

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:09-CV-535-BO

MARLO M., by her guardians and next)
friends WILLIAM and CARLETTE)
PARRIS, and DURWOOD W. by his)
guardian and next friend WILLIE)
WILLIAMS,)
)
Plaintiffs,)
)
v.)
)
LANIER CANSLER, in his official capacity)
as Secretary of the Department of Health and)
Human Services, and KAREN SALACKI, in)
her official capacity as Area Director of The)
Beacon Center Local Management Entity,)
)
Defendants.)
_____)

ORDER

This matter is before the Court on Plaintiffs' Motion for Temporary Restraining Order pursuant to Rule 65(b) of the Federal Rules of Civil Procedure. For the reasons discussed below, Plaintiffs' Motion for Temporary Restraining Order is GRANTED.

BACKGROUND

Plaintiffs are adults with dual diagnosis of a developmental disability and mental illness that require twenty-four hours a day care and supervision. Plaintiffs have been receiving state-funded Supervised Living 811 services through North Carolina's Department of Health and Human Services (DHHS) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, as well as health care and other services through North Carolina's Medicaid Assistance Program and Community Alternatives Program for Persons with Mental Retardation

and Developmental Disabilities waiver (CAP-MR/DD).

Defendant Karen Salacki is the Area Director of the Beacon Center, and has the authority and discretion to authorize, deny, reduce, suspend, and terminate state-funded services for Plaintiffs. Defendant Lanier Cansler, Secretary of DHHS, is responsible for the management, oversight, and implementation of these funding programs, and the people who ensure that publicly funded services are distributed in accordance with the law. *See* N.C.G.S. § 122C-111, *et seq.* On or about November 30, 2009, Plaintiffs received final notification that the state funding they rely upon to receive twenty-four hour care and remain in their homes, would be terminated effective December 15, 2009. As a result, Plaintiffs would be forced out of their homes and into a more restrictive congregate placement or institution.

Plaintiffs have filed a Complaint alleging Defendants actions violate the Americans with Disabilities Act, Title II, 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. These laws require Defendants to administer government services and programs in a manner as to not deny individuals with disabilities benefits that they are entitled to under the law. Plaintiffs ultimately seek declaratory and injunctive relief to preserve their receipt of care in the community until adequate CAP-MR/DD or state-funded services are made available to them.

ANALYSIS

The factors to be weighed before issuing a temporary restraining order are the same as those considered before issuance of a preliminary injunction. *Ficker v. Tuohy*, 305 F. Supp.2d 569, 571 (S.D. Md. 2004). The U.S. Supreme Court has recently clarified that a “plaintiff must establish ‘[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.’” *Real Truth About Obama, Inc. v. FEC*, 575 F.3d

342, 346 (4th Cir. Va. 2009) (quoting *Winter v. NRDC, Inc.*, 129 S. Ct. 365, 374 (2008)). “[A]ll four requirements must be satisfied.” *Id.*

The court finds that the balance of hardships in this case favors Plaintiffs. Without action, Plaintiffs will be removed from their homes and lose the services needed to function within the community on a day-to-day basis. This outweighs the harm to Defendants, who will only have to continue providing the coverage they have been providing to the Plaintiffs for more than four years. Under the ADA, “Qualified individuals with a disability” are those who “with or without reasonable modifications to rules, policies, or practices . . . meet[] the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2). Plaintiffs are qualified individuals under the ADA. While a State may generally make its own reasonable assessment on the appropriateness of the use of a community-based program for an individual, prohibited discrimination includes “unjustified institutional isolation of persons with disabilities.” *Olmstead v. L.C. by Zimring*, 527 U.S. 581, 600-02 (1999). Plaintiffs have been living in such community-based care for more than four years with State funding. This funding since 2005 would appear to be an acknowledgment by the State of the appropriateness of this environment for the Plaintiffs. Having shown a likelihood of success under the ADA; and the public having an interest in maintaining cost-effective treatment, the Plaintiffs have met the requirements for granting a TRO.

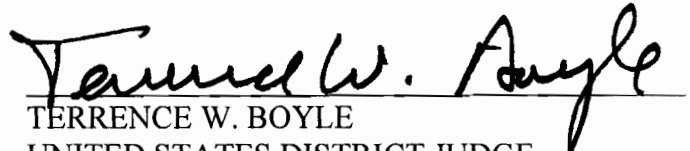
CONCLUSION

For the reasons stated above, Plaintiff's Motion for a Temporary Restraining Order is hereby GRANTED. Defendants, and all persons acting on their behalf, are hereby ORDERED to not reduce or terminate Plaintiffs' State-funded services on December 15, 2009, and to preserve Plaintiffs level of care and supervision, including allowing Plaintiffs to maintain their community placements in their homes.

A hearing on Plaintiffs' Motion for Preliminary Injunction shall be held on December 28, 2009, in Raleigh, North Carolina.

SO ORDERED.

This 14 day of December, 2009.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE