

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**O.B.** by and through his parents GARLAND )  
BURT and JULIE BURT, **C.F.** by and through )  
his mother, KRISTEN FISHER, **J.M.** and **S.M.** )  
by and through their parents, DAN MCCULLOUGH )  
and MICHELE MCCULLOUGH, )  
individually and on behalf of a class, )

Plaintiffs, )

vs. )

**FELICIA F. NORWOOD**, in her official capacity )  
as Director of the Illinois Department of )  
Healthcare and Family Services, )

Defendant. )

No. 15-CV-10463

Judge: Charles P. Kocoras

Magistrate: Michael T. Mason

**PLAINTIFFS’ MOTION TO ENFORCE  
PRELIMINARY INJUNCTION ORDER**

Now comes the Plaintiffs, by and through their attorneys, and files this Motion to Enforce the Preliminary Injunction Order entered by this Court.

**I. Introduction.**

1. The Defendant has failed to comply with this Court’s Preliminary Injunction Order of April 6, 2016 in two respects. First, the Defendant has failed to “take immediate and affirmative steps to arrange” for in-home shift nursing services at the approved level to the Plaintiffs and Class Members. Dkt. 42. Secondly, the Defendant has failed to provide to the Plaintiffs “what steps have been undertaken by Defendant to arrange for in-home shift nursing services” and “an identifying list” of Class Members, which contains “how much of their in-home shift nursing care was used or delivered during the preceding 90 days.” Dkt. 42.

2. Plaintiffs have made repeated written requests to the Defendant for assurances of compliance with this Court's Preliminary Injunction Order and, to date, have not received any assurance of compliance or any written response.<sup>1</sup> Although the Defendant provided a letter to the Plaintiffs dated May 6, 2016, which the Defendant represented as "[i]n accordance with paragraph B of the Preliminary Injunction Order," that letter did not satisfy this Court's Preliminary Injunction Order.<sup>2</sup>

## **II. Preliminary Injunction Order.**

3. On April 6, 2016, this Court entered a Preliminary Injunction Order, which ordered, in part, as follows:

- A. Defendant Felicia F. Norwood shall take immediate and affirmative steps to arrange directly or through referral to appropriate agencies, organizations, or individuals, corrective treatment of in-home shift nursing services to Plaintiffs and such similarly situated Medicaid-eligible children under the age of 21 in the State of Illinois who also have been approved for in-home shift nursing services at the level approved by Defendant, as required by the Medicaid Act.
- B. Defendant Felicia F. Norwood shall provide the following information to Plaintiffs within 30 days of the entry of this Order:
  - (1) what steps have been undertaken by Defendant to arrange for in-home shift nursing services to Plaintiffs and such similarly situated Medicaid-eligible children and
  - (2) an identifying list of such similarly situated Medicaid-eligible children which contains (a) their currently approved level of in-home shift nursing care and (b) how much of their in-home shift nursing care was used or delivered during the preceding 90 days. Dkt. 42.

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<sup>1</sup> See Exhibit "A" – Plaintiffs' letter dated May 13, 2016; Exhibit "B" – Plaintiffs' letter dated May 31, 2016; Exhibit "C" – Plaintiffs' letter dated June 9, 2016.

<sup>2</sup> See Exhibit "D" – Defendant's letter dated May 6, 2016 (filed under seal.)

### **III. Non-Compliance With Preliminary Injunction Order.**

#### **A. Defendant Has Failed to Take Immediate and Affirmative Steps to Arrange In-Home Shift Nursing Services to the Plaintiffs and Class Members.**

4. This Court's Order requires the Defendant to "take immediate and affirmative steps to arrange" for in-home shift nursing services at the approved level. The Defendant's letter of May 6, 2016 does not identify any specific actions taken to arrange services for the named Plaintiffs and Class Members. *See* Exhibit "D". Concerning nursing services for named Plaintiffs O.B., J.M., S.M., and C.F., the Defendant's statements that "[t]he [nursing] agency continues to recruit nurses" are not responsive to this Court's Order; those statements do not demonstrate what, if any, steps the Defendant has taken to arrange for nursing services. *See* Exhibit "D" at p. 2. The Defendant's statements that it will "continue to monitor these cases" of the Plaintiffs and that "[t]he agency continues to recruit nurses" do not inform the Plaintiffs or the Court of the "immediate and affirmative steps" the Defendant has taken and is taking, as required by the Court's Order. *See* Exhibit "D" at p. 2; Dkt. 42.

5. Regarding "similarly situated Medicaid-eligible children [Class Members]," the Defendant's statements that it "will be undertaking a comprehensive review" and that the Defendant "is going to review each case" do not satisfy the Court's Order. *See* Exhibit "D" at p. 3. This Court's Order does not direct the Defendant to study the issue, but rather, to take immediate and affirmative steps to arrange for the delivery of in-home shift nursing services.

6. Despite the Court's Order and the Court's finding that the Plaintiffs and Class "face irreparable injury by not receiving medically necessary in-home shift nursing services," the

Defendant has not explained what, if any, affirmative steps it has taken to arrange for services. *See* Dkt. 42 at ¶ 3.

**B. Defendant Has Not Provided an Identifying List of Similarly Situated Children.**

7. First, the Defendant admits that the list is “not accurate,” and, therefore, it does not include “similarly situated” children, as required by the Court’s Order. *See* Exhibit “D” at p. 5; Dkt. 42. Because the list provided is not accurate, the Plaintiffs and Class Counsel are unable to determine who the numbers listed in the exhibits represent, or whether the children in the lists are receiving services at the approved level.

8. Second, the list provided by the Defendant is not identifiable. Exhibit “D” at Ex. 1, 2. The Defendant provided only the Recipient Identification Number (RIN) for each child. Without additional information from the Defendant, the Plaintiffs are unable to identify the children listed or their families. In addition to accurate data regarding nursing services, an “identifying list” of similarly situated children should contain the following:

- i) the child’s name;
- ii) the child’s RIN;
- iii) the name of the child’s legally responsible caregiver; and
- iv) the child’s address;
- v) the phone number of the child’s legally responsible caregiver; and
- vi) the email address of the child’s legally responsible caregiver (if available).

9. The Plaintiffs are not persuaded by the Defendant’s contention that “HFS must rely upon paid claims data to establish the actual utilization of allocation or hours for each child.” Exhibit “D” at p. 5. Nothing in the Court’s Order states that the Defendant must use claims data to develop an identifying list. Alternatively, the Defendant could inquire with service providers (nursing agencies) regarding the exact number of hours provided to each child for the preceding 90 days.

#### **IV. Conclusion and Prayer for Relief.**

For the foregoing reasons, Plaintiffs respectfully request that this Court enter the following relief:

- A. Order the Defendant, Felicia F. Norwood, to file a report with this Court within 10 days, identifying what steps the Defendant has already undertaken to arrange for the delivery of in-home shift nursing services to each Plaintiff and each Class Member who are not receiving in-home shift nursing services at the level approved by the Defendant.
- B. Order the Defendant, Felicia F. Norwood, to file a report with this Court within 10 days, that includes a timeline providing when each Plaintiff and each Class Member who is not receiving in-home shift nursing services at the level approved by the Defendant will receive the nursing services at the approved level.
- C. Require the Defendant to provide to Plaintiffs' counsel within 10 days an identifying list of all Class Members, including:
  - i) the child's name;
  - ii) the child's RIN;
  - iii) the name of the child's legally responsible caregiver; and
  - iv) the child's address;
  - v) the phone number of the child's legally responsible caregiver;
  - vi) the email address of the child's legally responsible caregiver (if available);
  - vii) the child's approved service level; and
  - viii) an accurate amount of nursing services actually provided to the child over the past 90 days.
- D. Award such other relief as the Court deems just and appropriate.

Respectfully submitted,

/s/ Robert H. Farley, Jr.  
One of the Attorneys for  
the Plaintiffs

Robert H. Farley, Jr.  
Robert H. Farley, Jr., Ltd.  
1155 S. Washington Street  
Naperville, IL 60540  
630-369-0103  
[farleylaw@aol.com](mailto:farleylaw@aol.com)

Shannon M. Ackenhausen  
Thomas D. Yates  
Legal Council for Health Justice  
180 N. Michigan Avenue, Suite 2110  
Chicago, IL 60601  
312-427-8990  
[tom@legalcouncil.org](mailto:tom@legalcouncil.org)

Jane Perkins  
Sarah Somers  
National Health Law Program  
101 E. Weaver Street  
Suite G-7  
Carrboro, NC 27510  
919-968-6308  
[perkins@healthlaw.org](mailto:perkins@healthlaw.org)

**CERTIFICATE OF SERVICE**

I, Shannon M. Ackenhausen, one of the Attorneys for the Plaintiffs, deposes and states that she caused the foregoing Plaintiffs' Motion to Enforce Preliminary Injunction Order to be served by electronically filing said document with the Clerk of the Court using the CM/ECF system, this 17<sup>th</sup> day of June, 2016, and will cause the foregoing Plaintiffs' Motion to Enforce Preliminary Injunction Order to be served on the named Defendant using the CM/ECF system.

/s/ Shannon M. Ackenhausen  
One of the Attorneys  
for the Plaintiffs