

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
Civ. No.7:08-CV-57-H

DEVON TYLER MCCARTNEY, a minor)
child, by his mother Penny McCartney,)
ERIC CROMARTIE, a minor child, by his)
mother Selena McMillan, and KATIE)
TIPTON, a minor child, by her father Greg)
Tipton, individually and on behalf of all)
others similarly situated,)

Plaintiffs,)

v.)

DEMPSEY BENTON, Secretary, North)
Carolina Department of Health and Human)
Services, in his official capacity,)

Defendant.)

**MOTION TO DISMISS FOR LACK OF
JURISDICTION (MOOTNESS)
Rule 12(b)(1), Fed. R. Civ. P.**

**MOTION TO DISMISS
FOR LACK OF JURISDICTION (MOOTNESS)**

Dempsey Benton, Secretary of the North Carolina Department of Health and Human Services (“Department”) (“defendant”), respectfully moves the Court to dismiss the class claims in plaintiffs’ amended complaint pursuant to Rule12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction. Due to the recent enactment of legislation substantially modifying the Department’s appeals process, the class allegations have been mooted. In support of this motion, defendant submits North Carolina Session Law 2008-118, attached hereto as Exhibit 1.

Respectfully submitted, this the 11th day of August, 2008,

Roy Cooper
Attorney General

/s/ Ronald M. Marquette
Ronald M. Marquette
Special Deputy Attorney General
N.C. State Bar No. 3759
rmarquette@ncdoj.gov

/s/ Belinda A. Smith
Belinda A. Smith
Special Deputy Attorney General
N.C. State Bar No. 13708
bsmith@ncdoj.gov

/s/ Tracy J. Hayes
Tracy J. Hayes
Assistant Attorney General
N.C. State Bar No. 35712
tjhayes@ncdoj.gov

N.C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629
Phone (919) 716-6900
Fax: (919) 716-6763

Attorneys for defendant.

CERTIFICATE OF SERVICE

I hereby certify that on this day, August 11, 2008, I electronically filed the forgoing **MOTION TO DISMISS FOR LACK OF JURISDICTION (MOOTNESS)** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Douglas Sea, Jane Perkins and Sarah Somers, attorneys for Plaintiff, and I hereby certify that I have mailed the document to the following non CM/ECF participants: none.

/s/ Ronald M. Marquette
Ronald M. Marquette
Special Deputy Attorney General