

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

MELINDA FISHER, SHANNON G. by and
through her guardian, BRANDON R. by
and through his guardian, MARTY M. by
and through his guardian, MISTY M. by
and through her guardian, and NEAL
SIEGEL,

on behalf of themselves and all
others similarly situated,

PLAINTIFFS,

vs.

KIM REYNOLDS, in her official capacity of
Governor of Iowa; JERRY FOXHOVEN
In his official capacity as Director of the
Iowa Department of Human Services,

DEFENDANTS.

No. 17-cv-0208

**RESISTANCE TO
MOTION FOR INJUNCTIVE RELIEF**

The Defendants Resist the motion for temporary injunction, stating:

1. Plaintiffs cannot meet their burden for this extraordinary remedy.
2. Plaintiffs are not likely to be successful on the merits.
 - a. There is no entitlement to be served at a level in excess of what is provided by law. Waiver rates are capped in the administrative rules. Iowa Code chapter 17A sets out the criteria for a waiver or exception to administrative rule.
 - b. Waivers must be managed to the average aggregate cap. The cap rates set in the administrative code establish the equivalent cost of institutional care - the federal benchmark for cost neutrality.

- c. Each of the named Plaintiffs admit to being served well-above the limits of the respective waiver cap and claim those services were reduced.
 - d. Iowa embraces the *Olmstead* responsibility to serve persons in the community where it is reasonable and considering the needs of others. *Olmstead* does not require serving persons in the community at any cost. As the Court acknowledged, Iowa's duty to Plaintiffs must also be weighed vis-à-vis its duties to all of its Medicaid members. There is a relative judgment needed.
 - e. The State's policies are embodied in the managed care contract. The contract forbids de facto rationing of care, requires the *Olmstead* principles be considered in benefits decisions, and provides for notice and due process.
3. Plaintiffs cannot show threat of irreparable harm. Plaintiffs highlight benefits from community living, and claim to have made adjustments given service reductions. Plaintiffs do not claim they are without Medicaid benefits or without medical care at the levels required by law. Threat of harm is mitigated by the watchful eyes of community-based case managers and by attention to urgent member needs at the state level.
4. The balance of the harms must consider the need for the Medicaid program to be equitable and sustainable. In the balance, administrative due process protections are relevant to protecting Member rights.

5. Injunction is not in the public interest. The State must have its full discretion available to balance the many needs of all of its Medicaid members within the limits of the appropriation granted by the legislature.

WHEREFORE, the Defendants pray this Honorable court DENY the motion for preliminary injunction. In the alternative, Defendants agree an evidentiary hearing is in order. Discovery has not yet begun. Defendants ask that a reasonable schedule be set for conducting the evidentiary hearing, including a sequential identification of witnesses and exhibits.

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I certify that the attached was filed via CM/ECF on August 2, 2017. /s/
Gretchen Kraemer

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