UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

Case No. 05-23037-CIV-JORDAN/O'SULLIVAN

FLORIDA PEDIATRIC SOCIETY/THE FLORIDA CHAPTER OF THE AMERICAN ACADEMY OF PEDIATRICS et al.

Plaintiffs

vs.

SECRETARY OF THE FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION, et al.

Defendants.
_____/

ORDER ON DEFENDANTS' MOTION REOPEN THE RECORD FOR TRIAL ON LIABILITY AND SUGGESTION OF MOOTNESS

The Secretary of the Department of Children and Families has moved to dismiss all claims as moot, or in the alternative, to reopen the record on liability **[D.E. 1279]**. The Secretary of the Agency for Health Care Administration and the Surgeon General have moved to reopen the record on liability **[D.E. 1281].** As explained below, the motions are denied.

1. With respect to the motions to reopen the record, I find that a reopening of the record for discovery and further trial sessions would cause substantial prejudice. As I have stated repeatedly throughout these proceedings, there must be a point at which the evidentiary record on the issue of liability is closed. We have long since passed that stopping point. If my findings concerning the issue of liability necessitate a remedy phase, then, as I stated previously and as both parties agreed, the plaintiffs and the defendants will have the opportunity at that stage to present evidence and testimony concerning any changes that affect the ability of the plaintiffs to obtain the relief sought. Therefore, I deny defendants' motions to reopen the record.

2. As to DCF's suggestion of mootness, I conclude that at this time no aspect of this case is moot. "[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969). "The burden of establishing mootness rests with the party seeking dismissal." *Beta Upsilon Chi Upsilon Chapter at the Univ. of Fla. v. Machen*, 586 F.3d 908, 916 (11th Cir. 2009). And, as the Eleventh Circuit has noted, "[t]his burden is a heavy one." *Id.*

DCF contends that in the past year it has made the following changes to how it determines Medicaid eligibility: (1) it implemented a new computer system, the Medicaid Eligibility System ("MES"), which makes eligibility determinations based on new income eligibility standards mandated by the Affordable Care Act of 2010 ("ACA") and includes a feature that allows the computer system to set the continuous eligibility period for each household member; (2) it implemented a new streamlined Medicaid application; and (3) it implemented a reduction in the number and type of Medicaid coverage categories as required by the Centers for Medicare and Medicaid Services. DCF argues that these changes have made it impossible to award any meaningful relief to the plaintiffs, thus mooting their claims. *See Knox v. Serv. Employees Int'l Union, Local 1000*, 132 S. Ct. 2277, 2287 (2012) ("A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party."). I disagree.

Based on the record before me at this time, I cannot say that it would be "impossible . . . to grant any effectual relief whatever" to the plaintiffs should they prevail on any of the claims they raise. *Knox*, 132 S. Ct. at 2287. The changes discussed by DCF have only recently been implemented, and at this time no one can know whether or not they will effectively solve the issues raised by the plaintiffs. For example, DCF contends in its motion that having fewer Medicaid coverage categories "*should* minimize the *possibility* that communications between MES and the Florida Medicaid Management Information System ("FMMIS") about changes in coverage categories will lead to initiation of plan assignment processes," which the plaintiffs contend results in switching. That is a far cry, however, from establishing that it is absolutely clear that switching could not reasonably be expected to recur as a result of communications between MES and FMMIS about changes in coverage categories.

Similarly, with respect to the MES computer system, Phase 2 of the system was only recently implemented on November 10, 2014. At this time nobody knows whether or not this

new computer system will effectively solve the issues raised by plaintiffs, including the issue of early termination of Medicaid eligibility prior to the end of the continuous eligibility period. *See, e.g.*, *Finberg v. Sullivan*, 658 F.2d 93, 97-99 (3d Cir. 1980) (holding that a change in the law alone does not demonstrate that the complained of violations have ceased and will never recur, rather evidence as to how the new law operates in practice is necessary before the new law can be held to have mooted a plaintiff's claim).[1]

As to the implementation of a streamlined Medicaid application, again DCF states that it continued to implement changes to the application on November 10, 2014. Until such time as the application is finalized and its effects have been studied, there is no way to know whether it remedies the issues raised by plaintiffs so that it would be "impossible to award any meaningful relief to the plaintiffs," as DCF argues in its motion.

Absent an inquiry and study into the operation of these new changes, and their effect on the provision of medical assistance to Medicaid eligible children in Florida, I am reluctant to hold that these changes moot all of the plaintiffs' claims against DCF. To this end, should a remedy phase be reached, DCF will have the opportunity to present evidence and testimony concerning these changes and their effect on the ability of the plaintiffs to obtain the relief sought. Whether the relief sought by plaintiffs currently remains legally available to them is a merits issue, not a mootness issue. *See Chafin v. Chafin*, 133 S. Ct. 1017, 1024 (2013) (explaining that the argument that a court lacks the authority to order a certain type of relief "confuses mootness with the merits."). Thus, I deny DCF's motion to dismiss for mootness at this time.[2]

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[1] Notably, the defendants continue to dispute that continuous eligibility was ever a systemic issue. This refusal on the part of the defendants to admit that any systemic problem exists (or existed) with respect to the issue of continuous eligibility suggests that a live dispute between the parties remains. *See Sheely v. MRI Radiology Network, P.A.*, 503 F.3d 1173, 1187 (11th Cir. 2007) ("[A] defendant's failure to acknowledge wrongdoing . . . ensures that a live dispute between the parties remains.").

[2] Nothing in this order prevents the defendants from presenting evidence in the future in support of their claim of mootness.

DONE and ORDERED in chambers in Miami, Florida, this 25th day of November, 2014.

Adalberto Jordan
United States District Judge

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