IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CHIANNE D., *et al.*,

Plaintiffs,

Case No. 3:23-cv-00985-MMH-LLL

v.

JASON WEIDA, in his official capacity as Secretary for the Florida Agency for Health Care Administration, and SHEVAUN HARRIS, in her official capacity as Secretary for the Florida Department of Children and Families,

Defendants.
_____/

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS

Defendants offer this reply in support of their Motion to Dismiss Chianne's and C.D.'s Claims (ECF No. 87).

I. C.D. LACKS STANDING.

C.D. admits she is ineligible for Medicaid, ECF No. 101 at 3, and does not claim she would have contested DCF's determination in any event—or had grounds to do so. Rather, she claims to have suffered injury because DCF's notice afforded her no opportunity to plan ahead for the termination of her coverage on May 31, 2023. *Id*. She claims she had no coverage for one month—June 2023—and incurred medical expenses. *Id*. at 1–2; *see also* ECF No. 2-6 at 7 ¶ 25 (stating that C.D.'s KidCare coverage took effect on July 1, 2023).

This argument is flawed. C.D. does not explain how the *prospective* injunction she seeks would compensate her for medical expenses incurred in June 2023 and thus afford redress. *See* ECF No. 77 at 44 (seeking prospective reinstatement). Without a likelihood of redress, C.D. has no standing.

Further, to the extent C.D. seeks to be made whole for medical expenses incurred in June 2023, C.D. seeks retrospective relief, which the Eleventh Amendment prohibits. *Edelman v. Jordan*, 415 U.S. 651, 677 (1974).

Third, this case is wholly unlike *Kimble v. Solomon*, 599 F.2d 599 (4th Cir. 1979). There, Medicaid recipients received no advance notice of reductions to their benefits; Maryland provided notice more than one month *after* the change took effect. *Id*. at 601. The court noted that blindsided recipients had no advance notice that "certain types of medical services would be sharply curtailed within a few days and that any recipient in need of such services should obtain them promptly, while benefits remained available." *Id*. at 604.

Here, DCF notified C.D. on April 24, 2023, that her "Medicaid benefits . . . will end on May 31, 2023." ECF No. 2-6 at 25. It gave C.D. more than *five weeks'* advance notice—much more than the 10 days required by federal law, *see* 42 C.F.R. § 431.211. It advised her that she "may be able to get coverage from the Florida KidCare Program," ECF No. 2-6 at 25, and that, if she requests a fair hearing "before the effective date of this notice, [her] benefits may continue at the prior level until the hearing decision," *id*. at 27. There is no resemblance between this case and *Kimble*, where Maryland afforded Medicaid recipients no advance notice at all and therefore no opportunity to plan ahead.

Kimble, moreover, was an Eleventh Amendment case—not a standing case. C.D. cites no case in which a court held that the denial of an opportunity to "plan," causing a brief coverage gap, conferred standing—let alone standing to pursue *prospective* relief.

C.D. next claims that, under *Turner v. Ledbetter*, 906 F.2d 606, (11th Cir. 1990), a Medicaid recipient, though ineligible, is entitled to reinstatement until the State provides adequate notice. But *Turner* concerned a cash-assistance program—not Medicaid—and Medicaid regulations specifically address the circumstances in which inadequate notice requires reinstatement. Under those regulations, a State that fails to provide notice must reinstate coverage *only* if (1) the beneficiary timely requests a hearing; and (2) the termination "resulted from other than the application of Federal or State law or policy." 42 C.F.R. § 431.231(c). C.D.'s extension of *Turner* to Medicaid nullifies those prerequisites.

Here, C.D.'s coverage was terminated because her income exceeded applicable limits, ECF No. 2-6 at 19—clearly "the application of Federal or State law or policy." 42 C.F.R. § 431.231(c)(3). And Chianne withdrew C.D.'s fair-hearing request. ECF No. 38-2 ¶ 17. For either of these reasons, C.D. is not entitled to reinstatement of coverage.

Turner is distinguishable for other reasons as well. First, *Turner* concerned efforts to recoup benefits that Georgia had already paid under a cash-assistance program—not a wholesale reinstatement of benefits. 906 F.2d at 607. Second, the court's injunction barred recoupment only from recipients who had filed successful administrative appeals, and only of benefits paid while the appeals were pending. *Id*. at 608 ("[T]he district court concluded that the state could not recoup any funds which the recipients received while appealing their terminations."); *id*. at 609 ("[T]he recipients in this case, by successfully

appealing the termination of their benefits on the basis of inadequate notice, did not receive an overpayment."); *id*. at 610 ("Funds which the recipients received while challenging their terminations were legally awarded."). None of these circumstances is present here. C.D. has no standing, and her claims against Defendants should be dismissed.

II. THE "INHERENTLY TRANSITORY" EXCEPTION DOES NOT SAVE CHIANNE'S CLAIMS.

Like C.D., Chianne does not claim to be eligible for Medicaid. Chianne argues, however, that the Court may adjudicate her moot claims under the "inherently transitory" exception. But the "inherently transitory" exception salvages claims that are truly transitory—claims measured in hours, days, or weeks—and not claims like Chianne's.

A putative class action must be dismissed if the named plaintiff's claim becomes moot before a class is certified.[1] *Zeidman v. J. Ray McDermott & Co., Inc.*, 651 F.2d 1030, 1045 (5th Cir. July 27, 1981). Where, however, that claim is so inherently transitory that a district court cannot "reasonably be expected to rule on a certification motion" before the claim expires, class certification relates back to the date of the complaint. *Swisher v. Brady*, 438 U.S. 204, 213 n.11 (1978) (quoting *Sosna v. Iowa*, 419 U.S. 393, 402 n.11 (1975)).

This exception provides relief from the mootness doctrine where the challenged conduct is so ephemeral that it is "effectively unreviewable." *Genesis Healthcare Corp. v.*

[1] Once a class is certified, the class acquires its own legal status, and the mootness of the named plaintiff's claims no longer compels dismissal of the class action. *Sosna v. Iowa*, 419 U.S. 393, 399–02 (1975).

Symczyk, 569 U.S. 66, 76 (2013); *accord id*. at 77 (noting that the exception applies "where the transitory nature of the conduct . . . would effectively insulate defendants' conduct from review"). This exception is narrow, *Gerstein v. Pugh*, 420 U.S. 103, 111 n.11 (1975), and is "focused on the fleeting nature of the challenged conduct," *Symczyk*, 569 U.S. at 77.[2]

In *Gerstein*, the plaintiffs challenged their detention without a prompt probable-cause determination. Their claim was transitory because the "length of pretrial custody cannot be ascertained at the outset, and it may be ended at any time by release on recognizance" or otherwise. 420 U.S. at 111 n.11. It was unclear whether "any given individual, named as plaintiff, would be in pretrial custody long enough for a district judge to certify the class." *Id*.; *accord County of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991).

Similarly, in *Swisher*, the plaintiffs challenged the State's right to file exceptions to a master's report in juvenile-court proceedings. 438 U.S. at 206. Noting the "rapidity" with which courts reviewed exceptions, the Court held that the plaintiffs' claims came within the "inherently transitory" exception because the claims became moot before a court could reasonably have been expected to rule on class certification. *Id*. at 213 n.11.

This case bears no analogy to *Gerstein* and *Swisher*. The duration of post-partum eligibility is not fleeting and unpredictable, like pretrial detention. A pregnant woman

[2] This mootness exception is distinct from the exception articulated in *Zeidman*, which salvages moot claims when a defendant purposefully attempts to "pick off" the plaintiffs to avert class certification. *Stein v. Buccaneers Ltd. P'ship*, 772 F.3d 698, 706 (11th Cir. 2014).

remains eligible for Medicaid for a *determinate period of 21 months*, namely, for "the duration of her pregnancy and for the postpartum period consisting of the 12-month period beginning on the last day of her pregnancy." Fla. Stat. § 409.903(5). Neither that period nor the 12-month post-partum period in isolation is so short that the claim will predictably expire before a court has a reasonable chance to certify a class. The claim is not so fleeting that its abbreviated lifespan would insulate DCF's notices from review. Notably, Defendants have not challenged the claims of the other Plaintiffs on mootness grounds.

Chianne's claims were not "inherently transitory." She knew in August 2023 that her eligibility would continue through February 2024 and then expire. ECF No. 1 ¶ 100. Here, however, the question is not even whether *Chianne's* claims were so fleeting as to defy review, but whether "a claim will remain live *for any individual who could be named as a plaintiff* long enough for a court to certify the class." *Bellin*, 6 F.4th at 473 (quoting *Salazar v. King*, 822 F.3d 61, 73 (2d Cir. 2016) (emphasis added)); *accord Olson v. Brown*, 594 F.3d 577, 582 (7th Cir. 2010). Unlike pretrial detention, Medicaid eligibility is not so transitory that claims *of the type* presented here will, as a general rule, expire before a court has a reasonable opportunity to rule on a motion for class certification. Chianne has not demonstrated that the challenged conduct is so short-lived as to be unreviewable.

Chianne's cases do not support her position. In *Bellin v. Zucker*, 6 F.4th 463 (2d Cir. 2021), the plaintiffs challenged the process by which Medicaid recipients could seek increases in hours of personal care services. *Id*. at 467. The challenged process provided for a final resolution within 14 to 28 days—not enough time to secure class certification. *Id*. at 473. And in *J.M. v. Crittenden*, 337 F.R.D. 434, 452 (N.D. Ga. 2019), the plaintiffs

were erroneously terminated from Medicaid but quickly reapplied and were reinstated before the court could reasonably have certified a class. In contrast, Chianne is no longer eligible, and she had many months to secure class certification before her claims expired.

Chianne mistakenly argues that her eligibility period was "unpredictable." ECF No. 101 at 8. Florida law specifies the exact duration of pregnancy-related eligibility, Fla. Stat. § 409.903(5), and Chianne knew what that duration was, *see* ECF No. 1 ¶ 100. Chianne claims that the 12-month post-partum period is too short to "allow for a final resolution of her claims." ECF No. 101 at 8. What matters, however, is not whether the claims can be *resolved* before they expire, but whether the brief period of the challenged conduct denies courts a fair opportunity to certify a class. *Swisher*, 438 U.S. at 213 n.11.

Last, while Plaintiffs assert the "constant existence of a class of persons suffering deprivation," ECF No. 101 at 8–11, that alone does not establish a mootness exception, but is only one of the two elements of the "inherently transitory" exception, *see Bellin*, 6 F.4th at 473. For these reasons, this Court should dismiss Chianne's and C.D.'s claims.

/s/ *Andy Bardos*
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