UNITED STATES DISTRICT COURT
DISTRICT OF THE DISTRICT OF COLUMBIA

MONTE A. ROSE, JR., *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	No. 1:19-cv-02848-JEB
XAVIER BECERRA, *et al.*,	)	
	)	
Defendants.	)	

MOTION OF THE INDIANA FAMILY AND SOCIAL SERVICES ADMINISTRATION FOR ENTRY OF JUDGMENT PURSUANT TO RULE 54(B) AND RULE 58

Pursuant to Federal Rules of Civil Procedure 7(b), 54(b), and 58(d), Intervenor-Defendant Indiana Family and Social Services Administration (FSSA) moves for entry of judgment on all claims adjudicated in the Court's opinion, Dkt. 68, and order, Dkt. 67, dated June 27, 2024.

On June 27, 2024, this Court issued an opinion and a separate order granting Plaintiffs' Motion for Summary Judgment, denying Federal Defendants' Cross-Motion for Summary Judgment, and denying Indiana's Motion to Dismiss. Dkt. 67; Dkt. 68. The order states (among other things) that "Judgment is ENTERED for Plaintiffs on Count I," and that the "Secretary's 2020 approval of the Healthy Indiana Plan 2.0 is VACATED and REMANDED to the agency." Dkt. 67. The order, however, is captioned an "order," rather than a "judgment," and does not expressly address Counts II through V of plaintiffs' supplemental complaint.

Generally, any order or decision "that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action." Fed. R. Civ. P. 54(b). For a judgment on fewer than all claims to be final, the court must "direct entry of a final judgment as to one or more, but fewer than all, claims" and "expressly determine[] that there is no just reason

for delay." *Id.* Additionally, Rule 58 requires that "[e]very judgment . . . must be set out in a separate document." Fed. R. Civ. P. 58(a).

For the avoidance of doubt about whether the Court's June 27, 2024 order constitutes a final, appealable judgment on all or fewer than all claims, FSSA requests that the Court enter a separate judgment. *See* Fed. R. Civ. P. 58(d). If the Court understands its opinion and order to adjudicate all claims in this action, the judgment should so state. Conversely, if the Court understands its opinion and order to adjudicate Count I of plaintiffs' supplemental complaint and not the remaining counts, FSSA asks that the Court enter a separate judgment on Count I and "expressly determine that there is no just reason [to] delay" its entry. Fed. R. Civ. P. 54(b).

FSSA submits that, as this Court determined in *Gresham v. Azar II*, No. 18-cv-1900-JEB, Order (D.D.C. Apr. 4, 2019) (granting joint motion for entry of judgment on only Count II under Rule 54(b)), there is no just reason for delaying entry of judgment on any claims adjudicated. As the Court's opinion in this case explains, adjudicating Count I of plaintiffs' supplemental complaint, vacating the Secretary's 2020 approval, and remanding the case to the agency "affords Plaintiffs full relief." Dkt. 68 at 3. Entry of a separate final judgment would serve to clarify whether the time for appeal has begun to run and ensure the availability of appellate review without the need to conduct further proceedings, conserving judicial, party, and agency resources.

Securing swift appellate review is particularly important in this case. The Court's June 27, 2024 order vacates and remands the Secretary's 2020 approval of the Healthy Indiana Plan 2.0 (HIP 2.0). Dkt. 67. There can be no denying that vacatur impacts FSSA's operations. *See* Dkt. 68 at 59 (acknowledging there would be disruption). The impact of vacatur, moreover, extends beyond FSSA's authority to require POWER Account contributions. As the Secretary recognized,

FSSA must alter "eligibility systems and managed care plan contracts" to operate in a world without a waiver. S.A.R. 2. Those modifications alone will take months.

The Court's order poses difficulties regarding the state plan too. As FSSA pointed out, the state plan is intertwined with the Secretary's 2020 approval. State Reply 3–5. For example, the state plan specifies that the benefits package for persons under 100% of the federal poverty line who do not make POWER Account contributions is HIP Basic. State Plan, Section H1.1.[1] HIP Basic does not include assurance of non-emergency medical transportation. *See* State Plan, Section H1.5; State Plan, Section H1.7. Including that assurance would require amending contracts with the managed care entities that provide HIP Basic, *see* State Plan, Section H1.8, revising capitation rates, and obtaining certification and approval of the rates from CMS—a months-long process.

Or take another example. Under federal law, adult members of the Medicaid expansion population who are not pregnant or disabled are entitled only to "alternative benefits" (also known as "benchmark" benefits). *See* 42 U.S.C. § 1396a(k), 1396u-7(b)(2); 42 C.F.R. § 440.300. Under the state plan, the alternative benefit package for non-disabled, non-pregnant adults whose incomes are over 100% of the federal poverty line requires "contribution to . . . Personal Wellness and Responsibility (POWER) account[s]." State Plan, Section H2.1. In making this observation, FSSA's intent is not to quibble with this Court's observation about the population's eligibility for Medicaid. *See* Dkt. 68 at 27. Rather, FSSA's point is that the state plan presumes the waiver's existence. It is thus important to quickly obtain appellate review to minimize operational impacts.

Finally, FSSA respectfully requests prompt attention to this motion for entry of judgment. Because the time for appeal in this case begins to run within 60 days of an appealable order or judgment, *see* Fed. R. App. P. 4(1)(B), FSSA must file any notice of appeal within 60 days of this

[1] The plan is available at https://provider.indianamedicaid.com/ihcp/StatePlan/state_plan.asp.

Court's June 27, 2024 opinion and order to avoid possible forfeiture of appellate rights. Additionally, as vacatur of the Secretary's 2020 approval has significant implications for FSSA, securing swift appellate review is critical. Prompt entry of a separate judgment pursuant to Rule 58 and, if applicable, Rule 54(b) will clarify the case status and facilitate review.

Respectfully submitted,

THEODORE E. ROKITA
Indiana Attorney General

By: /s/ James A. Barta
James A. Barta
Solicitor General
Office of the Indiana Attorney General
302 W. Washington St.
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204-2770
Phone: (317) 232-0709
Fax: (317) 232-7979
Email: James.Barta@atg.in.gov

Caroline M. Brown
Brown & Peisch PLLC
1233 20th St. NW, Suite 505
Washington, D.C. 20036
Phone: (202) 499-4258
Email: cbrown@brownandpeisch.com

Counsel for Intervenor-Defendant
Indiana Family and Social Services Administration

UNITED STATES DISTRICT COURT
DISTRICT OF THE DISTRICT OF COLUMBIA

MONTE A. ROSE, JR., *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	No. 1:19-cv-02848-JEB
XAVIER BECERRA, *et al.*,	)	
	)	
Defendants.	)	

[PROPOSED] ORDER GRANTING MOTION FOR ENTRY OF JUDGMENT

The Court GRANTS Intervenor-Defendant Indiana Family and Social Services Administration's motion for entry of judgment. The Court will contemporaneously enter judgment [on all claims / on Count I only and finds that there is no just reason to delay entry of judgment].

DATED: _____

_____
HON. JAMES E. BOASBERG