

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KERIM and ADVIJE MEMISOVSKI, by their)
mother THERESA MEMISOVSKI, et al.,)
)
Plaintiffs,)
)
vs.)
)
BARRY MARAM, et al.,)
)
Defendants.)

No. 92 C 1982
Judge Joan H. Lefkow

MONEIA BEEKS, et al.,)
)
Plaintiffs,)
)
vs.)
)
PHILIP BRADLEY, et al.,)
)
Defendants.)

No. 92 C 4204
Judge Joan H. Lefkow

Order

Motion by plaintiffs for further relief to enforce orders requiring continued payment of Medicaid (*Beeks* dkt. 92, *Memisovski* dkt. 513) is granted as follows: The parties are directed to continue to negotiate to achieve substantial compliance with the consent decrees in these cases. If they cannot reach a negotiated solution, either party may make an appropriate motion, to be noticed for presentment on June 20, 2017, at 10:00 a.m.

Statement

Under a consent decree entered in *Beeks* on January 14, 1993, defendants agreed to be enjoined from failing to furnish assistance promptly to all persons in Illinois who are or will be eligible for benefits under Medicaid because of a budget impasse. Under a consent decree entered in *Memisovski* on November 8, 2005, defendants agreed to provide early and periodic screening, diagnosis, and treatment to children in Cook County who are eligible to receive those services under Medicaid. Unfortunately, defendants have not lived up to their agreements.

“Against a state that violates a valid federal court decree the court has the power to issue any order necessary to enforce the decree, including an order to pay.” *Wisconsin Hospital Ass’n*

v. *Reivitz*, 820 F.2d 863, 868 (7th Cir. 1987). Accordingly, on July 24, 2015, the court granted the emergency motion of the *Memisovski* class to enforce its decree pending the resolution of an “impasse” in negotiations between the Governor and the General Assembly, then expected to be temporary. That order required defendants

to make all Medicaid payments for claims properly billed on behalf of Medicaid providers serving members of the plaintiff class, including capitated payments to managed care entities (MCEs) that would have been paid in the absence of the budget impasse on July 1, 2015, and to continue to make timely and scheduled Medicaid payments in compliance with applicable federal law, until the budget impasse is resolved.

On August 31, 2015, the court granted the *Memisovski* class’s emergency motion to enforce the July 24, 2015 order. In addition, the court granted the related *Beeks* class’s motion to enforce its consent decree. The joint order enforced both consent decrees and required defendants to “process and make all Fiscal Year 2016 Medicaid payments to providers statewide who serve Illinois Medicaid patients that would have been made . . . in the ordinary course of business in the absence of the budget impasse.”

The defendants did not appeal this order. In fact, defendants subsequently entered into an *agreed* order on July 6, 2016, stating that prior orders related to the enforcement of the consent decrees “shall apply with equal force to Illinois Fiscal Year 2017 (July 1, 2016 through June 30, 2017).”¹

Under contractual arrangements with the State, Managed Care Organizations (MCO) manage and coordinate care to more than sixty percent of Medicaid enrollees in Illinois. The MCOs receive from the State funding to pay the claims submitted by medical providers. All Illinois Medicaid recipients enrolled in MCOs are members of either or both of the *Memisovski* and *Beeks* classes. Payment to the MCOs is required in order to ensure that providers are able to continue to offer services to class members.

The budget impasse has continued for two years, during which time revenue has become insufficient to meet the State’s ongoing obligations. According to defendants, the Comptroller has elected to fund the obligations of the *Memisovski* and *Beeks* consent decrees at a sharply reduced level in comparison to other obligations imposed by statute or orders from other courts. For example, defendants advise that the Comptroller is funding the state payroll as well as debt service at one hundred percent, respectively \$370 million and \$226 million each month. Yet Medicaid payments total just \$160 million per month, not including any payment to the MCOs. Although she has disclosed those choices and described the expected consequences if the chosen payees are not paid, the Comptroller has failed so far to demonstrate a lawful basis to disregard this court’s orders. As the Seventh Circuit has instructed, compliance with a state statute does not excuse failure to comply with a federal consent decree. *See Reivitz*, 820 F.2d at 868.


¹ In addition to the July and August 2015 orders, the court entered an order on September 16, 2015, on behalf of *Beeks* class members receiving Community Care Program services and an order on February 9, 2016, on behalf of *Beeks* and *Memisovski* class members receiving Family Case Management services.

Although the court means no disrespect to the Comptroller, who faces an unenviable situation, it finds that minimally funding the obligations of the decrees while fully funding other obligations fails to comply not only with the consent decrees, but also with this court's previous orders. Counsel for the classes have represented that they do not at this time demand or seek immediate payment in full. They contend that payments to MCOs must be sufficient to sustain the services to members of the classes. This is a reasonable position.

The parties are therefore directed to negotiate with the goal of achieving substantial compliance with the consent decrees.

Dated: June 7, 2017

ENTERED:



JOAN H. LEFKOW
United States District Judge