

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CLUSTER DANIELS, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	Case No. 3:79-3107
)	Judge Nixon
v.)	
)	
M.D. GOETZ, Jr., Commissioner,)	
Tennessee Department of Finance and)	
Administration; DARIN GORDON, <i>et al.</i> ,)	
)	
<i>Defendants,</i>)	
)	

ORDER

Pending before the Court is Defendants' Motion to Approve a Redetermination Process for Individuals Terminated from the SSI Program and to Vacate the Injunction Against Redetermination ("Defendants' Redetermination Motion") (Doc. No. 1532), Defendants' Memorandum in Support (Doc. No. 1533), and related Declarations (Doc. Nos. 1534, 1535, and 1536). Plaintiffs filed a Response (Doc. No. 1545), to which Defendants filed a Reply (Doc. No. 1548-1) and a second set of Declarations (Doc. Nos. 1549 and 1550). Defendants later filed a Supplemental Brief in Support (Doc. No. 1598) and an additional Declaration (Doc. No. 1620).

Also before the Court is Defendants' Motion to Ascertain Status of Motion to Approve a Redetermination Process for Individuals Terminated from the SSI Program and to Vacate the Injunction Against Redetermination ("Defendants' Status Motion") (Doc. No. 1619). Plaintiffs

have filed a Response in Opposition (Doc. No. 1621) and a Declaration (Doc. No. 1622). In addition, Plaintiffs filed a Motion for Leave to Take Discovery as to both the State and Federal Defendants (“Plaintiffs’ Discovery Motion”) (Doc. No. 1554) and a Brief in Support (Doc. No. 1555). In conjunction, Plaintiffs filed a number of Declarations (Doc. Nos. 1556 to 1575). State Defendants filed a Response (Doc. No. 1587) and related Declarations (Doc. Nos. 1588 to 1591). The Federal Defendants also filed a Response (Doc. No. 1602) followed by an additional Response from the State Defendants (Doc. No. 1603).

For the reasons stated below, Defendants’ Redetermination Motion is **GRANTED**, Plaintiffs’ Discovery Motion as to the Federal Defendants is **DENIED**, and Defendants’ Status Motion is **GRANTED**.

I. BACKGROUND

A. Factual Background

Because the parties are well-versed in the factual history of this case, the Court does not restate this history in its entirety. The facts pertinent to the present Order are as follows: this case began as a 42 U.S.C. § 1983 class action lawsuit in 1979. The original Plaintiffs, who were present and future Medicaid recipients, alleged that Tennessee’s Medicaid program violated both the Medicaid Act, 42 U.S.C. § 1396 and the Fourteenth Amendment to the United States Constitution. Plaintiffs asserted that Defendants, in their capacity as State officials, failed to provide adequate notice and procedural safeguards when their Medicaid providers denied their claims.

B. Procedural Background

At issue in the State's Motion is this Court's Memorandum (Doc. No. 203) and Order (Doc. No. 204) issued on November 13, 1987 enjoining the State "from terminating Medicaid benefits [from Supplemental Security Income ("SSI") recipients] without making a de novo determination of Medicaid eligibility independent of a determination of SSI eligibility by the Social Security Administration." (Doc. No. 204).

These SSI recipients are known as Daniels class members, named after Cluster Daniels, the named Plaintiff in the above-styled action. The Daniels class is also known as the Medicaid/SSI Subclass. This subclass consists of individuals who (a) received SSI in the past and were thus automatically eligible for and enrolled in Tennessee's Medicaid program (known as "TennCare" after January 1, 1994) as required by federal Medicaid regulations and who (b) subsequently had their SSI benefits terminated by the Social Security Administration ("SSA"), making them ineligible for that category of mandatory Medicaid.

Initially, the State operated under the following mechanism: the State automatically terminated the Medicaid benefits of individuals whose SSI benefits had been terminated by SSA. On February 20, 1985, this Court held that this automatic termination violated 42 C.F.R. §§ 435.930(b) and 435.916(c). (Doc. No. 159). In a separate Order, the Court held that Defendants must, "upon receipt of notification of a recipient's termination from SSI[,] . . . redetermine ex parte the recipient's eligibility for Medicaid benefits. Pending this determination, the state must continue to provide such individuals with Medicaid benefits." (Doc. No. 160) (emphasis in original).

Plaintiffs filed a motion for a temporary restraining order and a motion to show cause as

to why Defendants should not be held in contempt of this Court's 1985 Order (Doc. No. 159) regarding redetermination of Medicaid eligibility upon notice of termination of SSI benefits. In the abovementioned 1987 Order, this Court found inadequate Defendants' ex parte redetermination of Medicaid eligibility. (Doc. No. 204). Although this Court declined to impose upon the State specific administrative procedures in the 1987 Order (Doc. No. 203), it suggested guidelines found in related cases. Relying primarily on Crippen v. Kheder, 741 F.2d 102 (6th Cir. 1984), this Court noted that once the State receives notice that an individual has been terminated from SSI, the State must make a prompt ex parte determination regarding eligibility for Medicaid under a different category. (Doc. No. 203, at 6). Furthermore, this Court held that the State must continue to provide benefits to individuals throughout the redetermination process. (Id.).

This Court also relied on Rousseau v. Bordeleau, 624 F. Supp. 355, 361 (D.R.I. 1985), which held that a State cannot rely solely on SSA's determination of eligibility for SSI and must instead, make an independent finding. (Id.). Citing Massachusetts Association of Older Americans v. Commissioner of Public Welfare, 803 F.2d 35 (1st Cir. 1986), this Court noted that if the State finds an individual no longer eligible for SSI or for another category of Medicaid, the State is required to provide notice of the proposed termination of benefits, which must include information about the right to a fair hearing. (Doc. No. 203, at 7).

In February 2008, the parties submitted an Agreed Order to the Court vacating the 1987 Order (Doc. No. 204) as it pertains to members of the Medicaid/SSI Subclass who are either incarcerated in a state penitentiary or are state prisoners incarcerated in county jails. (Doc. No. 1543). According to the Agreed Order,

[a]ny class member who falls into this category of incarcerated individuals cannot be found eligible for Medicaid in any eligibility category. Therefore, a class member believed to be in this category does not need to go through a comprehensive redetermination process to evaluate their continued eligibility for Medicaid unless and until he is determined to not be an 'inmate of a public institution.' Prior notice and continuation of benefits pending appeal as required by federal regulations at 20 C.F.R. part 431, Subpart E, will be provided to members of the Medicaid/SSI Subclass who are either incarcerated in a state penitentiary or are a state prisoner incarcerated in a county jail.

(Doc. No. 1543, at 1-2) (emphasis in original).

With the exception of the abovementioned Agreed Order (Doc. No. 1543), the parties have been unable to agree on State procedures to conduct the required redetermination of Medicaid eligibility for Daniels class members. Defendants' Redetermination Motion (Doc. No. 1532), filed on February 1, 2008, requests the Court to vacate the injunction against redetermination and approve their proposed redetermination process. In support, Defendants filed a Memorandum (Doc. No. 1533) and the Declarations of Glenda Shearon (Doc. No. 1534), Scott Pierce (Doc. No. 1535), and Tracy Purcell (Doc. No. 1536) on February 1, 2008. Plaintiffs filed a Response (Doc. No. 1545) on February 28, 2008, to which Defendants filed a Reply (Doc. No. 1548-1) and a second round of Declarations from Glenda Shearon (Doc. No. 1549) and Tracy Purcell (Doc. No. 1550) on March 14, 2008. Defendants also filed a Supplemental Brief (Doc. No. 1598) on July 21, 2008 and an additional Declaration from M.D. Goetz, Jr. (Doc. No. 1620) on November 21, 2008. Plaintiffs also filed a Declaration from Rosa C. Austin (Doc. No. 1622) on December 8, 2008.

Related to Defendants' Redetermination Motion is Plaintiffs' Discovery Motion (Doc. No. 1554) and Brief in Support (Doc. No. 1555), filed on April 11, 2008. Plaintiffs filed multiple Declarations in Support (Doc. Nos. 1556 to 1575) also on April 11, 2008. Both the

State and Federal Defendants filed Responses (Doc. No. 1587) on May 12, 2008 and (Doc. No. 1602) on August 21, 2008, respectively; State Defendants also filed Declarations in Support (Doc. Nos. 1588 to 1591) on May 12, 2008. The State Defendants filed an additional Response in Opposition to Plaintiffs' Discovery Motion (Doc. No. 1603) on August 27, 2008.

On December 19, 2008 the Court issued an Order scheduling a hearing for January 7, 2009. (Doc. No. 1623). The Order instructed the parties to address two (2) questions: (1) why Defendants' proposed redetermination process does or does not meet Medicaid regulations; and (2) why a ruling on this matter would be (im)proper at this time. (*Id.* at 2). Immediately prior to the hearing, on January 6, 2008, the parties filed additional Declarations. Defendants filed a Declaration from Darin Gordon (Doc. No. 1625) and Plaintiffs filed two Declarations from G. Gordon Bonnyman, Jr. (Doc. No. 1627) and William Bush (Doc. No. 1628).

At the January 7, 2008 hearing the Court heard from G. Gordon Bonnyman, Jr. and William Bush for the Plaintiffs and Linda Ross, Michael Kirk, and Bret Bier for the Defendants.

C. Proposed Redetermination Process

The State's proposed redetermination process involves multiple steps. First, the State will determine which Medicaid enrollees fall within the Daniels class definition (individuals who at one time qualified for SSI and were thus automatically enrolled in the State's Medicaid program, but who SSA has since deemed ineligible for SSI). In order to do so, the State plans to review daily and monthly electronic reports from SSA that include information about SSI case additions and closures.

Next, the State will determine whether Daniels class members have an active pending

appeal with SSA involving their SSI benefits. If the appeal is pending, the beneficiary will continue to receive Medicaid benefits and the State will not begin a redetermination process for that individual. Only when the appeal with SSA is resolved and SSA finds that the individual is ineligible for SSI benefits, will the State begin the redetermination process.

The State will then determine if Tennessee's Department of Human Services ("DHS") found any of the Daniels class members eligible for an open category of Medicaid, meaning a Daniels class member has an "active" Medicaid case. (Doc. No. 1533, at 9). Such a situation would occur if a caseworker from DHS approved an individual for Medicaid independent of their SSI status. (Doc. No. 1536, at 5). If so, the State will close those individuals' SSI-Medicaid cases and continue their Medicaid eligibility under the appropriate eligibility category. At no point during this step will the State disrupt individuals' Medicaid coverage. (Doc. No. 1533, at 9).

In its briefings, the State describes an ex parte review process to determine whether Daniels class members qualify for another category of Medicaid before the State determines whether to terminate individuals from coverage. The State plans to conduct two (2) data matches: one (1) with information received from SSA and two (2) with information from the State's Food Stamps and Families First programs. (Id. at 10).

In the first match, the State will review information sent from SSA indicating that a beneficiary has lost SSI benefits. (Id. at 19). The State will match the Social Security Numbers in the TennCare InterChange Information System ("InterChange") with SSA's data to determine whether individuals lost their SSI benefits under circumstances that would qualify them for another category of Medicaid. There are two (2) such circumstances that the State has identified:

(1) individuals who lost their SSI eligibility and who would still be eligible for SSI if their cost of living adjustments (“COLA”) were deducted, known as “Passalong” eligibility; or (2) individuals who lost SSI for any reason and would be eligible if COLA were disregarded, known as “Pickle” eligibility. (Id. at 10 n.5).

In the second match, the State will conduct a data match of Social Security Numbers in InterChange with individuals in the State’s ACCENT system who are enrolled in the State’s Food Stamps or Families First programs. If, based on information from the Food Stamps or Families First programs, the State finds that individuals qualify for another category of Medicaid, the State will close their SSI-Medicaid case and move them into an appropriate category. At no point during the data match process will individuals lose Medicaid coverage. (Id. at 10).

If the State’s data matching fails to produce sufficient information to determine whether individuals are eligible for another category of Medicaid, the State will send individuals a Request for Information (“RFI”) form. The RFI will serve two main purposes: (1) it will inform Daniels class members that their TennCare benefits may be terminated without additional information showing eligibility under another Medicaid category and (2) it will provide guidance on how Daniels class members can submit that information. (Doc. No. 1548-1, at 6). In addition, the RFI will contain information about the possibility of receiving a termination notice if Daniels class members do not send eligibility information and how they can appeal a termination of benefits. (Id.).

Accordingly, the RFI will inform Daniels class members that because they lost their SSI benefits, they are no longer eligible for the SSI-category of Medicaid. Individuals would then have 30 days from receipt of the RFI to provide the State with information so the State can

determine whether they qualify for another category of Medicaid. (Id.). The State would provide such individuals a form to be completed in order to prove eligibility. Included in the form will be a list of the types of proof needed to verify certain information. (Id.). The RFI would also inform individuals that if they fail to return the form within 30 days, the State will send them a termination notice. Lastly, the RFI would contain information about the option of extending the 30-day time frame upon a showing of good cause. (Id.).

If, 30 days after receiving the RFI, a Daniels class member is unable to provide information proving eligibility for TennCare in a non SSI-Medicaid category, the State will send them a notice of termination. (Doc. No. 1548-1, at 6). The termination notice will include information about their right to appeal and how to request a hearing. Hearings must be made within 40 days of receiving the notice of termination. (Doc. No. 1533, at 13). Given the vulnerability of the Daniels class members and the possibility of error, the State will continue to furnish benefits until after the member has had a full opportunity to appeal the State's decision. (1548-1, at 7). If an individual does not request a hearing prior to the date of termination (designated in the termination notice), the State will disenroll the individual from TennCare. (Id.).

II. LEGAL STANDARD

The State's redetermination process for Daniels class members must meet federal Medicaid regulatory requirements, specifically, the redetermination regulations set forth in 42 C.F.R. §§ 431, Subpart E, 435.916(c), and 435.930(b). In addition, the State's proposed procedure must comply with the Sixth Circuit's decision in Crippen v. Kheder, 741 F.2d 102 (6th

Cir. 1984). Furthermore, as established in this Court's 1987 Order, the State must develop procedures that include a de novo determination of Medicaid eligibility independent of SSA's determination of SSI eligibility prior to terminating Medicaid benefits from Daniels class members.

Section 431, Subpart E has two parts: it (1) requires a State to provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly; and it (2) prescribes procedures for an opportunity for a hearing if a State suspends, terminates, or reduces services. 42 C.F.R. §§ 431, Subpart E (2008). Most significantly, for the instant matter, the hearing system must comport with the due process standards established in Goldberg v. Kelly, 397 U.S. 254 (1970).¹ 42 C.F.R. § 431.205 (2008). Other provisions of the act require a State to provide notice, which must include the action taken, the reason for the action, the specific regulations that support the action, and an explanation of the circumstances under which Medicaid is continued if a hearing is requested. 42 C.F.R. § 431.210 (2008).

Section 435.916(c) governs State action regarding changes in Medicaid eligibility. Accordingly, a State (1) "must promptly redetermine eligibility when it receives information about changes in a recipient's circumstances that may affect his eligibility[;]" and (2) if the State "has information about anticipated changes in a recipient's circumstances, it must redetermine eligibility at the appropriate time based on those changes." Section 435.916(c) (2008).

Section 435.930(b) requires a State to "[c]ontinue . . . furnish[ing] Medicaid regularly to all eligible individuals until they are found to be ineligible . . ." 42 C.F.R. § 435.930(b) (2008).

¹ The Supreme Court held that the State must hold a full evidentiary hearing before terminating a recipient's benefits to determine the validity of the State's grounds for termination.

In Crippen, the Sixth Circuit held that the State may not terminate a Medicaid recipient's benefits solely because his SSI benefits were terminated, without first determining whether the individual qualifies for another category of Medicaid. 741 F.2d at 107. The Court reasoned that the Social Security Act regulations require that upon learning that an individual has been terminated from SSI, the State must make a prompt ex parte determination regarding the individual's eligibility for Medicaid, separate from his eligibility for SSI benefits. Id. In addition, the Sixth Circuit held that the State must continue to administer benefits to such individuals during the ex parte redetermination process. Crippen, 741 F.2d at 107.

Although the Sixth Circuit found that no specific regulation covered the issue in dispute, the Court relied, in part, on sections 435.930(b), 435.916(c), and 435.1003(b). Id. at 104-05. Section 435.1003(b) required the State to take prompt action to determine eligibility once it receives notice from SSA that an individual's SSI benefits have been discontinued. Id. at 105.

Therefore, under Sixth Circuit law the State must make a prompt redetermination of Medicaid eligibility after receiving information from SSA that an individual is ineligible for SSI. Accordingly, the State must develop procedural mechanisms for thorough ex parte review of all information pertinent to an individual's eligibility for Medicaid before any individual is disenrolled from Medicaid. The State must also continue to furnish benefits to individuals until the State finds them ineligible for all categories of Medicaid. These requirements ensure that there is no disruption in coverage if the individual is eligible for another category of Medicaid.

III. ANALYSIS

Defendants' proposed redetermination process meets federal regulatory requirements. It

contains both an ex parte review process and a de novo determination of Medicaid eligibility independent of SSA's eligibility determination. (Doc. No. 1533, at 23). As described above, the proposed redetermination process is designed to ensure that no Daniels class member is inadvertently disenrolled from TennCare; only individuals who are found ineligible for SSI and other categories of Medicaid during redetermination will be disenrolled. Furthermore, the State's proposal includes provisions to continue Medicaid coverage to Daniels class members throughout redetermination.

Once the State learns that a Daniels class member is no longer eligible for SSI, the State will make an eligibility determination – separate from SSA's determination – of a Daniels class member's Medicaid eligibility. (Doc. No. 1533, at 20). The State will then make a prompt redetermination for other categories of Medicaid in compliance with section 435.916. (Id., at 10-11). To do so, the State will compare State data with information received from SSA as well as internal State agencies. The State will also request information from Daniels class members to ensure that the State has the most updated information to determine eligibility. Most importantly, Daniels class members will continue to receive Medicaid benefits during the State's proposed ex parte review process, which ensures that individuals do not experience a break in coverage while the State redetermines their Medicaid eligibility. (Id. at 17).

Only if the State's data matching does not produce sufficient information to determine whether individuals are eligible for other categories of Medicaid, will the State issue a RFI form. (Doc. No. 1548-1, at 6). The State's proposed RFI form adheres to the requirements found in section 435.916(c) in that, when filled out, the form provides the State with updated information to allow the State to determine Medicaid eligibility. Furthermore, the RFI contains phone

numbers that will provide assistance to Daniels class members who may need help filling out the form. (Redetermination Hr'g).

In compliance with both section 431, Subpart E and Goldberg v. Kelly, 397 U.S. 254 (1970), the State's proposal includes an opportunity for individuals to obtain a hearing prior to the termination of benefits. According to the proposal, individuals may request a hearing to appeal the State's eligibility determination as long as it is within 40 days of receiving the notice of termination. The notice of termination also fulfills the requirement found in section 435.919 and 431, Subpart E, both of which require a State to provide adequate notice prior to termination. Furthermore, in accordance with section 435.930(b), the State will continue to furnish Medicaid benefits to individuals throughout the appeal process so long as the appeal was timely. (Doc. No. 1533, at 12-13).

Defendants' proposed redetermination plan is similar, but for additional protections specific to Daniels class members, to the State's 2005 plan amending the TennCare Demonstration Project (No. 11-W-00151/4). The 2005 plan was approved by both the Centers for Medicare and Medicaid Services ("CMS") and the Sixth Circuit. See Rosen v. Goetz, 410 F.3d 919, 921 (6th Cir. 2005) (" . . . the State's procedures comply with the applicable Medicaid regulations and with CMS's own interpretation of those regulations and . . . the State's procedures otherwise comply with the due process requirements set fort in Goldberg v. Kelly . . .) (internal citation omitted). The only difference between the proposed plan at issue in this Order and the 2005 plan is front-end screening to determine whether a Daniels class member has a pending appeal with SSA regarding their SSI termination. Otherwise, they are virtually identical.

In opposition to the Defendants' Redetermination Motion, Plaintiffs raised concerns

regarding the extent of collaboration between the State and relevant federal agencies to ensure that no Daniels class member is mistakenly terminated from TennCare. (Doc. No. 1545, at 5). According to Defendants' declarations, officials at the Department of Human Services ("DHS") will work closely with the Bureau of TennCare and SSA to ensure a thorough redetermination process. (Doc. No. 1534, at 2). In addition, the State shared data with SSA, in a similar fashion to the proposed plan, following the 2005 Rosen litigation. Furthermore, SSA will provide data to the State that is reliable and accurate for the purposes of determining eligibility. (Doc. No. 1549, at 2). Nevertheless, the State will not rely solely on information from SSA. As explained above, the State intends to issue RFI forms to individuals who SSA concluded were ineligible for SSI and who the State has not been able to determine were eligible under another category of Medicaid. This measure will ensure that no Daniels class member is terminated solely based on information from SSA.

In addition, Plaintiffs argue that the issues raised in Defendants' Redetermination Motion are not yet ripe. (Doc. No. 1545, at 2). Specifically, Plaintiffs assert that they need more time to consider information from the State. (Doc. No. 1621, at 2-3). Plaintiffs further argue that before the Court decides Defendants' Redetermination Motion, the Federal Defendants must comply with Plaintiffs' Discovery Motion. (Id.).

In their pleading in opposition to Plaintiffs' Discovery Motion, the Federal Defendants claim that discovery from them is unnecessary because the issue before the Court is purely legal in nature. (Doc. No. 1602, at 3). They claim that since March 1989, when the Court denied their motion to be dismissed from litigation and until recently, they have not participated in this case. (Id. at 6). Moreover, the federal agency in charge of administering the federal Medicaid program,

CMS, has already weighed in on and approved the State's proposed redetermination process. (Id. Ex 1). In a July 2008 letter sent to Darin Gordon, Director of TennCare, Herb Kuhn, the Acting Director of CMS, agreed that the State's redetermination proposal complied with Medicaid law and policy. (Id.). Mr. Kuhn's also stated that the proposal was consistent with the State's 2005 plan, mentioned above. (Id.).

Therefore, it appears that Plaintiffs' concerns regarding the Federal Defendants are unfounded. CMS reviewed and approved the State's proposed redetermination process. (Doc. No. 1602, at 10) ("... CMS has determined that Tennessee's proposed procedures for redetermining eligibility for Daniels class members fully comport with Medicaid law."). An agency's interpretation of its own regulation should be granted deference by federal courts. See Air Brake Sys., Inc. v. Mineta, 357 F.3d 632, 643-44 (6th Cir. 2004) (citing Bowles v. Seminole Rock & Sand Co., 325 U.S. 410 (1945)). Additionally, the Sixth Circuit recently recognized, in a related Medicaid matter, that it would be a "daunting task . . . to override CMS's interpretation of its own administrative regulation." Rosen, 410 F.3d at 928.

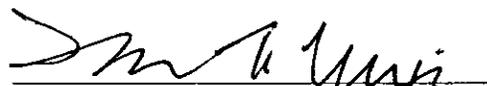
III. CONCLUSION

The State has proposed a redetermination process that abides by federal Medicaid law and the Sixth Circuit in Crippen, 741 F.2d 102 (6th Cir. 1984). Moreover, the federal agency in charge of administering Medicaid, CMS, reviewed and approved the proposed process. Thus, the Defendants' Redetermination Motion is **GRANTED**. The Court **VACATES** its November 13, 1987 Order (Doc. No. 204) and **APPROVES** the Defendants' proposed eligibility redetermination process. In addition, Defendants' Status Motion is **GRANTED** and Plaintiffs'

Discovery Motion as to the Federal Defendants is **DENIED**.

It is so ORDERED.

Entered this the 8th day of January, 2009.



JOHN T. NIXON, SENIOR JUDGE
UNITED STATES DISTRICT COURT