

**IN THE CIRCUIT COURT FOR
THE SECOND JUDICIAL
CIRCUIT FOR LEON COUNTY,
FLORIDA**

**AMERICAN HABILITATION SERVICES, INC.,
et. al**

Plaintiffs

v.

CASE NO. 04-326

**STATE OF FLORIDA, DEPARTMENT OF
CHILDREN AND FAMILIES, and AGENCY
FOR HEALTH CARE ADMINISTRATION**

Defendants

**ORDER APPROVING CLASS ACTION SETTLEMENT
AND CERTIFYING CLASS**

This cause came on to be heard before the court on June 19, 2006 after Notice of Hearing to have the parties' Settlement Agreement dated April 3, 2006, as amended May 5, 2006 (hereinafter as amended the "Settlement Agreement") approved. This matter was presented to the court pursuant to the parties, Joint Motion for Court Approval of Settlement and to Certify Agreed Class for Settlement Purposes Only Pursuant to Rule 1.220(b)(2), dated April 17, 2006. The court has fully reviewed plaintiffs' amended complaint, the evidence presented, the memoranda of law, Notices to putative class members and responses, and the arguments of counsel, and being otherwise fully advised in the premises, makes the findings of fact and conclusions of law set forth below.

FINDINGS OF FACT

1. This matter came before the court pursuant to the parties Joint Motion for Court Approval of Settlement and to Certify Agreed Class for Settlement Purposes Only Pursuant to Rule 1.220(b)(2), dated April 17, 2006. One of the conditions to the Settlement Agreement is the requirement that this court certify this case as a class action, under Fla. R. Civ. P. 1.220.

2. Plaintiffs seek economic damages for alleged violations of various contractual relationships they have with the State of Florida. Plaintiffs allege common breaches of such contracts and statutory matters with which the State of Florida has not complied.

3. In the Settlement Agreement the parties provide that class action certification would be provided to the following persons:

All Medicaid providers of the following two Developmental Services Home and Community-Based Waiver services, residential habilitation services and adult day training services, who were providers as of November 1, 2003, and who were adversely impacted by the rate reductions which became effective on November 1, 2003. Intensive residential habilitation services are specifically excluded from this class definition, as these services have individually negotiated rates.

4. The Settlement Agreement also provides that all members of the class after due notice and opportunity to be heard must participate in the class action. This court previously by its April 17, 2006 Order on Parties' Joint Motion to Approve Notice to Settlement Class Members of Proposed Settlement Agreement approved the form of Notice which was duly mailed and delivered to all putative class members. The agreement and the order approving it gave potential class members 45 days from receipt of the notice of settlement to opt out.

5. This court finds that the requisite notice and opportunity to opt out was provided to all the class members. No class member opted out within the time period allowed.

6. This court further finds that all the conditions precedent to class certification and approval of the Settlement Agreement have occurred.

CLASS CERTIFICATION FINDINGS

7. In order to obtain class certification under Fla. R. Civ. P. 1.220, plaintiffs must prove that each of the prerequisites set forth in Fla. R. Civ. P. 1.220(a) have been met, namely that the members of the class are so numerous that separate joinder of each member is impracticable, that the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class, that the claim or defense of the representative party is typical of the claim or defense of each member of the class, and that the representative party can fairly and adequately protect and represent the interests of each member of the class.

Applying the facts of this case to the applicable law, this court concludes that the above prerequisites to granting the motion for class action certification have been met as set forth below.

8. Numerosity

The members of the potential class are so numerous that separate joinder of each member is impracticable. The evidence shows that the potential class of Medicaid Developmental Services Home and Community-Based Waiver services in this case is 787. Both Florida and federal courts have held that fewer than 100 plaintiffs may satisfy the numerosity requirement.

9. Commonality

The claims of plaintiffs as the representative parties raise questions of fact common to the questions of fact raised by the claim of each member of the potential class. The evidence shows

several factors common to all members of the potential class, including a single regulatory reimbursement scheme to which all the class members are equally subject to.

10. Typicality

Plaintiffs as representative parties have claims which are typical of the claims of each member of the class. The main purpose of the typicality requirement is to aid the court in its duty to protect the absent class members. A named plaintiff's claim will be found to be typical if it arises from the same event or conduct giving rise to the claims of absent class members. Further, typicality may be satisfied notwithstanding the existence of some factual distinctions between claims of the named plaintiffs and those of other class members. Commonality and typicality requirements tend to merge. The issue is whether the claims of the named plaintiffs and the claims of the class are so interrelated that the interests of the class members will be fully and adequately protected. Factual variations will not render a representative's claims atypical unless those claims are markedly different from those of the other class members. The need for individual damage calculations does not diminish the appropriateness of the class certification where common questions as to liability predominate.

11. Adequacy of Representation

This court concludes that the representative parties can fairly and adequately protect and represent the interests of each member of the class. To be representative, the interest of the plaintiff must be coextensive with the interests of the other members of the class. Adequacy of representation embodies concerns which fall into two categories: that the representatives and their attorneys will competently, responsibly, and vigorously prosecute the suit, and that the relationship of the representatives' interests to those of the class are such that there is not likely to

be divergence in viewpoint or goals in the conduct of the suit. The named representatives and their counsel in the instant matter have met these legal standards.

12. Fla. R. Civ. P. 1.220(b)(3)

Not only must the motion for class certification meet the preliminary requirements of Fla. R. Civ. P. 1.220(a), but it also must meet one of the standards under Fla. R. Civ. P. 1.220(b).

Plaintiffs' motions for class certification are based on Fla. R. Civ. P. 1.220(b)(3) which requires that the questions of law or fact common to the claim of the representative party and the claims of each member of the class predominate over any questions of law or fact affecting only individual members of the class, and that class representation is superior to other methods for the fair and efficient adjudication of the controversy.

It has been held that a class suit is maintainable where the subject of the action presents a question of common or general interest, and where all members of the class have a similar interest in obtaining the relief sought. The court must also consider if the class action is superior to the other available methods for fair and efficient adjudication of the controversy. It has been held that when common questions represent a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is a clear justification for handling the dispute on a representative rather than on an individual basis. For example, some courts have held that an action can be brought under subsection (b)(3) even though there is not a complete identity of facts relating to all class members, as long as a "common nucleus of operative facts" is present, a test very similar to that used to determine the application of the doctrine of pendent jurisdiction.

The court finds and holds that common issues of law and fact concerning liability and statutory interpretation involved in the action before the court predominate over issues of individual concern enough to justify class resolution of this dispute.

Therefore, the court certifies the class as defined above for settlement purposes only, pursuant to the parties' agreement.

SETTLEMENT AGREEMENT FINDINGS

13. The court finds that the notice to class members fairly apprised them of the terms of the proposed settlement and the options that are open to them in connection with proceedings.

14. Settlement of this complex dispute minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.

15. Compromise of these class claims is fair, adequate, reasonable, and not the product of collusion.

Based on the foregoing findings of fact and conclusions of law, **IT IS ORDERED AND ADJUDGED** that:

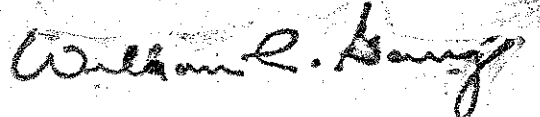
A. Plaintiffs' and defendants' Joint Motion for Court Approval of Settlement and to Certify Agreed Class for Settlement Purposes Only Pursuant to Rule 1.220(b)(2), dated April 17, 2006 is GRANTED and the court hereby certifies these cases to proceed on a classwide basis.

B. The law firm of Sternstein, Rainer & Clarke, P.A. shall serve as lead counsel of the class.

C. The court hereby approves the Settlement Agreement.

D. The Plaintiffs' counsel shall provide notice to the court when the remainder of the terms of the Settlement Agreement are completed.

DONE AND ORDERED in Chambers in the City of Tallahassee, County of Leon, Florida,
on June 20, 2006.



Circuit Judge William L. Gary

Cc:

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