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

MELISSA WILSON, et al., individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	**NO. 3:14-cv-01492**
v.	)	**JUDGE CAMPBELL**
	)	**MAGISTRATE JUDGE**
WENDY LONG, et al.,	)	**NEWBERN**
Defendants.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

hearing' by the State Defendants after these time periods have run." (Doc. No. 90.) On September 2, 2014, the Court also issued a preliminary injunction. (Doc. No. 91.) The preliminary injunction order required the State to provide an opportunity for a fair hearing on any delayed adjudications to anyone who had proof of an application that had not been acted on within the requisite time period. (*Id.*)

Defendants appealed the preliminary injunction ruling, and the Court of Appeals for the Sixth Circuit affirmed. (Doc. Nos. 97, 152, 159.) The case was tried without a jury on October 9 and 10, 2018, and the parties filed post-trial briefs. (Doc. Nos. 261, 262, 263.)

I. Findings of Fact

A. The Medicaid Act

Title XIX of the Social Security Act, 42 U.S.C. § 1396, *et seq*, popularly known as Medicaid, provides eligible low-income individuals health care insurance. Eligibility may be based on age or other qualifiers such as being an adult caregiver, a child, pregnant,

B. The Affordable Care Act

Prior to the enactment of the Affordable Care Act (ACA), the federal government had no

C.

appeal (90 days for disability claims). (*Id.*) TennCare looks for proof of application in available databases and if it cannot find one, will request proof from the applicant. (*Id.*) Acceptable proof includes a screenshot of an online application, correspondence from FFM, and proof of mailed or faxed applications. (*Id.*)

E. Current Status of the Delayed Application Appeals Process

Since August 2015,

and the TennCare call center. (*Id.*) The State uses community input to identify issues with the TennCare application process, including input from advocacy groups, legislators, and healthcare provider groups. (Doc. No. 256 at 244; Doc. No. 257 at 82.) Dr. Wendy Long, Director of TennCare, testified that TennCare still has delayed applications, but that "unlike back in 2014, when we were identifying these sorts of system problems and developing systemic solutions, we don't see these sorts of pro

applications were approved in July 2014 after being held up for some time due to "inconsistencies" during the time before CMS and the State resolved the problems with processing these applications. (Doc. No. 257 at 97.) Mr. Adams testified that while his application was pending, he incurred medical debt, delayed medical treatment, and experienced significant stress as a result of being without health insurance.

Ms. Amy Foster applied for TennCare for her cousin, Brian Lee Foster ("Lee"), in December 2017. (Doc. No. 257 at 50-52.) On March 6, 2018, she received a letter from TennCare indicating that Lee's application was delayed, but that TennCare was working on it. (*Id.* at 52-54.) On April 6, Ms. Foster filed a delayed application appeal. (*Id.* at 54.) Lee's application was approved on May 18, 2018. (*Id.* at 64.) Ms. Foster testified that Lee was unable to receive adequate mental health care during the time his application was pending and that his health was negatively affected. (*Id.* at 64-69.)

Ms. Kayla Krouse applied for TennCare on December 13, 2016, and was granted presumptive coverage. Ms. Krause testified that she filed more than one application for TennCare through the FFM starting in December 2016. (Doc. 256 at 79-80.) The State acknowledged that when more than one application is filed on the federal exchange, only the date of the most recent date is saved. (Doc. No. 257 at 120-122.) The FFM records showed an application date of February 13, 2017. (*Id.*) On April 4, 2017, Ms. Krause filed a delayed application appeal. (Doc. 256 at 91.) She was approved for TennCare on April 11, 2017. (*Id.* at 92.) Ms. Krause testified that while her application was delayed she was unable to afford medical tests related to her pregnancy and that she worried she would not have medical insurance before the baby was born. (*Id.* at 85-93.)

II. CONCLUSIONS OF LAW

A. Legal Standards

International Ass'n of Machinists & Aerospace Workers v. Tennessee Valley Auth., 108 F.3d 658, 668 (6th Cir. 1997), if Plaintiffs fail to prove a violation of law, declaratory relief is inappropriate.

B. Section 1396(a)(3) and the Due Process Clause

Plaintiffs argue Defendants failed to provide Plaintiffs with adequate notice and a meaningful opportunity for fair hearings, in violation of 42 U.S.C. § 1396a(a)(3) and the Due Process Clause. Section 1396a(a)(3) provides that a State plan must "provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness." 42 U.S.C. § 1396a(a)(3). The Due Process Clause likewise requires that state Medicaid applicants and participants have the right to adequate notice and a fair hearing. *See Hamby v. Neel*, 368 F.3d 549, 559–60 (6th Cir. 2004); *Ability Ctr. of Greater Toledo v. Lumpkin*, 808 F. Supp. 2d 1003, 1026 (N.D. Ohio 2011) ("Applicants to Medicaid have a property interest in the benefits for which they hope to qualify and are, therefore, entitled to the due process protections imposed by the federal Medicaid statute and regulations and *Goldberg v. Kelly*, 397 U.S. 254 (1970)."). The Court finds

Defendants demonstrated at trial that they have no intention of abandoning this process in the absence of judicial supervision. Plaintiffs offer no evidence to the contrary. The Sixth Circuit presumes good faith on the part of government officials when a change in conduct is made, and "such self-correction provides a secure foundation for a dismissal based on mootness so long as it appears genuine." *Bench Billboard Co. v. City of Cincinnati*, 675 F.3d 974, 981 (6th Cir. 2012); *see also Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1116 n.15 (10th Cir. 2010) (citing similar cases applying the same presumption).

Plaintiffs argue that even though TennCare has established an appeals process, that it does not provide adequate notice of the opportunity to appeal. Plaintiffs would like this Court to find that an opportunity for a fair hearing requires individualized notice such that every applicant whose eligibility was not timely resolved would receive personal notice of the opportunity to appeal the delay. At trial, Defendants testified that notice of the opportunity to appeal is communicated on the TennCare website in several locations, and is given to persons calling the TennCare call center to inquire about the status of their application. (Doc. No. 257 at 35-37; *Id.* at 110-11.) Section Sec0 Td [(S)2(s)-s/el/e2 Tc 0.018 Tw T* [(e)An, na(l)-2((t)-20.0009)]TJ 1.9 loiCd67

Defendants assert that Section 1396a(a)(8) does not create an individual right that can be enforced under 42 U.S.C. § 1983. Pursuant to this Court's Order of November 11, 2018, regarding the enforceability of Section 1396a(a)(8) as a claim under 42 U.S.C. § 1983, the Court will address the merits of Plaintiffs' Section 1396a(a)(8) claim.[2]

The Medicaid Statute requires that a state's Medicaid plan must "provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals." 42 U.S.C. § 1396a(a)(8). Implementing regulations in 42 C.F.R. § 435.912 obligate the state to make eligibility determinations with 45 days (90 days for disability) after an application is submitted except when a delay in making eligibility determinations is caused by "unusual circumstances" such as when there is an administrative or other emergency beyond the agency's control. *Id.* at § 435.912(e).

State Medicaid plans are evaluated based on "substantial compliance" with the applicable regulations. 42 U.S.C. §1396c. For purposes of substantial compliance, a state Medicaid plan is reviewed by "category or parts of the State plan" so that if some parts of a plan comply substantially with the regulations while others do not, the entire plan is not non-compliant. *Id.*

The law does not require that a state Medicaid agency implement a flawless program. *Unan v. Lyon*, 853 F.3d 279, 288 (6th Cir. 2017). *See Frazar v. Gilbert*, 300 F.3d 530pco plir. 2017lsDC -.1(u)-

be-discovered systemic problems with an entire category of applications – the "inconsistency applications." Those delays, which have long since been resolved, gave rise to the instant case. Ms. Foster applied for TennCare for her cousin in December 2017 during a period that TennCare was experiencing an abnormal and unanticipated surge in applications. The Court finds that this was an unusual circumstance. Ms. Krause applied for TennCare in December 2016 or February 2017. Though her application was delayed, there is no evidence that n4(C)-33((en)-4(c1J 0a)-20(y)16( )-1

in the record, and the Curt is ill- equipped and constitutionally li

regulatory requirements when Congress and the appropriate regu

such requirements. Simply put, the proposed dtional layer of re

impose on the State by judicial order appear to be a solution in search of a problem given the State's new regulations and changes since 2014.

The Court finds that Defendants are in substantial compliance with section 1396a(a)(8). Thus, Plaintiffs are unable to meet the requirements for the extraordinary remedy of a permanent injunction: an actual violation of the law. Additionally, Plaintiffs fail to show there is any "existing or imminent invasion" of their rights, thus they are not entitled to declaratory relief. *Angell*, 109 F.2d at 381.

Therefore, the Court denies Plaintiffs' request for relief under Section 1396a(a)(8).