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

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| WILLIAM R. HAMPE, by and through his Mother/guardian Jill Hampe, individually and on behalf of a class, | ) | |
| Plaintiff, | ) | Case No. 10-3121 |
| | ) | Judge Hibler |
| vs. | ) | Magistrate Judge Keys |
| JULIE HAMOS, in her official capacity as Director of the Illinois Department of Healthcare and Family Services, | ) | |
| Defendant. | ) | |

## STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

The United States files this Statement of Interest, pursuant to 28 U.S.C. § 517, because this litigation implicates the proper interpretation and application of the integration mandate of title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et. seq. *See Olmstead v. L.C.*, 527 U.S. 581 (1999). The Department of Justice has authority to enforce title II, 42 U.S.C. § 12133, and to issue regulations implementing the statute, *id.* at § 12134. Accordingly, the United States has a strong interest in the resolution of this matter.

## INTRODUCTION

This litigation involves the defendant's systematic failure to modify its current policies and practices of providing insufficient home-based medical care for Medicaid-eligible adults to prevent institutionalization. Children and young adults in the State of Illinois who have exceptional medical needs are eligible to receive home-based Medicaid services to avoid institutionalization under the State's Medically Fragile/Technology Dependent ("MF/TD") waiver program. Under defendant's regulatory scheme, however, once these individuals reach

the age of 21, they are ineligible for the MF/TD waiver. Because the adult waiver program to which a majority of people transition does not provide community-based services at the same level, these individuals may be forced to enter an institution in order to receive the medical services they need to survive. [1] These institutional placements are often more costly to the State. This lawsuit alleges that defendant administers the waiver programs available in Illinois, including the MF/TD and the Home Services Program ("HSP") waiver programs, in a manner that constitutes unlawful discrimination under title II of the ADA, 42 U.S.C. § 12131 and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a). (Compl. ¶ 52-68). Plaintiffs are a putative class of:

> [A]ll persons who are enrolled or will be enrolled in the State of Illinois Medically Fragile, Technology Dependants Waiver Program (MF/TD) or Medicaid and when they obtain the age of 21 years are subjected to reduce [sic] Medicaid funding which reduces the medical level of care which they had been receiving prior to obtaining 21 years. (Mot. Class. Cert. ¶ 2).

The United States supports the Plaintiffs' Motion for Class Certification because it advances the important public interest in community integration. [2] The proposed class meets the legal standard for certification under Rule 23.[3] Class actions provide appropriate mechanisms

[1] A state report on the MF/TD waiver indicates that "the children in the MF/TD waiver typically transition into the persons with disabilities waiver at 21 years of age." *See* "Report of Medicaid Services for Persons who are Medically Fragile, Technology Dependent," January 2010, Pl. Ex. A at 13.

[2] Recent litigation highlights the State of Illinois' heavy reliance on segregated, institutional settings to serve people with disabilities, contrary to the national trend of serving people with disabilities in the community and the *Olmstead* mandate. *See Ligas v. Maram*, No. 05-C-4331 (N.D. Ill.); *Williams v. Quinn*, No. 05-C-4673 (N.D. Ill.). The Department of Justice has participated in both cases in various capacities, including by participating as a non-party in the *Ligas* settlement conference and filing a statement of interest in support of the Joint Proposed Consent Decree in *Williams*.

[3]The proposed class does not require individual determinations of eligibility as "qualified individuals with disability" or "otherwise qualified" under the ADA or the Rehabilitation Act

for enforcing the integration mandate of title II and certification of the proposed class is consistent with decisions by federal courts in cases alleging similar discrimination. Accordingly, this Court should grant the Plaintiff's Motion for Class Certification.

## FACTUAL BACKGROUND

The State of Illinois has opted to take advantage of Medicaid's waiver programs in order to provide home and community-based services to persons with disabilities who would otherwise be cared for in hospitals and other institutions. The "waiver" authority permits the Secretary of Health and Human Services to waive certain Medicaid requirements in order for the State to offer the services. *See* 42 U.S.C. §1396m(b)-(h); 42 C.F.R. §430.25(d). [4] Defendant has restricted eligibility for the MF/TD waiver program for persons under the age of 21. [5] *See* Ill. Adm. Code tit. 89, § 120.530. These individuals would otherwise require a level of care required by a skilled nursing facility or a hospital. *Id.* After reaching the age of 21, most individuals transition to the HSP waiver program, which provides in-home care for adults with severe disabilities who would otherwise have to be cared for in institutions. *See* Ill. Admin. Code tit. 89, § 676.10. The HSP program has significant funding caps, and as a result, individuals often

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because the disabilities which qualify them for enrollment in the MF/TD waiver similarly make them eligible for protection under the ADA and the Rehabilitation Act.

[4] States can submit requests for approval to the Centers for Medicare and Medicaid Services ("CMS") to alter the terms of a particular waiver application at any time. *See* 42 C.F.R. § 441.355. Such requests are regularly granted by CMS. *See Knowles v. Horn*, 2010 WL 517591 (N.D. Tex., Feb. 10, 2010) (citing to *Grooms v. Maram*, 563 F. Supp. 2d 840, 857 (N.D. Ill., 2008) ("[T]he federal government has not denied a single waiver application in the last ten years. Defendant here presents no basis to believe the federal government would deny the State's application for an amendment in this case and the court will not concoct one.")

[5] The Illinois Medicaid plan includes nine separate waiver programs. *See* Illinois Department of Healthcare and Family Services, "Home and Community Based Services Waiver Programs," http://www.hfs.illinois.gov/hcbswaivers/.

experience a significant reduction of services, which places them at risk of institutionalization.

Plaintiff William R. Hampe has severe and profound disabilities and extensive medical needs. (Compl. ¶¶ 1, 18a-c). Prior to this lawsuit, he received funding for approximately 16 hours a day (112 hours per week) of skilled nursing care in his home at a cost of approximately $18,000 per month. (Compl. ¶ 19). He requires a skilled nursing level of care and his treating physician states that the alternative to medical home care is inpatient hospitalization, at a rate of approximately $55,000 per month. (*Id*. at ¶¶ 18e, 19).

Plaintiff Hampe aged out of the MF/TD waiver program on his 21st birthday, June 18, 2010. In April 2010, defendant notified him that he would transition to the HSP program,[6] under which he was entitled to an "exceptional care rate" of only $9,429 per month for medical care in his home. (*Id*. at ¶ 42). This amount is approximately 50 percent less than the amount he received under the MF/TD waiver program and is insufficient to meet the costs of the skilled nursing services he requires to remain in the community. (*Id*. at ¶ 43). Consequently, Plaintiff Hampe faces the prospect of entering a hospital or remaining in the community without sufficient medical services, placing him at risk of death. (*Id*. at ¶ 20). Defendant agreed to maintain the level of services Plaintiff received prior to his 21st birthday until further order of this Court. (Agreed Order, May 28, 2010 [Docket No. 11]).

Plaintiff Hampe resides with his mother and guardian, Jill Hampe, in Wheaton, Illinois. (Compl. at ¶ 18f). The proposed reduction will force him into an institutional setting, isolating

[6] The HSP program provides services to assist individuals with severe disabilities in remaining in their homes instead of an institutional setting. *See* http://www.dhs.state.il.us/page.aspx?item=36737. The HSP is authorized by the Persons with Disabilities waiver program. *See Radaszewski v. Maram*, 2008 U.S. Dist. LEXIS 24923, at *7 (N.D. Ill. 2008) (overturned on other grounds).

him from the community and his mother. (*Id*. at ¶¶ 45, 49). The cost of his care in an institution, at a rate of $55,000 per month, would be substantially greater than the cost of allowing him to remain in the community, at approximately $18,000 per month. (*Id*. at ¶¶ 19, 22).

## INTEREST OF THE UNITED STATES

This case involves the proper interpretation and application of the integration mandate of title II of the ADA and the Rehabilitation Act, which the Department of Justice has the authority to enforce and for which the Department issues implementing regulations. *See* 42 U.S.C. § 2133 and § 12134. The United States has a strong commitment to realizing the goals of community integration as set forth in *Olmstead*.[7] Ending the unnecessary segregation of individuals with disabilities is one of the key tenets of the ADA. In enacting the ADA in 1990, Congress found that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2). As directed by Congress, 42 U.S.C. § 12134, the Attorney General issued regulations implementing title II, which are based on regulations issued under section 504 of the Rehabilitation Act.[8] *See* 42

[7] *See* "President Obama Commemorates Anniversary of Olmstead and Announces New Initiatives to Assist Americans with Disabilities," June 22, 2009, Office of the Press Secretary, *available at* http://www.whitehouse.gov/the_press_office/President-Obama-Commemorates-Anniversary-of-Olmstead-and-Announces-New-Initiatives-to-Assist-Americans-with-Disabilities/).

[8] Title II, which prohibits discrimination by public entities, was modeled closely on Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in federally conducted programs and in all of the operations of public entities that receive federal financial assistance. Title II provides that "[t]he remedies, procedures, and rights" set forth under Section 504 shall be available to any person alleging discrimination in violation of Title II. 42 U.S.C. § 12133; *see also* 42 U.S.C. § 12201(a) (ADA must not be construed more narrowly than Rehabilitation Act). The ADA directs the Attorney General to promulgate regulations to implement Title II and requires those regulations to be

U.S.C. § 12134(a); 28 C.F.R. § 35.190(a); Executive Order 12250, 45 Fed. Reg. 72995 (1980), *reprinted in* 42 U.S.C. § 2000d-1. The title II regulations, 28 C.F.R. § 35.130(d), require public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." The preamble discussion of the "integration regulation" explains that "the most integrated setting" is one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible." 28 C.F.R. § 35.130(d).

Eleven years ago, the Supreme Court applied these authorities and held that title II prohibits the unjustified segregation of individuals with disabilities. *Olmstead*, 527 U.S. at 586. *Olmstead* held that public entities are required to provide community-based services for persons with disabilities who would otherwise be entitled to institutional services when a) treatment professionals reasonably determine it is appropriate; b) the affected persons do not oppose such treatment; and c) the placement can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity. *Olmstead*, 527 U.S. at 607.

A public entity's duty to provide integrated (i.e., community-based) services, however, is not absolute. A public entity is required only to make reasonable modifications that do not

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consistent with preexisting federal regulations that coordinated federal agencies' application of Section 504 to recipients of federal financial assistance and interpreted certain aspects of Section 504 as applied to the federal government itself. 42 U.S.C. § 12134(a)-(b). Title II thus extended Section 504's pre-existing prohibition against disability-based discrimination in programs and activities (including state and local programs and activities) receiving federal financial assistance or conducted by the federal government itself to all operations of state and local governments, whether or not they receive federal assistance. The ADA and the Rehabilitation Act are generally construed to impose the same requirements. *See Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 607 (7th Cir. 2004); *Washington v. Indiana High School Athletic Ass'n, Inc*., 181 F.3d 840, 845 n.2 (7th Cir. 1999).

"fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7) (2009). Thus, a public entity violates title II if it segregates individuals in institutions when those individuals could be served in the community through reasonable modifications to its program, unless it is able to demonstrate that doing so would result in a "fundamental alteration" of its program. *Olmstead*, 527 U.S. at 595-596.

## ARGUMENT

Defendant's policy of providing inadequate home and community-based services for the proposed class solely because they reach the age of 21 places them at risk of institutionalization and therefore violates the integration mandate of title II. Courts in this district, as well as the Illinois Court of Appeals, have recognized that defendant's "age-out" policy under the MF/TD waiver program is problematic under title II. *See Radaszewski v. Maram*, 2008 U.S. Dist. LEXIS 24923 (N.D. Ill. 2008) (J. Darrah) (State of Illinois violates title II of the ADA by failing to fully fund the cost of private-duty nursing care that plaintiff, who had aged out of the MF/TD waiver program, required in order to remain in the community); *Grooms v. Maram*, 563 F. Supp. 2d 840 (N.D. Ill. 2008) (J. Pallmeyer); *Sidell v. Maram*, No. 05-C-1001 (C.D. Ill. 2009) (ordering relief for plaintiff who aged out of MF/TD waiver program because the "State of Illinois may modify the adult waiver program to accommodate [plaintiff]'s needs and provide services"); *Jones v. Maram*, 867 N.E.2d 563 (Ill. App. Ct. 2007) (affirming lower court granting of preliminary injunction for plaintiff who aged out of MF/TD waiver program and was at-risk of institutionalization); *Fisher v. Maram*, No. 06-C-4405 (N.D. Ill.) (J. Guzman) (enjoining defendant from reducing services for plaintiff who aged out of MF/TD waiver program).

## I. Plaintiffs Meet the Legal Standard for Class Certification Under Rule 23.

Certification of the proposed class is proper. [9] To proceed as a class action, a class must first satisfy the threshold requirements under Rule 23(a): (1) the class is so numerous that joinder of all members is impracticable; (2) there are common questions of fact and law; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed R. Civ. P. 23(a). *Harper v. Sheriff of Cook County*, 581 F.3d 511, 513 (7th Cir. 2009); *Rosario v. Livaditis*, 963 F.2d 1013, 1017 (7th Cir. 1992). Second, the moving party must show that the proposed class falls within at least one of the three categories set forth in Rule 23(b).[10]

a. Plaintiffs Meet the Numerosity Requirement.

Rule 23(a)(1) requires that the proposed class be "so numerous that joinder of all persons is impracticable." Plaintiffs need not specify the exact number of class members. *See Marcial v. Coronet Ins. Co.*, 880 F.2d 954 (7th Cir. 1989). The Seventh Circuit has held that joinder was impracticable where a class was comprised of 40 individuals. *See, e.g., Swanson v. Am. Consumer Indus.*, 415 F.2d 1326, 1333 (7th Cir. 1969); *see also Armes v. Shanta Enterprise, Inc.*, 2009 WL 2020781, at *2 (N.D.Ill. 2009). As of September 1, 2009, 504 children were

[9] While the Court need not accept as true all facts alleged in Plaintiff's complaint at this stage of litigation, the decision to certify a class does not depend on the strengths or weaknesses of the claims, but rather on whether the representatives and potential class satisfy the requirements of Rule 23. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974); *Szabo v. Bridgeport Machines, Inc.*, 249 F.3d 672, 677 (7th Cir. 2001); *Williams*, 2006 WL 3332844, at * 3. The Court's determination whether class certification is appropriate therefore does not involve an inquiry into the merits. *Young v. County of Cook*, 2007 WL 1238920, at *5 (N.D. Ill. 2007).

[10] Plaintiffs seek certification under Rule 23(b)(2), which permits certification if the defendant has "acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." *See* Fed. R. Civ. Pro. 23(b)(2); Mot. Class Certif. ¶1.

receiving services in the MF/TD waiver program. *See* Pl. Ex. A at 3. From July 1, 2007, through June 30, 2008, 606 children received services under the MF/TD waiver. *Id*. Thirty-seven individuals aged out of waiver eligibility for the period from July 2007 to December 2009. *Id*. at 9. Based solely on the number of individuals who will likely age out of the waiver in the next 24 months, the proposed class approximates at least 40 individuals. The class will include an even larger number given the fact that hundreds of individuals are currently enrolled in the MF/TD waiver. The numerosity requirement is therefore satisfied.

a. Plaintiffs Meet the Commonality Requirement.

The commonality requirement does not necessitate "every class member's factual or legal situation to be a carbon copy" of those of the named plaintiffs, and thus the "low commonality hurdle is easily surmounted." *Wesley v. Gen. Motors Acceptance Corp*., 1992 WL 57948, at *3 (N.D. Ill. 1992); *see also Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 155 (1982). A common nucleus of operative fact satisfies the commonality requirement of Rule 23(a)(2). *See Rosario v. Livaditis*, 963 F.2d at 1018. Common nuclei of fact exist where, as in this case, the defendant has engaged in standardized conduct towards members of the proposed class. *See Chandler v. Southwest Jeep-Eagle, Inc*., 162 F.R.D. 302, 308 (N.D. Ill. 1995) (citing cases).

Defendant's conduct in reducing services for all participants of the MF/TD waiver program has been uniform with respect to the plaintiff class and constitutes a "common nucleus of operative fact." *Rosario*, 963 F.2d at 1018. Defendant's policy applies regardless of individual medical need and results solely because an individual has reached the age of 21. Memo Class Cert. at 7. Differences in the individualized facts regarding class members' specific medical needs and the community supports they require do not bar class certification. *Rolland v.*

*Patrick*, 2008 WL 4104488, *4 (D. Mass.) ("any identified factual differences between the named Plaintiffs and some of the class . . . did not undermine commonality and, in particular, did not preclude certification of a class of persons with mental retardation who were challenging Defendants' practices.") Such factual differences can be addressed in the remedial phase. *Rolland*, 1999 WL 34815562, at *5 (D. Mass. 1999) (class certification was appropriate and "individualized determinations of needs and services were more properly left for post-judgment relief"); *Marisol A. v. Guiliani*, 126 F.3d 372, 375 (2d Cir. 1997) (individual needs did not defeat commonality). Plaintiffs have therefore satisfied the commonality requirement.

b. Plaintiffs Meet the Typicality Requirement.

The question of typicality is closely related to the question of commonality. *Rosario*, 963 F.2d at 1018. A "plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *De La Fuente v. Stokely-Van Camp, Inc*., 713 F.2d 225, 232 (7th Cir. 1983) (citations and internal quotation omitted). This requirement "primarily directs the district court to focus on whether the named representatives' claims have the same essential characteristics as the claims of the class at large." *Retired Chicago Police Ass'n v. City of Chicago*, 7 F.3d 584, 596-7 (7th Cir. 1993).[11] Plaintiff Hampe's claim has the "same essential characteristics" as the proposed class, namely, that defendant violates the integration mandate through its policy of reducing services when an individual reaches the age of 21. Further, the

[11] This requirement is intended to ensure that class representatives will represent the best interests of the class members who take a less active role. It overlaps substantially with the requirement that class representatives be members of the class. *Robinson v. Sheriff of Cook Co.*, 167 F.3d 1155, 1157 (7th Cir. 1999).

remedy that plaintiffs seek is a declaratory judgment requiring the State to maintain services in the community. (Compl. at 16-17). The typicality requirement is therefore satisfied.

c. Plaintiff Hampe is an Adequate Representative of the Class.

Rule 23(a)(4) requires that the named plaintiff "fairly and adequately protect the interests of the class." Fed.R.Civ.P. 23(a)(4). Courts generally make two inquiries here. First, plaintiff must not have claims antagonistic to or in conflict with those of other class members and must have sufficient interest in the case's outcome to be a vigorous advocate. Second, plaintiff's counsel must be qualified, experienced, and able to conduct the proposed litigation. *See Rosario,* 963 F.2d at 1018. Plaintiff Hampe is an adequate representative of the class. His claims derive from the same violation of federal law as the other proposed class members. His interest in obtaining injunctive relief to prevent defendant from reducing medical services coincides with the general interests of the proposed class.[12] Thus, adequacy of representation is satisfied.

d. Plaintiffs Meet the Requirements of Rule 23(b)(2).

Finally, plaintiffs seek certification as a class under Rule 23(b)(2), which requires that "plaintiffs . . . need merely show that defendants acted on grounds generally applicable to the class for which they seek declaratory and injunctive relief." *Williams*, 2006 WL 3332844, at * 4. Declaratory and injunctive actions that present common questions such as a state policy for treatment of persons who automatically become ineligible for continued Medicaid benefits is suitable for class certification pursuant to Rule 23(b)(2). *See Jefferson v. Ingersoll Int'l Inc.*, 195

[12] Plaintiff's counsel also satisfies the requirements of Rule 23(g). Robert Farley is an experienced advocate who previously has represented clients in both title II cases and class actions. *See Bruggeman v. Blagojevich*, No. 00-C-5392 (N.D. Ill.) (Title II case); *Bullock v. Sheahan*, No. 04-C-1051 (N.D. Ill.) (class counsel); *Gary v. Sheahan*, No. 96-C-7294 (N.D. Ill.) (class counsel).

F.3d 894, 897 (7th Cir. 1999.) Plaintiffs do not seek damages, so the concern for individualized damage awards that often drives the distinction between certifying a Rule 23(b)(2) class and a Rule 23(b)(3) class is not present. *Lemon v. IUOE, Local 139,* 216 F.3d 577 (7th Cir. 1999).[13] Plaintiffs allege that defendant's policies and practices discriminate against them by denying class members the resources necessary to reside in the community. Defendant's conduct is generally applicable and therefore satisfies the requirement under Rule 23(b)(2).

## II. Title II Integration Claims Often Require Systemic Reform and Class Actions are Appropriate Mechanisms for Adjudicating Such Claims.

The class action is an appropriate mechanism for achieving relief for violations of title II in the community integration context. Integration claims typically involve large service systems that affect hundreds or thousands of individuals who rely on the state for their medical care. Courts have routinely granted class certification in ADA cases and specifically in *Olmstead* cases.[14] The class action is therefore a useful and necessary tool for addressing such systemic problems. The alternative — forcing individual plaintiffs, who are by virtue of their membership in the class, without resources to litigate independently to pursue individual complaints — is an unfair and inefficient use of judicial resources.[15]

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[13] Even if the Court were to determine that individual determination of each class member's claims were important, the Court could bifurcate the case and review the injunctive relief — i.e., changing the state's policy — under Rule 23(b)(2), and the delivery of appropriate remedy under Rule 23(b)(3) on a case-by-case basis. *See Jefferson*, 195 F.3d at 898.

[14] *See, e.g., Ball et al v. Rodgers*, 492 F.3d 1094 (9th Cir. 2007); *Frederick L. v. Dept. of Public Welfare*, 364 F.3d 487 (3d Cir. 2004); *State of Connecticut Office of Protection and Advocacy v. Connecticut*, 2010 WL 1416146 (D. Conn. 2010); *Messier v. Southbury Training School*, 562 F. Supp. 2d 294 (D. Conn. 2008); *Rolland v. Patrick*, 2008 WL 4104488 (D. Mass. Aug. 19, 2008); *Colbert v. Blagojevich*, No. 07-C-4737 (N.D. Ill. 2008); *Williams v. Quinn*, No. 05-C-4673 (N.D. Ill. Nov. 11, 2006).

[15] This is a case in which the declaratory judgment as to the entire class may lead to negotiations on each class member's actual remedy, but that does not change the determination

For instance, in *Williams*, Judge Hart certified a class of Illinois residents alleging title II violations who a) have a mental illness; b) are institutionalized in a privately owned Institution for Mental Diseases; and c) with appropriate supports and services may be able to live in an integrated setting. *Williams*, 2006 WL 3332844, at *5. The Court determined that class certification was appropriate because, as in this case, "defendant's conduct toward the class largely defines the class." *Id.* at *12. In *Colbert,* Judge Lefkow certified a class of "all Medicaid-eligible adults with disabilities in Cook County, Illinois, who are being, or may in the future be, unnecessarily confined to nursing facilities and who, with appropriate supports and services, may be able to live in a community setting." *Colbert*, 2008 WL 4442597, at *10.

Defendant's administration of its waiver programs constitutes an extensive benefits system that serves thousands of Illinois residents. The MF/TD waiver program sets the maximum capacity of individuals at 700 persons,[16] while the PWD waiver program has a capacity at 27,870 persons.[17] Together, these programs constitute a sizeable amount of the state's community-based services. Plaintiffs' claims will require system-wide change in policies to ensure that defendant's Medicaid program allows individuals to live in the most integrated setting appropriate to their needs.

Moreover, defendant's refusal to modify the policy and practice despite the fact that individual plaintiffs have successfully challenged this very policy in five separate lawsuits underscores the need to address this problem on a systemic, class-wide basis. *See Radaszewski*,

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that this is suitable for a decision under Rule 23(b)(2). *Berger v. Xerox Ret. Income Plan*, 338 F.3d 755, 763-764 (7th Cir. 2003) (declaration of liability is the determining factor to individual award of benefits).

[16] *See* http://www.hfs.illinois.gov/hcbswaivers/tdmfc.html.

[17] *See* http://www.hfs.illinois.gov/hcbswaivers/disabilities.html.

2008 U.S. Dist. LEXIS 24923;[18] *Grooms*, 563 F. Supp. 2d 840; *Sidell*, No. 05-C-1001; *Jones*, 867 N.E.2d 563; *Fisher*, No. 06-C-4405. Each of these lawsuits determined that defendant's policy of reducing medical funding at age 21 violates the ADA and the Rehabilitation Act. Certification of the proposed class advances the Court's interest in judicial economy because it allows simultaneous and efficient adjudication of the issues common to the class. *See Thorogood v. Sears, Roebuck and Co.*, 547 F.3d 742, 744 (7th Cir. 2008) ("The class action is an ingenious device for economizing on the expense of litigation.") If the class is not certified, proposed class members will be required to file individual lawsuits. Due to their limited financial resources and extensive medical issues, class members are unlikely to initiate individual actions.

Contrary to defendant's assertion that the court must first conduct individualized hearings as to whether a plaintiff is "qualified" or "otherwise qualified," (Def. Resp. Class Cert. at 5-11), the issue for declaratory judgment is common to all members of the class — whether the state's polices violate the integration mandate of *Olmstead* and title II of the ADA. Any need for individualized determinations of benefits is a mechanical application of correct policies and procedures. *See Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 414 (5th Cir. 1998); *Jefferson*, 195 F.3d at 898; *Berger*, 338 F.3d at 763. The central question in this litigation — whether the defendant's administration of its waiver programs is consistent with the *Olmstead* integration mandate — can be answered without regard to individual class members' diagnoses or circumstance. Indeed, it is the state's systemic failure to make individualized determinations

[18] The U.S. Court of Appeals for the Seventh Circuit reversed the district court's entry of judgment on the pleadings for the defendant after a thorough analysis of the *Olmstead* integration mandate, the waiver programs and the state's claimed defenses. *Radaszweski v. Maram*, 383 F.3d 599 (7th Cir 2004). The court determined that "the integration mandate may well require the State to make reasonable modifications to the form of existing services in order to adopt them to community-integrated settings." *Id*. at 611.

based on a person's need that has led to this litigation.

## Conclusion

For the above stated reasons, the Court should grant Plaintiff's Motion for Class Certification. With the Court's permission, counsel for the United States will be present at any upcoming hearings.

Dated: July 16, 2010

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that on July 16, 2010, she electronically filed the foregoing Statement of Interest of the United States with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel enrolled in the CM/ECF system.

*/s/ Regan Rush*