

DISTRICT COURT CITY AND COUNTY OF DENVER, COLORADO	<p style="text-align: center;">COPY</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiffs: <p style="text-align: center;">VALERIE IMANI HAWTHORNE-BEY, <i>et al.</i></p> Defendants: <p>KAREN REINERTSON, Executive Director of the Colorado Department of Health Care Policy and Financing, <i>et al.</i></p>	
<u>ORDER DENYING CLASS CERTIFICATION</u>	

THIS MATTER comes before the Court on the Motion of Plaintiffs to have this matter certified as a class action. The Court denies this request. The basis for the Court's decision is stated below.

The rule that governs class actions is Colorado Rules of Civil Procedure 23. In part Rule 23 states:

(b) *Class Actions Maintainable.* Any action may be maintained as a class action if the prerequisites of section (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of:

(A) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(B) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interest; or

(2) The party opposing the class 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; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

- (A) The interest of members of the class in individually controlling the prosecution or defense of separate actions;
- (B) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (C) The desirability or undesirability of concentrating the litigation of the claims in the particular forum;
- (D) The difficulties likely to be encountered in the management of class action.

THE CLASS IS SO NUMEROUS JOINDER IS IMPRACTICABLE

Defendants do not really contest the fact that the proposed class is extremely large. It would not be practicable to join each potential Plaintiff in this case. The number of Plaintiffs could number into the hundreds if not the thousands. Plaintiffs have met this prerequisite to have the class certified.

QUESTIONS OF LAW AND FACT ARE NOT COMMON TO THE CLASS

The Plaintiffs argue that there is only one common question of law and fact; that being whether CBMS is adequate. The Court disagrees with this contention.

An application for benefits may have been denied for a variety of reasons. Improper application by CBMS is only one possible reason for an application to be denied. An application can be denied because of an error made by an eligibility technician in the county. An application can be denied because of failure of the applicant to give all the required information or because the applicant simply is not eligible. The facts of each case must be analyzed on their own merits. Both the questions of law and the questions of fact may be numerous as to the potential members of the class.

In the case of Davoll v. Webb, 160 FRD 142 (D. Colo. 1995) a Federal District Court for the District of Colorado denied a class action of Denver police officers' with disabilities who claimed they were not granted reasonable accommodations. In denying this class the court stated:

The mere fact that each plaintiff sustained work-related injuries resulting in a physical impairment, being placed in a light duty position and later retiring would not mean he or she had a "disability" as defined in the ADA. Various factors would have to be considered in determining whether each named plaintiff and each member of the putative class has or will have a "disability" for the purpose of an ADA claim. Such "necessarily individualized inquiries" are best suited to a case-by-case determination.

Likewise in this case the determination of why an individual was denied benefits requires a “necessarily individualized inquiry.” For this reason the second prerequisite for a class action, that there are common questions of fact and law, has not been met.

CLAIMS OR DEFENSES OF THE REPRESENTATIVE PARTIES ARE NOT TYPICAL OF THE CLAIMS OR DEFENSES OF THE CLASS

For the reasons mentioned above claims of the putative class are not typical of each other. Likewise the defenses of which Defendants may present are not typical as to each member of the class. The factual situations vary so greatly from each individual Plaintiff. The claims and defenses may not be considered typical.

COUNSEL FOR PLAINTIFFS WILL CERTAINLY FAIRLY AND ADEQUATELY PROTECT THE INTEREST OF THE CLASS

There have been three hearings on the issue of the preliminary injunction. From the experience of those hearings and reviewing the pleadings submitted by counsel for the Plaintiff, there is absolutely no doubt that the attorneys for Plaintiff would fairly and adequately represent any class that was certified.

CONCLUSION

Because the Plaintiffs cannot meet two of the four prerequisites for the certification of a class, the request for a class certification is denied.

Done this 21 day of January, 2005

BY THE COURT:



John W. Coughlin
District Court Judge

cc: Terence Fagan, Esq.
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