

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

A.L., <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	No. 06 C 3520
v.	)	
	)	Judge Guzmán
MICHAEL O. LEAVITT, Secretary of	)	
Health and Human Services,	)	Magistrate Judge Mason
	)	
Defendant.	)	
	)	

**MEMORANDUM OF LAW IN OPPOSITION TO  
PLAINTIFFS’ MOTION FOR RECONSIDERATION**

**PRELIMINARY STATEMENT**

Certain plaintiffs who are recipients of Medicaid benefits under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., have moved this Court to reconsider its earlier, reasoned Memorandum Opinion and Order denying the plaintiffs’ motions for emergency injunctive relief and class certification with respect to the members of proposed Class A, i.e., current recipients of Medicaid. See Pls.’ Mem. in Supp. of Mot. for Reconsideration at 1 n.1. According to these plaintiffs, the Court erred in failing to address this class’s purported Due Process challenge to section 6036 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396b(x) (“section 6036”). However, the plaintiffs do not meet (nor do they even mention) the high standard of “manifest error” applicable to a motion for reconsideration in this Circuit. In fact, the plaintiffs do not establish that this Court made any error at all, as the plaintiffs themselves expressly refused to identify the statute as the specific source of the alleged injuries to Class A.

Even if the Court were to reinstate the Class A named plaintiffs for the limited purpose of challenging the constitutionality of the statute on Due Process grounds, that decision would not

justify revisiting the necessity of preliminary injunctive relief. The plaintiffs admit in their Memorandum in Support of their Motion for Reconsideration that they failed to request relief against section 6036 in their Amended Motion for TRO and Preliminary Injunction. The plaintiffs blame this omission on a “drafting mistake.” Regardless, the extraordinary remedy of reconsideration is appropriate only when based on a manifest error by the Court, not a careless error by the plaintiffs.

Finally, should the Court agree with the plaintiffs that this is an exceptional case justifying reconsideration and, therefore, consider a Due Process challenge to section 6036, that challenge would be meritless, subject to dismissal by the Court on the existing papers. As the Secretary has established in his earlier filings, whatever process current recipients of Medicaid are due is provided, if not exceeded, by the pre-deprivation hearings that are mandatory under the Interim Final Rule for all current recipients of Medicaid. The plaintiffs do not even examine, let alone criticize, the process that will be provided pursuant to the Rule and existing agency regulations. Accordingly, there is no basis to support a meritorious Due Process challenge to the statute.

### **BACKGROUND**

In a Memorandum Opinion and Order dated September 14, 2006, this Court dismissed all of the plaintiffs’ challenges to the July 6, 2006, Interim Final Rule issued by the Secretary of Health and Human Services (“the Secretary” or “HHS”), 71 Fed. Reg. 39214 (July 12, 2006), for lack of subject matter jurisdiction except for plaintiff A.L.’s Administrative Procedure Act (“APA”) claim that the Secretary’s application of the Rule’s documentation requirements to Title IV-E adoptees is arbitrary and capricious. In dismissing the majority of the plaintiffs’ claims, the Court found that the plaintiffs had failed to allege that they were unable to comply with the

requirements of the Rule and that any alleged threat to their benefits was therefore speculative. Mem. Op. at 10-11. The Court also noted that any such allegation at this point, prior to any actual attempt to comply with the Rule, would be “nothing more than conjecture.” Id. at 11.

As to the plaintiffs’ additional allegation that they would be required to expend time and resources to satisfy the requirements of the Rule, the Court found that the allegation was “sufficient to support . . . standing” for certain claims. Id. However, the Court held that even this alleged injury would not be redressable with respect to the majority of the claims because any such injury would be a product of section 6036 rather than the Rule. Id. at 12. The only distinction that the Court found between the Rule and section 6036 related to A.L.’s APA challenge to the Rule’s application to Title IV-E adoptees. Id. at 14. Noting, without deciding, that the regulation “appears” to contradict the statute in this regard, the Court allowed A.L. to proceed with her claim as a representative of a class of Title IV-E beneficiaries. Id. at 14-15. The Court then referred the motion for preliminary injunction, as it applies to the sole remaining claim, to a magistrate judge.

On October 3, 2006, the plaintiffs filed a Motion for Reconsideration of Dismissal of Claims of Class A and Denial of Motions as to Class A, and one week later they filed a Memorandum in Support of that Motion. In the Motion and the Memorandum in Support, the plaintiffs argue that the Court erred in dismissing the claims of the Class A plaintiffs, current recipients of Medicaid, for lack of standing because the First Amended Complaint challenged the constitutionality of both the Interim Final Rule and section 6036 on Due Process grounds.<sup>1</sup> Mot. for Reconsideration ¶ 8. Accordingly, the plaintiffs request that the Court reinstate and grant

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<sup>1</sup> The plaintiffs’ motion is expressly limited to the Class A plaintiffs’ Due Process claim.

their motions for emergency injunctive relief and class certification with respect to the Due Process claim of the members of Class A. Id. ¶ 9.

## ANALYSIS

### **I. The Plaintiffs' Motion to Reconsider the Dismissal of their Due Process Claim Should Be Denied**

“The Federal Rules of Civil Procedure do not provide for motions to reconsider interlocutory orders. However, they are frequently entertained by the court. Motions for reconsideration are best characterized as based in common law and serve a limited function: ‘to correct manifest errors of law or fact or to present newly discovered evidence.’” Lakeside Feeders, Ltd. v. Chicago Meat Processors, Inc., 35 F. Supp. 2d 638, 640 (N.D. Ill. 1999) (internal citations omitted); see also Zepter v. Dragisic, 237 F.R.D. 185, 187 (N.D. Ill. 2006) (“Courts commonly treat these motions as if they fall under the scope of Rule 59(e), which provides for the amendment of judgments, even when they are requests to reconsider orders instead of final judgments.”). “[T]he doctrine of law of the case cautions that the court should exercise its discretion to reconsider its prior rulings sparingly[. . .] based on [the] sound policy that, when an issue is once litigated and decided, that should be the end of the matter.” Shakman v. The Democratic Org. of Cook County, 844 F. Supp. 422, 425 (N.D. Ill. 1994) (quoting Evans v. City of Chicago, 873 F.2d 1007, 1014 (7th Cir. 1989)). In accordance with this principle, such motions should be granted “only in exceptional cases.” Id.

The plaintiffs do not discuss this heightened standard for reconsideration in their motion. Instead, they simply assert that the Court’s “conclusion” in its order that the plaintiffs did not make a direct challenge to the statute “is not correct,” Mot. for Reconsideration ¶ 8, and then focus the vast majority of their discussion on the merits of their purported Due Process challenge

to the statute. However, based upon the plaintiffs' pleadings in support of their Amended Motion for TRO and Preliminary Injunction, it is plain the Court made no "manifest" error of fact or law. The Court should deny the plaintiffs' motion for reconsideration on that ground alone. See, e.g., Starcon Int'l, Inc. v. NLRB, 450 F.3d 276, 278 (7th Cir. 2006) ("The doctrine of law of the case precludes reexamining a previous ruling (unless by a higher court) in the same case unless it was manifestly erroneous.").

For that matter, there is no indication that the Court made *any* error of fact or law. Any confusion regarding the proper object of the plaintiffs' challenge is a direct result of the plaintiffs' own actions, rather than the product of judicial error. In their Reply Memorandum in Support of the Amended Motion for TRO and Preliminary Injunction, the plaintiffs expressly disavowed seeking any particular relief in this case against the operation of section 6036:

Plaintiffs do not seek a "preliminary declaratory judgment" that would identify the source of any threatened violations of rights; they simply seek an order avoiding the threatened unlawful violations. That is, they seek an order preventing the termination or denial of Medicaid without appropriate respect for final administrative determinations of citizenship already made, . . . and with respect to cases not even covered by the words of Section 6036. This is not a declaratory judgment that assigns the unlawfulness to either section 6036 or the implementing regulations, although it surely is one or the other. It is an injunction to prevent harm regardless of the specific source.<sup>2</sup>

Pls.' Reply Mem. at 5-6. In accordance with this amorphous challenge to any injury resulting

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<sup>2</sup> Indeed, the plaintiffs' Memorandum in Support of their Amended Motion for TRO and Preliminary Injunction, with the exception of a couple of conclusory sentences, focuses exclusively on the alleged deficiencies in the Rule, and in the Introduction to their Memorandum the plaintiffs describe their challenge as a challenge only to the Rule. See Pls.' Mem. in Supp. of Am. Mot. for a TRO and Prelim. Inj. at 1-2 ("Plaintiffs challenge new procedures the Secretary has adopted for determining eligibility for Medicaid. . . . Though Section 6036 is written as an administrative mandate for states, the Secretary has published implementing regulations that declare the citizenship documentation requirements to be a mandate for beneficiaries and applicants . . . . Plaintiffs claim that the Secretary's procedures exceed the scope of his statutory authority . . . .").

from the documentation requirements, the plaintiffs submitted a proposed order that would prohibit anyone, including the states, from denying Medicaid to an individual for failure to comply with the documentation requirements. See id. at 13.

However, as this Court noted in its September 14, 2006, Order, this amorphous request for relief falls well short of satisfying the plaintiffs' obligation under Article III to demonstrate the particular source of their alleged injury. See Order at 13 n.4 ("Plaintiffs' stated disinterest in 'identify[ing] the source of any threatened violations of rights' or 'assign[ing] . . . unlawfulness to either [the statute] or the implementing regulations,' Pls.' Reply at 5-6, does not excuse them from complying with the traceability requirement."); Perry v. Village of Arlington Heights, 186 F.3d 826, 829 (7th Cir. 1999) (explaining the oft-repeated proposition that plaintiffs bear the burden of demonstrating the elements of standing, including a causal link between injury and source); cf. United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs, hunting for truffles buried in briefs."). And this requested relief was, in any event, infeasible, as the court would be unable to enjoin any individual or entity not a party to this suit from taking action on the documentation requirements. See Sept. 14, 2006, Order at 12-13 ("The only person whose actions the Court can direct is the Secretary, a reality reflected by the prayer for relief in the first amended complaint: "[P]laintiffs pray that this Court: . . . [p]reliminarily and permanently enjoin the Secretary from applying, implementing or effectuating in any way [the statute] in a manner that violates plaintiffs' rights."); Herrlein v. Kanakis, 526 F.2d 252, 253-54 (7th Cir. 1975) ("(N)o court can make a decree which will bind any one but a party; a court of equity is as much so limited as a court of law; it cannot lawfully enjoin the world at large, no matter how broadly it words its decree.") (quoting Alemite Mfg. Corp. v. Staff, 42 F.2d 832-33 (2d Cir. 1930)). Because the plaintiffs had not demonstrated that the specific relief sought (or the

relief that the Court could feasibly grant) would redress their alleged harms, the Court correctly held that the plaintiffs lacked standing.

**II. Even if the Court Were to Reconsider the Dismissal of the Due Process Challenge to the Statute, It Should Not Revisit the Plaintiffs' Motion for TRO and Preliminary Injunction**

Even if the Court were to deem this an “exceptional” case warranting reconsideration of the dismissal of the plaintiffs’ purported Due Process challenge to section 6036, that decision should not extend to reexamining the plaintiffs’ eligibility for preliminary injunctive relief.<sup>3</sup> As the defendant argued in its Opposition to Plaintiffs’ Amended Motion for TRO and Preliminary Injunction, the relief requested by the plaintiffs in the Motion is expressly limited to an injunction against the operation of the Interim Final Rule issued by the defendant:

“WHEREFORE, Plaintiffs respectfully requests [sic] entry of two orders granting:

- a. a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure prohibiting Defendant Secretary Michael Leavitt of DHHS from implementing the interim regulations until this court rules on the merits of this case and prohibiting the application of the interim regulations retroactively after such ruling;
- b. a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure prohibiting Defendant Secretary Michael Leavitt from implementing the interim regulations;
- c. other and further relief as this Court deems just and equitable.”

Pls.’ Am. Mot. for TRO and Prelim. Inj. at 10-11. The plaintiffs’ Motion is entirely devoted to

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<sup>3</sup> Reconsideration of the dismissal of the Class A plaintiffs and their purported Due Process challenge to the statute would not justify certification of a class of all current Medicaid recipients. As explained by the defendant in his Opposition to Plaintiffs’ Amended Motion for Class Certification, incorporated herein by reference, the plaintiffs have failed to satisfy the class certification requirements for this, or any other, claim.

the Interim Final Rule, including the plaintiffs' allegations of harm and the discussion of the likelihood of success on the merits of their constitutional challenge. See id. at 8 ("The Secretary's interim regulations violate the Due Process Clause of the Fifth Amendment to the United States Constitution and exceed the scope of his statutory authority in violation of the Administrative Procedure Act."). Thus, even if it were appropriate to consider the merits of the plaintiffs' Due Process challenge to the statute, the plaintiffs have failed to demonstrate that injunctive relief would be appropriate on that basis.

In their Memorandum in Support of the Motion for Reconsideration, the plaintiffs concede that their Amended Motion for TRO and Preliminary Injunction "did not contain an alternative request for relief against Section 6036." Mem. in Supp. of Mot. for Reconsideration at 3. Thus, the plaintiffs admit there is no basis to argue that the Court erred in refusing to grant a preliminary injunction against the operation of the Rule alone, as an injunction against the Rule would not have prevented injury resulting from the operation of section 6036. See Sept. 14, 2006, Mem. Op. at 12. The plaintiffs argue that the Court should overlook this omission because it was the product of a "drafting mistake." Mem. in Supp. of Mot. for Reconsideration at 3. However, the plaintiffs' "drafting mistake" does not constitute a manifest error of law or fact on the part of the Court, nor does it constitute newly discovered evidence that could not have been presented when the Motion was filed. The motion to reconsider should not be used by the plaintiffs as a procedural vehicle for correcting errors in pleadings that have already been submitted and decided by the Court.<sup>4</sup> Cf. Moro v. Shell Oil Co., 91 F.3d 872, 876 (7th Cir.

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<sup>4</sup> It is difficult to understand the explicit, three-paragraph request for relief in the Amended Motion for TRO and Preliminary Injunction to be a "drafting mistake," as the request comprehensively lists the relief sought by the plaintiffs in their Motion. And the request is  
(continued...)

1996) (holding that Rule 59 does not serve as a means for a party to correct procedural failures); Entertainment, Inc. v. City of Northlake, No. 03 C 692, 2004 WL 1243972, at \*2-3 (N.D. Ill. June 3, 2004) (unreported) (rejecting “inartful drafting” and errors in pleadings as basis for reconsideration of judgment).

### III. Plaintiffs’ Due Process Claim Is Meritless

As the Secretary has previously explained in detail, the plaintiffs’ Due Process challenge, whether to the Rule or the statute, lacks merit. See Defs’ Mem. in Opp. to Pls.’ Am. Mot. for TRO and Prelim. Inj. at 34-38; Defs.’ Mem. In Opp. to Pls.’ Mot. for TRO and Prelim. Inj. at 21-25.<sup>5</sup> The plaintiffs spend much of their brief on reconsideration revisiting arguments already rejected by this Court<sup>6</sup> and asserting that, under cases such as Youakim v. McDonald, 71 F.3d 1274 (7th Cir. 1995), cert. denied, 518 U.S. 1028 (1996), the plaintiffs have a Due Process

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<sup>4</sup>(...continued)  
consistent with the substance of the Motion itself. Instead, the limitation of the request appears to signal that the true focus of the plaintiffs’ challenge is to the legitimacy of the Interim Final Rule. See Pls.’ Am. Mot. at 8.

<sup>5</sup> Because the plaintiffs spend the bulk of their brief in support of reconsideration rearguing the merits of their claim, we incorporate the pertinent portions of our prior briefs in opposition to the plaintiffs’ first and second TRO motions by reference.

<sup>6</sup> The plaintiffs’ Due Process challenge to section 6036, like their previous challenge to the constitutionality of the Rule, is based in large part on their argument that the statute should not be read to impose an “eligibility” requirement on applicants or recipients, but rather a “procedural” requirement. See Pls.’ Mem. in Supp. of Mot. for Reconsideration at 8-9. Whatever the impact of this distinction, this Court has already rejected the plaintiffs’ characterization of section 6036, holding that the regulations’ “*de facto* change of the statutory eligibility requirement” is a distinction that arises “from the statute” itself. Order of Sept. 14, 2006, at 12. Moreover, the Court’s decision was correct. When “Congress chooses to withdraw federal funding for a particular service” under Medicaid, “a State is not obliged to continue to pay for that service as a condition of continued federal financial support of other services.” Harris v. McRae, 448 U.S. 297, 309 (1980). Nor, where (as here) Congress chooses to withdraw federal funding for individuals who fail to meet certain new requirements, is a state obliged to continue to pay for services to those individuals.

interest in continued receipt of Medicaid benefits. Pls.' Mem. in Supp. of Mot. for Reconsideration at 5-10.

Neither current recipients of nor applicants for Medicaid have any substantive property right that would prohibit Congress from enacting substantive changes to Medicaid eligibility requirements. As the Supreme Court noted in Richardson v. Belcher, 404 U.S. 78, 81 (1971), “the analogy drawn in Goldberg between social welfare and ‘property,’ cannot be stretched to impose a constitutional limitation on the power of Congress to make substantive changes in the law of entitlement to public benefits.” See also Defs.’ Mem. in Opp. to Pls.’ Am. Mot. for TRO and Prelim. Inj. at 34-36. Thus, current recipients of public benefits hold no veto over decisions placed squarely in the hands of the legislature. See, e.g., Atkins v. Parker, 472 U.S. 115, 129 (1985) (“[A] legislatively mandated substantive change in the scope of [a] program . . . must, of course, comply with the substantive limitations on the power of Congress, but there is no suggestion in this case that the amendment at issue violated any such constraint. Thus, it must be assumed that Congress had plenary power to define the scope and the duration of the entitlement to food-stamp benefits, and to increase, to decrease, or to terminate those benefits based on its appraisal of the relative importance of the recipients’ needs and the resources available to fund the program. The procedural component of the Due Process Clause does not ‘impose a constitutional limitation on the power of Congress to make substantive changes in the law of entitlement to public benefits.’” (citation omitted)).

If there is any protection afforded the plaintiffs, it is to “a hearing” to allow them the opportunity to meet the new requirements of section 6036. Youakim, 71 F.3d at 1288. In this case, the Interim Final Rule and existing regulations provide just that opportunity. At the time of redetermination for a current recipient, states will examine recipients’ documents to determine

whether they have satisfied the requirement of section 6036. See, e.g., 71 Fed. Reg. at 39216 (mandating a “reasonable opportunity to present documents” at the “time of . . . redetermination”); id. (requiring states to “assist the individual in securing evidence of citizenship” when individual is otherwise unable to do so). If the individual is determined not to have met the requirements of section 6036, “[n]otice and appeal rights must be given to the . . . recipient” prior to the deprivation of benefits. See 71 Fed. Reg. at 39217; see also 42 C.F.R. § 431.205(d) (requiring that a State Medicaid agency’s hearing system “must meet the due process standards set forth in Goldberg v. Kelly, 397 U.S. 254 (1970), and any additional standards specified in this subpart”); id. § 431.206 (requiring notice); id. § 431.230 (providing for the continuation of benefits during the hearing process). In their instant motion, the plaintiffs do not criticize (nor even point to) the substantial procedural protections that will be afforded them under the statute and Rule. There is, accordingly, no basis for the plaintiffs to claim that the statute itself denies the plaintiffs due process.

Instead of engaging in a traditional Due Process analysis, the plaintiffs appear to argue, without support or citation, that current recipients are entitled to complete “repose” in the enjoyment of their benefits and, therefore, Congress<sup>7</sup> cannot create new documentation requirements for Medicaid beneficiaries under the Social Security Act. Pls.’ Mem. in Supp. of Mot. for Reconsideration at 9-10. Medicaid beneficiaries are entitled to repose under the

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<sup>7</sup> Congress plainly intended to apply the documentation requirements to all Medicaid beneficiaries and applicants after the effective date, not only those whose citizenship verification under the *old* requirements were somehow suspect. See H.R. CONF. REP. 109-362, at 342 (2005) (“The provision would apply to determinations of initial eligibility for Medicaid made on or after July 1, 2006, and to redeterminations made after such date in the case of individuals for whom the *new documentary requirements* were not previously met.” (Emphasis added)).

Secretary's regulations until their next annual redetermination of eligibility, but not, as the plaintiffs would have it, in perpetuity.<sup>8</sup> Cf. O'Kane v. Apfel, 224 F.3d 686, 691 (7th Cir. 2000) (upholding Congress's prohibition of payment of Social Security disability benefits based on claimant's alcoholism or drug addiction to eligibility determinations pending on date of enactment). At the point of redetermination, recipients, like applicants, must be in compliance with Medicaid eligibility requirements, including the documentation requirements of section 6036. See 42 C.F.R. § 435.916. Any other conclusion would effectively remove the well-recognized ability of "Congress [to] alter, and even eliminate, [benefits] at any time." Hisquierdo v. Hisquierdo, 439 U.S. 572, 575 (1979). Indeed, "[t]o engraft upon the [Medicaid] system a concept of 'accrued property rights' would deprive it of the flexibility and boldness in adjustment to ever-changing conditions which it demands." Flemming v. Nestor, 363 U.S. 603, 610 (1960).

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<sup>8</sup> The disability cases that the plaintiffs cite in their brief as proof that benefits may not be terminated without evidence of a change in disability are wholly irrelevant. They do not involve a congressional change to eligibility for public benefits or even, as the plaintiffs would argue, "procedural" changes enacted by Congress. Cf. Cassiday v. Schweiker, 663 F.2d 745, 747 (7th Cir. 1981). It is far different to assert the unremarkable proposition that disability benefits may not be arbitrarily revoked than to assert that Congress has no ability to change how those benefits are determined.

**CONCLUSION**

For the foregoing reasons, the Court should deny the plaintiffs' Motion for Reconsideration of Dismissal of Claims of Class A and Denial of Motions as to Class A.

Dated October 25, 2006

Respectfully Submitted,

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