

**United States District Court, Northern District of Illinois**

<b>Name of Assigned Judge or Magistrate Judge</b>	James F. Holderman	<b>Sitting Judge if Other than Assigned Judge</b>	
<b>CASE NUMBER</b>	05 C 4331	<b>DATE</b>	12/22/2005
<b>CASE TITLE</b>	Ligas, et al. vs. Maram, et al.		

**DOCKET ENTRY TEXT**

The petitions to intervene by intervenors Illinois Health Care Association (Dkt. No. 26), the Golden Intervenors (Dkt. No.37), and the Residents of Misericordia (Dkt. No. 43) are denied. This case is set for further status on January 12, 2006 at 9:00 a.m.

■ [ For further details see text below.]

Mailed Notice

**STATEMENT**

Before this court are three petitions to intervene under Federal Rule of Civil Procedure 24(a) and (b) filed in the above-captioned case. (Dkt Nos. 26, 37, 43). For the reasons stated below, the petitions are denied.

This lawsuit was filed on July 28, 2005 by and on behalf of developmentally disabled individuals (“named plaintiffs”) against the defendant Illinois state officials (“state defendants”). In the complaint, the named plaintiffs allege that the state defendants’ failure to provide the plaintiffs with long term care services in the most integrated, community setting appropriate for their needs violates Title II of Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and Title XIX of the Social Security Act. (Dkt. No. 1.) Specifically, the plaintiffs seek injunctive relief, in which the state would offer the option of placing eligible developmentally disabled individuals in community settings with appropriate services and support, in addition the option of placing individuals in institutions, such as Medicaid-certified long-term care facility serving those with developmental disabilities called intermediate care facilities (“ICF-DD”).

Three parties have filed petitions to intervene, all seeking to protect the same asserted interest: those developmentally disabled individuals who wish to remain in institutional settings. The first intervenor is Illinois Health Care Association (“IHCA”), a nonprofit organization representing licensed and certified long-term care facilities that provide services for developmentally disabled individuals. (Although IHCA is an association of long-term care facilities, IHCA focuses its petition to intervene on the protecting the rights of developmentally disabled individuals who wish to remain at their member facilities, rather than the direct interests of the member facilities.) The second intervenors, “the Golden Intervenors,” consist of eleven developmentally disabled individuals, who also seek to continue receiving services in long-term institutions. The last intervenors are the “Residents of Misericordia,” who are twelve developmentally disabled individuals desiring to continue to receive long-term institutional care at Misericordia and one who is on the

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waiting list for placement at Misericordia. Because the petitions identify the same interests, this court addresses their arguments jointly.

In their petitions to intervene, the intervenors argue that the plaintiffs seek community placement for all who are eligible to the exclusion of any option of choice on the part of developmentally disabled individuals to remain in institutional settings. Further, because the plaintiffs have proposed to certify a class under Federal Rule of Civil Procedure 23(b)(2) for injunctive relief, which does not permit potential members to opt out of the class, the Golden Intervenors, the Residents of Misericordia, and other individuals who wish to remain in institutional settings will be bound by any resolution in the case. As a result, the intervenors believe that their interest in remaining in institutional settings is directly at issue in the case. The intervenors fear that the state defendants will be forced to serve them in a community setting rather than the institutional setting they desire. The intervenors also argue that neither the named plaintiffs, who seek conflicting objectives in state services, nor the state defendants can adequately represent their interests.

Intervenors may petition to intervene in a case either as a right or permissive. Fed. R. Civ. P. 24(a) and (b). To intervene as a right under Rule 24(a), the intervenor must (1) file a timely application; (2) claim an interest relating to the property or transaction which is the subject of the action that is direct, substantial, and legally protectable; (3) be so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; (4) have the interest inadequately represented by the existing parties. *Heartland, Inc. v. United States Forest Serv.*, 316 F.3d 694, 700 (7th Cir. 2003); *Transamerica Ins. Co. v. South*, 125 F.3d 392, 396 n.4 (7th Cir. 1997).. All of these requirements must be established. *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 946 (7th Cir. 2000).

The first element is not at issue, and so this court addresses the remaining requirements and determines that none of the intervenors can demonstrate a direct, substantial, legally protectable interest that would be impaired by the outcome of the lawsuit. See *Solid Waste Agency of N. Cook County v. United States Army Corps of Engineers*, 101 F.3d 503, 507 (7th Cir. 1996) (“test is whether the outcome of the suit might impair or impede the would-be intervenor's interest”). Based on the limited relief that the named plaintiffs seek, the intervenors' claimed interest in remaining in an institutional setting would not be impaired or impeded in the resolution of this case. According to the plaintiffs, the state defendants' alleged violations are grounded in the failure to inform and offer an integrated, community setting to eligible developmentally disabled individuals as an option.

The plaintiffs' complaint is replete with language of choice, demonstrating that the relief sought is not a mandatory community setting for all, but a choice of either a community setting or an institutional setting. In the complaint, the plaintiffs accuse of the state defendants of “failing to develop a comprehensive effectively working plan to offer developmentally disabled individuals services in the most integrated setting appropriate to their needs.” (Cmplt. ¶ 6.) The plaintiffs allege that Title XIX requires the defendants to “offer persons with developmental disabilities who are Medicaid-eligible a choice between institutional and community services.” (Cmplt. ¶ 7.) Finally, in defining the defendants' failings that the lawsuit seeks to remedy, the named plaintiffs state that “[d]efendants do not provide Plaintiffs or class members the choice between institutional or community settings.” (Cmplt. ¶ 115.) Because the plaintiffs bring this lawsuit only to remedy their inability to choose to live in a community setting if they are eligible, the intervenors' claimed interest of remaining in an institutional setting is not impeded or impaired by a potential resolution allowing the named plaintiffs that choice. See *Reid L. v. Ill. State Bd. of Ed.*, 289 F.3d 1009, 1010 (7th Cir. 2002) (affirming denial of intervention where intervening students did not establish how their interest in least restrictive educational environment was impaired by rules requiring individualized education plan).

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Furthermore, the intervenors' contention that the state defendants cannot adequately represent their interests is at best speculative and at worst conclusory. Turning first to the most developed argument, the Golden Intervenors argue that the state defendants will have conflicting concerns regarding resources and funding and therefore would not be able to adequately represent the intervenors. But "more is needed than a presumption of inadequacy based on the diversity" of the state defendants' interests, especially given that the state defendant raised all of the intervenors' arguments in its Memorandum in Opposition to Class Certification. *Solid Waste Agency*, 101 F.3d at 508 (rejection inadequacy of representation argument based on additional interests related to its government role of Department of Justice plaintiff). (The class certification motion was denied as moot in this court's October 27, 2005, minute order.) In their memorandum, the Residents of Misericordia rely on one passage from the state defendants' Memorandum in Opposition to Plaintiffs' Motion for Class Certification, where the state defendants assert that its argument against class certification "should not be construed as the Defendants' belief that [institutional] residents who do not want to move have superior legal rights to [institutional] residents who may want to move to the community. [Dkt. No. 34]" The state defendants' refusal to view one group's legal rights as superior does not contradict or undermine the intervenors' (and for the that matter the plaintiffs') belief that there should be a choice in settings.

Finally, this court notes that the named plaintiffs seek to certify a broadly defined class that is not restricted to those who wish to be placed in a more integrated community setting. This court denied the motion for class certification as moot in order to first address the petitions to intervene. Should the named plaintiffs renew their motion for class certification, this court encourages them to more narrowly tailor their class to those who desire to be placed in community settings. A more narrowly tailored class certification request will ensure that the interests identified by the intervenors remain unimpaired.

Accordingly, this court denies the petitions to intervene by IHCA (Dkt. No. 26), the Golden Intervenors (Dkt. No.37), and the Residents of Misericordia (Dkt. No. 43). This case is set for further status on January 12, 2006 at 9:00 a.m.