

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

<p>KERIM and ADVIJE MEMISOVSKI, by their mother THERESA MEMISOVSKI, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BARRY MARAM, et al.,</p> <p style="text-align: center;">Defendants</p>	<p style="text-align: center;">No. 92 C 1982</p> <p style="text-align: center;">Hon. Joan Humphrey Lefkow</p>
<p>MONEIA BEEKS, et al.,</p> <p style="text-align: center;">Plaintiffs</p> <p style="text-align: center;">v.</p> <p>PHILIP BRADLEY, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">No. 92 C 4204</p> <p style="text-align: center;">Hon. Joan Humphrey Lefkow</p>

**DEFENDANTS' RESPONSE TO PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF MOTION TO ENFORCE CONSENT DECREE**

Defendants, through their attorney, Lisa Madigan, Attorney General of Illinois, hereby respond to Plaintiffs' Supplemental Memorandum in Support of Motion to Enforce Consent Decree (Dkt. 522) as follows:

In their Supplemental Memorandum, Plaintiffs assert that the Seventh Circuit's decision in *Wisconsin Hosp. Ass'n v. Reivitz*, 820 F.2d 863 (7th Cir. 1987), supports their argument that this Court's power to enforce federal consent decrees includes the power to order that "payments to MCOs, needed to maintain the required services to Medicaid beneficiaries, ... take precedence

over pure state obligations such as payments into the state pension system.” Suppl. Mem. at 2. Defendants disagree that the *Reivitz* case so dictates.¹

In *Reivitz*, the State of Wisconsin, relying on a state statute enacted in April, 1982, was seeking to pay less in reimbursement rates than it had agreed to pay under a consent decree entered between the State and the hospital association in July, 1982. 820 F.2d at 864-65. On those facts, the court stated: “Against a state that violates a valid federal court decree the court has the power to issue any order necessary to enforce the decree, including an order to pay.” *Id.* at 868. Thus, in proper context, the court held only that a court can order the State, as a party to a decree, to pay the amount it had already agreed to pay under the decree.

Here, the issue is not and never has been whether the State will pay the amounts it has agreed to pay. The issue here, which the decision in *Reivitz* does not resolve, is whether the Court can order the State to pay agreed-upon amounts more quickly or ahead of other obligations on the grounds that more expeditious payment is needed to ensure compliance with a consent decree. Because Defendants continue to believe that Plaintiffs have not shown violations of the decrees as a result of the delay in payments, this Court lacks a basis under the decrees or the law to grant the requested relief.

If, however, the Court grants the requested relief, Defendants request that the Court make the order effective July 1, 2017 (the beginning of the next fiscal year), for two reasons. First, as

¹ Plaintiffs also state that the *Memisovski* Decree requires that “certain payments to Medicaid providers be not only timely, but expedited.” Suppl. Mem. at 1. That description of the *Memisovski* Decree is incorrect. Paragraph 23 of the *Memisovski* Decree (Dkt. 422), which Plaintiffs cite, provides that “HFS will continue to provide expedited processing of claims” for certain providers. The *Memisovski* Decree makes no mention of expedited payment, and the Comptroller, which is the state actor that makes payments once claims and payment vouchers are processed, was not and is not a defendant in *Memisovski*. As the Defendants have advised the Court in the current proceedings, HFS has been promptly processing all claims and vouchers for payments, including those described in Paragraph 23 of the *Memisovski* Decree.

Defendants' counsel advised the Court during the June 6, 2017 hearing, Moody's Investor's Service issued a statement on June 1, 2017, in which Moody's stated that one of the factors that could lead to a downgrade of the rating on Illinois' general obligation bonds is the entry of "[c]ourt rulings that increase the volume of payment obligations that are legally prioritized."² And, as Defendants' counsel also advised during the June 6 hearing, a rating downgrade would have the immediate effect of triggering provisions in several credit swap agreements that could require an immediate payment of approximately \$39 – 107 million and an increase in the interest rate the State pays under the swap agreements, which would further reduce the cash available to the State to pay its obligations.

If this Court enters an order granting Plaintiffs their requested relief, that order could lead to another downgrade. However, if the Court grants relief but the order is not effective until July 1, 2017, that likely will avoid an immediate downgrade and also would send a message to the Illinois General Assembly and Governor that they have until June 30 to resolve the State's budget impasse and avoid the consequences of the Court's order. If the budget impasse is not resolved by July 1, that fact alone likely will lead to a rating downgrade, regardless of the effective date of the Court's order.

Second, making any order effective July 1 will give Defendants some additional time to determine how to comply with the Court's order. Although Defendants do not know how the Court might word an order granting relief, Defendants anticipate that they will need some time to figure out how in practical terms to comply with any such order, given that, as has been

² https://www.moodys.com/research/Moodys-Downgrades-Illinois-GOs-to-Baa3-from-Baa2-Affecting-315B--PR_904021452?WT.mc_id=AM~UmV1dGVyc05ld3NfU0JfUmF0aW5nIE5ld3NfQWxs~20170601_PR_904021452 (visited June 6, 2017).

described in earlier hearings, the State's cash flow crisis leaves Defendants with no obvious way to satisfy Plaintiffs' request for relief.

Conclusion

For each of these reasons, Defendants respectfully request the Court to deny Plaintiffs' motion to enforce, or, if the Court enters an order granting relief, to make such order effective July 1, 2017.

June 6, 2017

Respectfully submitted,

LISA MADIGAN, Illinois Attorney General

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that, on June 6, 2017, he caused to be filed through the Court's CM/ECF system a copy of **DEFENDANTS' RESPONSE TO PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO ENFORCE CONSENT DECREE**. Parties of record may obtain a copy of this filing through the Court's CM/ECF system.

/s/ Brent D. Stratton

Brent D. Stratton