STATE OF MAINE
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT
CIVIL ACTION
Doc. No. BCD-AP-18-02

MAINE EQUAL JUSTICE PARTNERS, CONSUMERS FOR AFFORDABLE HEALTH CARE, et al.

Petitioners

v.

RICKER HAMILTON, COMMISSIONER MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Respondent

ORDER ON RESPONDENT'S MOTION TO STAY

On June 4, 2018 this Court issued an Order in the above-captioned matter requiring Commissioner Ricker Hamilton of the Maine Department of Health and Human Services ("DHHS") to submit a State Plan Amendment ("SPA") no later than June 11, 2018 to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services ensuring MaineCare eligibility for Maine people under 65 years of age who qualify for medical assistance pursuant to 42 U.S.C. § 1396(a)(10)(A)(i)(VIII).

On June 7, 2018, Commissioner Hamilton timely filed an appeal of that Order to the Supreme Judicial Court along with a Motion to Expedite Briefing in which the Commissioner requested clarification from the Law Court that this Court's June 4, 2018 Order would be automatically stayed pending appeal based on Rule 62(e) of the Maine Rules of Civil Procedure.

Maine Equal Justice Partners ("MEJP") responded by filing in the Law Court an Opposition to Motion to Stay Pending Appeal and a Partial Objection to the Motion to Expedite Briefing.

On June 11, 2018 the Law Court issued an Order on Motion to Stay citing "a lack of clarity in the Commissioner's motion to stay as to the relief being sought and the failure of the parties to seek a ruling from the Superior Court as to the status of its order pending appeal." *Maine Equal Justice Partners v. Commissioner, DHHS*, 2018 ME ___ (Super. Ct. Docket No. BCD-18-02), Order on Motion to Stay, June 11, 2018. The Law Court further suspended the provisions of M.R. App. P. 3(b) "to the extent necessary to permit the Superior Court to act on the parties' formal motions to determine the immediate enforceability of the Superior Court's order pending appeal or for any stay or injunction pending appeal." *Id.*

That ruling effectively restored the Superior Court's jurisdiction over this case. The Law Court also directed this Court to act on the motion to stay, while at the same time preserving the parties' rights to reassert their arguments regarding the propriety of a stay of the Superior Court's Order when the matter shortly returns to the Law Court.

After the Law Court's order was received by this Court, counsel for MEJP represented to this Court by letter that the parties had agreed that this Court should expeditiously act based on the filings they made in the Law Court on the Commissioner's motion for stay. On June 12, 2018 the Court conferred telephonically with counsel for the parties and directed them to file any supplemental arguments simultaneously with this Court by close of business June 13, 2018, with rebuttal arguments by close of business June 14, 2018.[1]

[1] The Court in the teleconference directed the parties to address the practical effects on the Superior Court if no stay was issued while the Law Court considers Commissioner Ricker's appeal, and invited them to argue as to whether this was a factor that the Court could or should consider. The Court expressed concerns as to how other expected litigation between the parties would be managed in the Superior Court if individuals who believed they were qualified to receive Medicaid benefits pursuant to the expansion law applied to DHHS for coverage and were denied. The Court concluded after considering the parties' arguments that those cases are likely to be filed

The motion presents two separate legal issues: first, whether this Court's June 4, 2018 order is automatically stayed pending appeal under M.R. Civ. P. 62(e); second, if it is not, whether the Commissioner can satisfy the four criteria for obtaining a stay of the Order under M.R. Civ. P. 62(g), which essentially requires this Court to decide if the Commissioner can establish each of the four criteria for obtaining injunctive relief.

The Automatic Stay Provision of Rule M.R. Civ. P. 62(e) does not apply.

The automatic stay provision of M.R. Civ. P. 62(e) does not apply to orders issued by the Superior Court on administrative appeals pursuant to M.R. Civ. P. 80C. *Nat'l Org. for Marriage v. Comm'n on Governmental Ethics & Elections Practices*, 2015 ME 103, ¶ 12, 121 A.3d 792. Rule 62(e) provides for stay of execution of a final judgment pending a filed appeal, with certain exceptions. M.R. Civ. P. 62(e). In *Nat'l Org. for Marriage*, the Law Court stated that "the plain language of 'execution upon the judgment' in Rule 62(e) does not include agency actions because they are not judgments upon which an execution may issue." *Id*. ¶ 10 (citing M.R. Civ. P. 69). The June 4, 2018 Order constituted the Court's ruling on an administrative appeal brought pursuant to M.R. Civ. P. 80C. As such, there is no applicable automatic Rule 62(e) stay effectuated by Respondent's filing of an appeal.[2]

The Commissioner cannot establish on this record all four criteria required to obtain injunctive relief as required by Rule 62(g).

irrespective of whether a stay is issued by this Court, and if they are filed, could be effectively case-managed to protect the rights of all parties while the Law Court considers the Commissioner's appeal.

[2] Petitioners argue that the Rule 62(e) automatic stay is not applicable because M.R. Civ. P. 81(c) requires that the rules applicable to injunctions apply to rulings from M.R. Civ. P. 80B appeals, and because M.R. Civ. P. 80C was derived from 80B, the rules applicable to injunctive relief should be applied to relief granted on an M.R. Civ. P. 80C appeal. By that reasoning, the Rule 62(e) automatic stay would not apply. The Court does not address this reasoning because the Court concludes that *Nat'l Org. for Marriage* is dispositive on this issue.

In order to evaluate the merits of Respondent's motion for stay based upon the Court's inherent authority as found in M.R. Civ. P. 62(g),[3] the Court must look to the four-factor test for granting injunctive relief. According to the test, a party seeking a stay must demonstrate:

> that (1) it will suffer irreparable injury if the stay is not granted; (2) such injury outweighs any harm which granting the stay would inflict on the other party; (3) it has a likelihood of success on the merits (at most, a probability; at least, a substantial possibility); and (4) the public interest will not be adversely affected by granting the stay.

Nat'l Org. for Marriage, 2015 ME 103, ¶ 14, 121 A.3d 792 (citing *Bangor Historic Track, Inc. v. Dep't of Agric., Food & Rural Res*., 2003 ME 140, ¶ 9, 837 A.2d 129; *Dep't of Envtl. Prot. v. Emerson*, 563 A.2d 762, 768 (Me. 1989)); *see also Respect Maine PAC v. McKee*, 622 F.3d 13, 15 (1st Cir. 2010). These factors are "not to be applied woodenly or in isolation from each other; rather, the court of equity should weigh all of these factors together in determining whether injunctive relief is proper in the specific circumstances of each case." *Emerson*, 563 A.2d 762, 768."Clear evidence of irreparable injury should result in a less stringent requirement of certainty of victory; greater certainty of victory should result in a less stringent requirement of proof of irreparable injury" *Id*. (citing *Developments in the Law -- Injunctions*, 78 Harv. L. Rev. 994, 1056 (1965)).

It is important to note, particularly with respect to the first criteria requiring the establishment of irreparable harm, that what the June 4, 2018 Order required was that the Commissioner file the SPA. The Commissioner has not demonstrated that irreparable harm will be caused by complying with the expansion law's unambiguous requirement that this document

[3] "The provisions in this rule do not limit any power of the Superior Court or Law Court during the pendency of an appeal to suspend, modify, restore, or grant an injunction or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered." M.R. Civ. P. 62(g).

be filed. The Commissioner argues, however, that the SPA acts as a binding contract with the federal government obligating the state to expend funds for the provision of benefits and that filing the SPA would amount to irreparable harm to DHHS.

In response, Petitioners cite to *Natl. Fedn. of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012). In *Sebelius*, the United States Supreme Court held that the Secretary of Health and Human Services could not constitutionally "withdraw existing Medicaid funds for failure to comply with the requirements set out in the expansion," thereby making expansion voluntary and allowing States to opt in and out of the program. *Id*. 585-586. The Court has already concluded in its June 4, 2018 Order that the SPA is not, and cannot be equated with, a binding contract. The United States Supreme Court has held, as a constitutional matter, that any State's participation in Medicaid expansion is voluntary. Further, it is undisputed that the Maine Legislature or Maine people could enact legislation withdrawing from the program. The Commissioner's argument that once Maine opts in, it can never opt out remains unpersuasive.

With respect to the second criteria, the Court further finds that the harm to the Petitioners of being without MaineCare benefits to which they are statutorily entitled outweighs any harm to the Commissioner or DHHS resulting from a denial of the motion to stay.

As to the third criteria, concerning whether the Commissioner has established a likelihood of success on the merits, the Court in its June 4, 2018 Order has already rejected the Commissioner's arguments regarding when the expansion law became effective, whether Maine statutes prevent the Commissioner from complying with the law, as well as his core claim that the judicial branch cannot enforce the expansion law without violating the doctrine of separation of powers. The Court therefore cannot at this stage find that the Commissioner is more likely than not to succeed on the merits.

Finally, in considering the fourth criteria, whether the public interest would "not be adversely affected by granting the stay," the Court concludes that granting the stay would be adverse to the public interest. The executive branch's refusal to act and follow the will of the people, as legislatively codified in 2017 I.B. 2, has the potential to engender disrespect for duly enacted laws. The Court does recognize that an order denying a stay could cause some uncertainty that could result in further litigation including further motions, or further appeals regarding other deadlines established in the expansion law that were not addressed in the June 4, 2018 Order. The Court would note in this regard that the parties have appropriately and in good faith asked the Law Court to expedite its review of this Court's orders. The Court therefore concludes that the potential for this uncertainty is not so great as to overcome the Commissioner's failure to demonstrate irreparable harm, likelihood of success on the merits, or that the balance of harms weighs more heavily against the Commissioner.

Because the Commissioner has not met any of the four criteria for obtaining injunctive relief, this Court denies the Commissioner's motion for stay pending review of this order by the Law Court.

The Clerk is directed to incorporate this Order into the docket by reference pursuant to M.R. Civ. P. 79(a).

DATE: June 15, 2018

/s
Michaela Murphy
Superior Court Justice
Business and Consumer Court