

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

A.M.T., et al., )  
*Plaintiffs,* )  
 )  
vs. ) 1:10-cv-0358-JMS-TAB  
 )  
ANNE WALTERMAN MURPHY, in her official )  
capacity as Secretary of the Indiana Family )  
and Social Services Administration, et al., )  
*Defendants.* )

**ORDER ON DEFENDANTS’ MOTION TO STAY**

Plaintiffs filed a Motion for Summary Judgment on October 12, 2010. [Dkt. 64.] Defendants filed a Motion for Partial Judgment on the Pleadings on November 10, 2010. [Dkt. 78.] Contemporaneously, Defendants also filed a Motion to Stay Briefing on Plaintiffs’ Motion for Summary Judgment. [Dkt. 80.] Plaintiffs filed a response that same day, objecting to Defendants’ request to stay briefing on their summary judgment motion. [Dkt. 81.]

Defendants argue that the Court should stay briefing on Plaintiffs’ Motion for Summary Judgment for two reasons. First, Defendants argue that judicial economy dictates ruling on their Motion for Partial Judgment on the Pleadings before they respond to Plaintiffs’ Motion for Summary Judgment because Defendants will not have to respond to certain arguments if they succeed on their Rule 12(c) motion. Second, Defendants argue that they need additional time to conduct discovery because they are “unable to complete the necessary affidavits from medical professionals to support their assertion that the requested therapies are not medically necessary.” [Dkt. 83 at 2 ¶8.]

Defendants’ judicial economy argument fails because, as they admit, they have only moved for partial judgment on the pleadings and “there are remaining issues even if the Court

grants the Defendants' motion for partial judgment on the pleadings." [Dkt. 83 at 2 ¶5.] Given the gravity of the issues at hand, Plaintiffs' vulnerability, and the fact that issues will remain regardless of how the Court rules on Defendants' 12(c) motion, the Court finds this argument unavailing.

As for Defendants' argument that they need additional time to conduct discovery in order to respond on summary judgment, they have not filed a Rule 56(f) motion or submitted an affidavit as that rule requires. *See Woods v. City of Chicago*, 234 F.3d 979, 990 (7th Cir. 2000) (recognizing that party's failure to "file an affidavit outlining his reasons for needing further discovery as contemplated by Rule 56(f) . . . alone justifies district court's decision" to refuse additional discovery); *see also Wallace v. Tilley*, 41 F.3d 296, 302-03 (7th Cir. 1994) (holding that appellate court precluded from considering whether district court abused discretion in ruling on defendant's summary judgment motion before allowing plaintiff to conduct requested discovery when non-moving party failed to file affidavit pursuant to Rule 56(f)).

For these reasons, the Court **DENIES** Defendants' Motion to Stay Briefing on Plaintiffs' Motion for Summary Judgment. [Dkt. 80.] The Court recognizes that it has not ruled on Plaintiffs' Motion to Certify Class and that Defendants' summary judgment response may be affected by the Court's forthcoming ruling. Therefore, the Court grants Defendants an extension of time to respond to Plaintiffs' Motion for Summary Judgment and **ORDERS** that they file their response within **five business days** of the Court's ruling on Plaintiffs' Motion to Certify Class.

11/12/2010

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