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On January 23, 2013, U.S. District Judge Barbara Crabb issued a decision in the Family Care case, *Amundson v. Wisconsin DHS*. The defendants filed motions to dismiss the case on various legal grounds. Some issues were resolved in the plaintiffs' favor, but the defendants' motion to dismiss was granted.

•Defendants argued that the plaintiffs did not have standing to sue because it was too speculative and uncertain whether they would be able to stay in their present homes even if rates were restored to previous levels. ---The Court did not accept this argument, and said "because the providers were able to maintain services to plaintiffs under the prior rates, it is reasonable to infer at this stage that restoring those rates would allow the plaintiffs to stay in their current placements."

•Defendants argued that the plaintiffs had to include the residential providers in the case because the providers were also responsible for the discharges. ---The Court did not accept this argument.

•The managed care organization defendants also argued that the case should be dismissed because of the McCarran-Ferguson Act which prohibits any Federal interference with State insurance laws. They claimed that managed care was exempt from the ADA and Rehab Act. ---The Court said the defendants had failed to explain how the Family Care statutes could qualify as laws that regulate insurance.

•The State defendants argued that they were immune from claims under the ADA and §1983. ---The Court agreed and dismissed those claims against the State. This does not affect the claims against the managed care organizations. They do not have immunity. Also, this ruling does not affect the Rehabilitation Act claims. States do not have sovereign immunity from law suits under the Rehab Act because they voluntary accept Federal funds and agree to waive their immunity from lawsuits.

Judge Crabb did acknowledge the harm caused by funding cuts:

> [I]t is impossible not to sympathize with plaintiffs' plight. They are not seeking large sums of money for personal gain or sweeping changes to the government. They simply want to keep their homes and a basic level of assistance. It is unfortunate to say the least that the most vulnerable members of society have found themselves to be the victims of budget cuts. I have little doubt that the reductions in funding will cause significant hardship to individuals with disabilities all around Wisconsin.

Judge Crabb ultimately granted the defendants' motion to dismiss the case. The defendants had cited cases from the Seventh Circuit Court of Appeals that said ADA and Rehab Act claims must be based on discrimination against people with disabilities in comparison to those without disabilities. Plaintiffs responded that these cases were decided before the *Olmstead* case which made it clear that discrimination could occur within groups of people with disabilities. Judge Crabb believed she was bound by the older cases and suggested that plaintiffs pursue that issue with an appeal to the Seventh Circuit. Other Federal courts around the country have applied the ADA and Rehab Act to situations like this, and have held that *Olmstead* does authorize law suits challenging discriminatory actions within a disability funding program.

Plaintiffs can ask Judge Crabb to reconsider her own decision. Plaintiffs can also appeal the case to the Seventh Circuit Court of Appeals in Chicago. We will be consulting with national legal experts about the next step. Other organizations may get involved in the case because the issues are so significant.

For further information – contact Rock Pledl rtp@pledlcohn.com

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

MICHAEL AMUNDSON
by his legal guardians Ella and Richard Amundson;
CHUCK ANDERSON;
MATT DANSDILL, by his legal guardians Robert and Pat Dansdill;
JOLEEN GARAGHTY,
by her legal guardian Mary Junbauer;
CHUCK HOGAN,
by his legal guardians Keith and Beckie Hines;
JOSHUA BORGH,
by his legal guardian Celeste Nelson;
ANDREA NACK,
by her legal guardians Roberta Daggy and LaVerne Nack;
MICAH RINDO,
by his legal guardians Linda and John Rindo;
CARRIE RING,
by her legal guardian Carol Ring;
JENNIFER SANDERS,
by her legal guardian Diane McGrane;
DORSE YOUNGBLOOD;
RICHARD KAWATSKI,
by his legal guardian Christine Kawatski;
CRAIG PICHLER,
by his legal guardian Claudia Pichler;
RICHARD STARK;
SCOTT VISOCKY,
by his legal guardian Steven Visocky;
CHRISTOPHER YAHR,
by his legal guardian ELIZABETH YAHR;
DONALD NEUMAN
by his legal guardian JASON NEUMAN,
on behalf of themselves and all others similarly situated,

OPINION and ORDER

12-cv-609-bbc

Plaintiffs,

v.

WISCONSIN DEPARTMENT OF HEALTH SERVICES;
DENNIS SMITH; COMMUNITY HEALTH PARTNERSHIP, INC.;
CHP-LTS, INC.; NORTHWEST LONG-TERM CARE DISTRICT;
and CARE WISCONSIN FIRST, INC.,

Defendants.

- -

The plaintiffs in this proposed class action allege that they are individuals with disabilities who live in group homes that receive funding under the Wisconsin Care Program. According to the amended complaint, defendants Wisconsin Department of Health Services and Dennis Smith (the department's secretary) control the funding to managed care organizations that operate the program in different regions of the state. In turn, these organizations, including defendants Community Health Partnership, Inc., CHP-LTS, Inc., Care Wisconsin First, Inc. and defendant Northwest Long-Term Care District, provide funding to group homes. Plaintiffs allege that defendants have reduced funding to the homes and they filed this lawsuit to compel defendants to restore the rates in effect as of January 1, 2012.

Plaintiffs bring claims under the Rehabilitation Act, the Americans with Disabilities Act and 42 U.S.C. § 1983. They do not argue that any of these laws require a specific amount of funding to group homes, but they assert a number of other legal theories:

(1) defendants are making greater reductions with respect to providers who serve individuals with developmental disabilities than to providers who serve other disability groups, in violation of the Rehabilitation Act and the Americans with Disabilities Act;

(2) defendants' reductions create a substantial risk that plaintiffs "will be forced into institutions and other less integrated settings," in violation

of the Rehabilitation Act and the Americans with Disabilities Act;

(3) defendants' reductions are preventing plaintiffs from receiving services as effective as those provided to others, in violation of the Rehabilitation Act and the Americans with Disabilities Act;

(4) defendants' reductions are limiting the number of accessible community residential settings that are available to plaintiffs who are not ambulatory, in violation of the Rehabilitation Act and the Americans with Disabilities Act;

(5) defendants' reductions are preventing plaintiffs from "liv[ing] in the residence of their choice and associat[ing] with other individuals of their choice," Am. Cpt. ¶ 249, dkt, #22, in violation of the due process clause of the Fourteenth Amendment (plaintiffs originally relied on the First Amendment as well, but dropped that claim in their opposition brief, dkt. #53 at 27);

(6) defendants' methods for determining funding do not provide adequate notice to plaintiffs, in violation of the Medicaid Act and the due process clause.

Three motions to dismiss are now before the court, one filed by the department and defendant Smith, dkt. #45, one filed by defendants Community Health Partnership, Inc. and CHP-LTS, Inc., dkt. #35, and one filed by defendant Care Wisconsin First, Inc. Dkt. #37. Each motion raises a variety of objections to plaintiffs' claims, both procedural and substantive.

In reviewing plaintiffs' allegations, it is impossible not to sympathize with plaintiffs' plight. They are not seeking large sums of money for personal gain or sweeping changes to the government. They simply want to keep their homes and a basic level of assistance. It is unfortunate to say the least that the most vulnerable members of society have found themselves to be the victims of budget cuts. I have little doubt that the reductions in

funding will cause significant hardship to individuals with disabilities all around Wisconsin.

As unfortunate as this situation is, however, it is not a violation of the law. I agree with defendants that plaintiffs' amended complaint does not state a claim upon which relief may be granted. Under the current law of this circuit, a defendant does not violate the Americans with Disabilities Act or the Rehabilitation Act by treating one group of individuals with a particular disability better than another group with a different disability. Plaintiffs' claims that defendants are denying them accessible facilities and a placement in "the most integrated setting" are not supported by any authority or a reasonable interpretation of the relevant statutes and regulations. With respect to plaintiffs' claims against the department and defendant Smith under the due process clause and the Medicaid Act, I need not consider the merits of those claims because the department and defendant Smith are immune from suit.

Defendant Northwest did not file its own motion or join one filed by another defendant. However, plaintiffs' claims against that defendant are the same as the other managed care organizations, so I will dismiss the complaint as to Northwest as well. Judson Atkinson Candies, Inc. v. Latini-Hohberger Dhimantec, 529 F.3d 371, 384-85 (7th Cir. 2008) (court may enter judgment in favor of nonmoving defendant if it is clear that same grounds for dismissal apply to that defendant).

Plaintiffs fairly allege the following facts in their amended complaint. Dkt. #22.

ALLEGATIONS OF FACT

Each of the plaintiffs is an individual with a developmental disability and some are non-ambulatory. Each is eligible to receive services through the Wisconsin Family Care program, which funds community-based services for individuals with various disabilities. Residential care outside the member's own home is among these services. Each of the plaintiffs lives in an "adult family home" with up to three other residents or a "community-based residential facility" with between four and seven other residents.

Wisconsin receives funding for the Family Care program from the U.S. Department of Health & Human Services as part of Medicaid. In designing the Family Care program, defendant Wisconsin Department of Health Services had to choose between handling all operational and administrative functions of the Family Care program internally within the department and delegating those functions to other entities. The department chose the latter option, so the managed care organizations perform various operational and administrative functions on behalf of the department.

The department has chosen defendants Community Health Partnership, Inc., CHP-LTS, Inc., Care Wisconsin First, Inc. and defendant Northwest Long-Term Care District to operate the Family Care Program and serve as the managed care organization for different parts of the state. Defendants Community Health and CHP-LTS serve Dunn, Chippewa, Eau Claire, Pierce and St. Croix counties; defendant Care Wisconsin serves Columbia, Dodge, Green Lake, Jefferson, Marquette, Washington, Waukesha and Waushara counties; defendant Northwest serves Ashland, Barron, Bayfield, Burnett, Douglas, Iron,

Price, Polk, Sawyer and Washburn counties. Each of the plaintiffs lives in one of these counties.

The department gives each managed care organization the same monthly "capitation" payment for each plaintiff. The amount of the monthly payment does not reflect the actual cost of serving any particular person. It is a monthly average derived from historical costs of serving the Medicaid long-term care population. Some individual members will have actual monthly costs far less than the average and some will have far greater costs.

Throughout 2011 and 2012, the managed care organizations made substantial reductions to residential providers for Family Care members with developmental disabilities, particularly higher cost individuals with developmental disabilities. Providers who serve Family Care members with other disabilities and lesser care needs, such as individuals with physical disabilities and the elderly, are not being similarly targeted. For example, defendant CHP stated that it planned to reduce residential costs for individuals with developmental disabilities by $2.1 million while individuals with physical disabilities would receive a $110,000 reduction and the frail elderly group would receive a $600,000 increase. The department and defendant Smith have expressed their approval of these reductions.

Numerous residential providers across the state are discharging individuals with developmental disabilities and individuals with higher care needs as a direct result of rate cuts by defendants. In addition, providers are being forced to reduce staffing and services. Some providers simply are closing the entire home. Providers have told plaintiffs that they cannot continue to provide services at the reduced rates.

OPINION

A. Jurisdictional Issues

1. Standing

The first question in every case in federal court is whether subject matter jurisdiction is present. Avila v. Pappas, 591 F.3d 552, 553 (7th Cir. 2010). One component of jurisdiction is standing, under which plaintiffs must show that they have suffered an injury in fact that is fairly traceable to the defendant's action and capable of being redressed by a favorable decision from the court. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Initially, only the state defendants questioned plaintiffs' standing to sue, but defendants Community Health Partnership and CHP-LTS joined this position in their reply brief.

Defendants identify plaintiffs' alleged injury as the risk that they will be discharged from their homes. Defendants do not argue that the risk is too small to qualify as an injury for the purpose of standing; in fact, plaintiffs allege that many individuals with disabilities already have been discharged in recent months because of reduced funding. MainStreet Org. of Realtors v. Calumet City, 505 F.3d 742, 744 (7th Cir. 2007) ("[S]tanding in the Article III sense does not require a certainty or even a very high probability that the plaintiff is complaining about a real injury, suffered or threatened."). Rather, defendants' argument focuses on the issue of redressability.

"[A] plaintiff must show that a favorable decision will likely, not just speculatively, relieve her injury." Sierra Club v. Franklin County Power of Illinois, LLC, 546 F.3d 918,

927-28 (7th Cir. 2008). Defendants argue that plaintiffs "could still be discharged" even if the court orders defendants to restore funding to the rates in effect on January 1, 2012. Dfts.' Br., dkt. #46, at 16. This is because it is ultimately the providers rather than defendants that decide whether a particular resident is discharged, regardless of the funding defendants provide. Particularly because plaintiffs do not allege a particular rate that is necessary to allow them to continue living at their current residences, defendants argue that it is "merely speculative" that restoring previous rates will redress their injuries. Id. at 18.

"[A] plaintiff does not lack standing merely because the defendant is one of several persons who caused the harm." Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton, 422 F.3d 490, 500 (7th Cir. 2005). Rather, when the plaintiff's injuries are caused in part by a nonparty's actions, the plaintiff must show that the nonparty is likely to act in a way that will redress her injuries if the plaintiff obtains her requested relief. Lujan, 504 U.S. at 562 (when standing is contingent on choices of third party, "it becomes the burden of the plaintiff to adduce facts showing that those choices have been or will be made in such manner as to produce causation and permit redressability of injury"); 15 Moore's Federal Practice § 101.42(5) (3d ed.) ("[I]f there is sufficient evidence that the third party will act in such a way as to redress the injury if the plaintiff prevails in court, the redressability prong will be satisfied.").

Plaintiffs' situation is a bit different from that of some other plaintiffs whose standing relies on assumptions about the conduct of third parties because plaintiffs' injury may be redressed without any new or different action from the third party providers. That is,

although plaintiffs are trying to change defendants' conduct by restoring funding, plaintiffs simply want to keep the status quo with respect to the third party providers by maintaining plaintiffs' current residences. This fact alone reduces the inferential leap necessary to conclude that the providers are unlikely to discharge plaintiffs if plaintiffs prevail in this case.

If plaintiffs had alleged facts suggesting that there were variables other than funding that were likely to lead to discharge from their homes, then I would agree with defendants that plaintiffs could not meet the redressability requirement. E.g., ASARCO Inc. v. Kadish, 490 U.S. 605, 614-15 (1989) (teachers' association did not have standing to challenge law that decreased school funding; alleged harm was lower pay, but "[e]ven if the State were to devote more money to schools, it does not follow that there would be an increase in teacher salaries or benefits" because "maybe taxes would be reduced, or maybe the State would reduce support from other sources so that the money available for schools would be unchanged"). However, there are no allegations in the amended complaint supporting that view. Rather, plaintiffs allege that the residential care providers have been discharging individuals with disabilities as a result of the 2012 rate reductions and that the providers have told plaintiffs that they cannot continue to provide services at the reduced rates. That allegation is sufficient to survive defendants' motion to dismiss.

Although plaintiffs do not identify the precise rate that is necessary for the providers to maintain services, they do allege that the providers are blaming the 2012 reductions for their current predicament. Further, because the providers were able to maintain services to plaintiffs under the prior rates, it is reasonable to infer at this stage that restoring those rates

would allow plaintiffs to stay in their current placements. Nelson v. Milwaukee County, 04 C 0193, 2006 WL 290510 (E.D. Wis. Feb. 7, 2006) (concluding that plaintiffs in similar case demonstrated standing in complaint by alleging that increased funding would prevent discharge).

It is possible that even the prior rates are no longer sufficient to maintain services to plaintiffs. It is also possible that a particular plaintiff could be discharged for reasons unrelated to funding. However, defendants point to no facts supporting either view, so it would be premature to dismiss the case on these grounds now.

In any event, plaintiffs' alleged harm is not limited to potential discharge. They allege that, regardless where they live, reduced rates will lead to the reduction in the number and quality of services they need. Although plaintiffs raise this issue in both their amended complaint and their opposition brief, defendants do not address it in any of their briefs. Accordingly, I conclude that it is reasonable to infer at this stage that plaintiffs have alleged redressable harms caused by defendants' reduced funding.

Defendants raise a separate argument under Fed. R. Civ. P. 19 that the case must be dismissed unless the providers of residential services are joined. Although this is not a jurisdictional issue, I will consider it here because it is related to defendants' standing argument.

Under Fed. R. Civ. P. 19(a)(1), a party should be joined if:

> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
>
> (B) that person claims an interest relating to the subject of the action and is

so situated that disposing of the action in the person's absence may:

> (i) as a practical matter impair or impede the person's ability to protect the interest; or
>
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Defendants say that Rule 19(a)(1)(A) and (B)(i) are implicated in this case, but they do not explain how. Instead, they repeat their standing argument: "Without [the providers] in this case as [parties], the relief that Plaintiffs have requested would not be meaningful because [the providers] can discharge [plaintiffs] from [their] care as [they] see fit." Dfts.' Br., dkt. #46, at 50. However, the only relief plaintiffs are requesting in their complaint is to restore previous funding levels, something that is within defendants' control, not the providers'. For the purpose of Rule 19, it makes no difference whether plaintiffs' ultimate goal might involve a third party. E.g., Hammond v. Clayton, 83 F.3d 191, 195 (7th Cir. 1996); Perrian v. O'Grady, 958 F.2d 192, 196 (7th Cir. 1992).

Alternatively, defendants say that the providers are necessary parties because they possess "highly relevant information" that both plaintiffs and defendants will need. Dfts.' Br., dkt. #46, at 50. Defendants are vague about what that information might be, but even if this is true, defendants fail to explain why it matters. "Rule 19 is designed to protect the interests of absent persons, as well as those already before the court, from duplicative litigation, inconsistent judicial determinations, or other practical impairment of their legal interests." Hammond, 83 F.3d at 195. The rule has nothing to do with making discovery more convenient for the parties. In any event, defendants do not make any showing that

they would be unable to use Fed. R. Civ. P. 45 to obtain any information they need from the providers.

Defendants raise a number of new arguments regarding Rule 19 for the first time in their reply brief, but none of them are developed or supported by any authority, so they are forfeited. Adams v. Raintree Vacation Exchange, LLC, --- F.3d ---, 2012 WL 6621147 (7th Cir. Dec. 20, 2012) ("When there are authorities to cite for a key proposition, the party asserting the proposition must cite them . . . and failure to do so forfeits reliance on the proposition."); Carmichael v. Village of Palatine, Illinois, 605 F.3d 451, 460-61 (7th Cir. 2010) (failure to develop argument constitutes forfeiture); Narducci v. Moore, 572 F.3d 313, 324 (7th Cir. 2009) ("[T]he district court is entitled to find that an argument raised for the first time in a reply brief is forfeited.").

2. Political question

In their reply brief, defendants Community Health Partnership and CHP-LTS argue for the first time that plaintiffs' claims are political questions that cannot be resolved by the court. None of the other parties join this argument and defendants Community Health and CHP-LTS do not develop it, but I will address it briefly because it implicates jurisdiction. Judge v. Quinn, 624 F.3d 352, 358 (7th Cir. 2010) (arguments about political question doctrine cannot be forfeited).

"The political-question doctrine identifies a class of questions that either are not amenable to judicial resolution because the relevant considerations are beyond the courts'

capacity to gather and weigh or have been committed by the Constitution to the exclusive, unreviewable discretion of the executive and/or legislative-the so-called 'political'-branches of the federal government." Id. (internal quotations and alterations omitted). As the cases cited by defendants show, the doctrine is rarely invoked and has been confined to extreme cases in which a court ruling would threaten the courts' legitimacy or violate the separation of powers. Coleman v. Miller, 307 U.S. 433 (1939) (state senators sought to prevent legislature from passing bill); Oetjen v. Central Leather Co., 246 U.S. 297, 302 (1918) (plaintiffs sought determination regarding legitimacy of foreign government). See also In re African-American Slave Descendants Litigation, 471 F.3d 754, 758 (7th Cir. 2006) ("The political-question doctrine bars the federal courts from adjudicating disputes that the Constitution has been interpreted to entrust to other branches of the federal government.").

The doctrine obviously does not apply to this case. Plaintiffs are relying on specific statutory language that courts have both the ability and the duty to enforce. In fact, defendants cite no instance in which a court invoked the doctrine in the context of a statutory claim. Distilled, defendants' argument is not that the court lacks the authority or competence to interpret and apply the Americans with Disabilities Act and the Rehabilitation Act, but that plaintiffs are asking the court to adopt untenable interpretations of those statutes. However, that is a question on the merits that does not implicate the political question doctrine.

B. Sovereign Immunity

The doctrine of sovereign immunity is derived from the Eleventh Amendment and "bars actions in federal court against a state, state agencies, or state officials acting in their official capacities," Indiana Protection & Advocacy Services v. Indiana Family & Social Services Administration, 603 F.3d 365, 370 (7th Cir. 2010), unless the state waives immunity or Congress abrogates it. Virginia Office for Protection and Advocacy v. Stewart, 131 S. Ct. 1632, 1637-38 (2011). Although it is not a jurisdictional issue, Board of Regents of University of Wisconsin System v. Phoenix Intern. Software, Inc., 653 F.3d 448, 458-59 (7th Cir. 2011), it "is the kind of preliminary question that should be resolved before the merits of the claim." Toeller v. Wisconsin Dept. of Corrections, 461 F.3d 871, 874 (7th Cir. 2006).

The department and defendant Smith argue that sovereign immunity bars plaintiffs' claims against these two defendants under the ADA and § 1983. Plaintiffs' § 1983 claims include their claims for violations of the due process clause and the Medicaid Act, which the parties agree are enforced under § 1983. (Defendants do not argue that they are immune from the claims under the Rehabilitation Act, presumably because the state has waived sovereign immunity by accepting federal funds for the Family Care program. Stanley v. Litscher, 213 F.3d 340, 344 (7th Cir. 2000).) Plaintiffs "do not oppose the dismissal" of their claims against the department under § 1983. Plts.' Br., dkt. #53, at 27. This is a wise concession because it is well established that § 1983 does not provide a cause of action against state agencies. Will v. Michigan Dept. of State Police, 491 U.S. 58, 66 (1989);

Thomas v. Illinois, 697 F.3d 612, 613-14 (7th Cir. 2012); Illinois Dunesland Preservation Society v. Illinois Dept. of Natural Resources, 584 F.3d 719, 721 (7th Cir. 2009).

With respect to the ADA claims and the § 1983 claims against defendant Smith, plaintiffs argue that they may rely on the exception to sovereign immunity recognized in Ex Parte Young, 209 U.S. 123 (1908), which permits claims "for prospective injunctive relief against state officials who . . . are sued in their official capacity." Bruggeman ex rel. Bruggeman v. Blagojevich, 324 F.3d 906, 912 (7th Cir. 2003). Plaintiffs concede that the Ex Parte Young exception would not apply to an order requiring defendants to retroactively restore previous rates, but they argue that it would apply to an injunction that restores the previous rate going forward. Plaintiffs cite Ameritech Corp. v. McCann, 297 F.3d 582, 587 (7th Cir. 2002), for the proposition that "the critical issue is not whether a declaration of rights will have some effect on State expenditures, but rather whether the declaratory judgment imposes upon the State a monetary loss resulting from a past breach of a legal duty on the part of defendant state officials."

Defendants acknowledge this argument in their reply brief, but, oddly, they do not respond to it. Instead, they focus on plaintiffs' alternative argument that the ADA abrogates state sovereign immunity with respect to the claims at issue in this case. However, it is necessary to consider the issue of abrogation only if plaintiffs' request for relief does not fit within an exception to sovereign immunity. Although the state can waive its immunity through litigation conduct, generally the state's words or deeds must make the waiver "clear," "unmistakable" and "unequivocal." FAA v. Cooper, 132 S. Ct. 1441, 1448 (2012); Phoenix,

653 F.3d at 458. In this case, it is clear that the department is invoking the defense, so its failure to respond to a particular argument is not dispositive.

Plaintiffs' distinction between past money damages and future money damages is artificial because "Ex parte Young cannot be used to obtain an injunction requiring the payment of funds from the State's treasury." Stewart, 131 S. Ct. at 1639. "[W]here a plaintiff's request for relief 'would have an effect upon the state treasury that is not merely ancillary but is the essence of the relief sought,' it is barred by the Eleventh Amendment." Council 31 of the American Federation of State, County and Municipal Employees, AFL-CIO v. Quinn, 680 F.3d 875, 882-83 (7th Cir. 2012)(quoting MSA Realty Corp. v. State, 990 F.2d 288, 293 (7th Cir.1993)). Like the plaintiffs in Council 31 and MSA Realty, plaintiffs are seeking an order requiring defendants to increase state funding. In neither case did the court make a distinction between past and future violations. Rather, the only question was whether the requested injunction "would require direct payments by the state from its treasury for the indirect benefit of a specific entity." Id. at 884. Because that is what plaintiffs' claims would do, Ex Parte Young does not apply.

With respect to abrogation, the parties focus on the question whether Congress had the power under § 5 of the Fourteenth Amendment to abrogate sovereign immunity with respect to the claims in this case. Under current law, Congress may abrogate immunity under § 5 to remedy "actual violations" of the Constitution. United States v. Georgia, 546 U.S. 151, 158 (2006). In addition, "Congress may enact so-called prophylactic legislation that proscribes facially constitutional conduct, in order to prevent and deter unconstitutional

conduct." Nevada Dept. of Human Resources v. Hibbs, 538 U.S. 721, 727-28 (2003). In particular, prophylactic legislation is valid "if it exhibits a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." Tennessee v. Lane, 541 U.S. 509, 520 (2004) (internal quotations omitted).

In Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356 (2001), the Court found that Congress did not validly abrogate immunity in Title I of the ADA, which addresses disability discrimination in employment, because there was no history and pattern of constitutional violations by the states against individuals with disabilities in that context. However, in Lane, 541 U.S. at 530-31, the Court concluded that Title II "is valid § 5 legislation as it applies to the class of cases implicating the accessibility of judicial services" because there was such a history and pattern of state discrimination. Since Lane, neither the Supreme Court nor the Court of Appeals for the Seventh Circuit for the Seventh Circuit has considered whether Title II validly abrogated sovereign immunity in any other context.

In this case, plaintiffs have failed to show that the state is not entitled to sovereign immunity. Plaintiffs rely on Congress's power to remedy actual constitutional violations by pointing to their claim under the due process clause, but even if they could prove a violation of their right to due process, that claim is about plaintiffs' right to live with a particular group of people. It has nothing to do with discrimination against individuals with disabilities, which is the subject of plaintiffs' ADA claims.

With respect to the question whether Title II abrogates the state's immunity under the "congruent and proportional" test, plaintiffs include only a single paragraph in their

brief. First, they cite Justice Breyer's dissent in Garrett, which they say "is accompanied by a massive Appendix containing a list of discriminatory incidents," some of which involved public disability programs. Plts.' Br., dkt. #53, at 21. However, plaintiffs do not discuss any of these incidents or even attempt to explain how they amount to a relevant pattern of disability discrimination for the purpose of this case. In addition, plaintiffs cite two Supreme Court cases involving the treatment of individuals with disabilities in state institutions. Youngberg v. Romero, 457 U.S. 307 (1982); Jackson v. Indiana, 406 U.S. 715 (1972). Again, plaintiffs do not explain how two cases amount to a pattern of discrimination. By failing to develop an argument, plaintiffs have waived these claims. General Auto Service Station v. City of Chicago, 526 F.3d 991, 1006 (7th Cir. 2008) (concluding that two-paragraph "cursory argument" was "so brief that [plaintiff] ha[d] waived it"); Pruitt v. City of Chicago, Illinois, 472 F.3d 925, 930 (7th Cir. 2006) ("[I]nsufficient development forfeits all of these arguments. Appellate counsel must recognize that scattergun contentions are doomed to failure."). Accordingly, I conclude that plaintiffs' complaint must be dismissed as to their claims under the ADA and § 1983 against the state defendants because these defendants are entitled to sovereign immunity.

C. Rehabilitation Act and Americans with Disabilities Act

Plaintiffs are seeking relief under the Rehabilitation Act and Title II and Title III of the Americans with Disabilities Act. They are suing each of the defendants under the Rehabilitation Act, which prohibits disability discrimination in "any program or activity

receiving Federal financial assistance." 29 U.S.C. § 794(a). Title II applies to "services, programs, or activities of a public entity." 42 U.S.C. § 12132. Because plaintiffs' Title II claims are limited to the department and defendant Smith and I have concluded that these defendants are entitled to sovereign immunity with respect to the ADA claims, I do not need to consider those claims. Finally, plaintiffs are suing defendants Community Health, CHP-LTS, Care Wisconsin and Northwest under Title III, which applies to "the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 U.S.C. § 12182(a).

Plaintiffs' claims under the Rehabilitation Act and Title III can be organized into four groups: (1) defendants are discriminating against them by targeting developmental disabilities for greater reductions in funding than other disabilities; (2) defendants are preventing plaintiffs from receiving services that are as effective as those provided to individuals with other disabilities; (3) defendants' reduced funding creates a substantial risk that plaintiffs will not be able to live in "the most integrated setting"; and (4) defendants are limiting the number of accessible community residential settings available to the non-ambulatory plaintiffs. Defendants have raised numerous arguments for dismissing some or all of these claims.

1. McCarran-Ferguson Act

Defendant Wisconsin Care argues that plaintiffs' claims under the ADA and the Rehabilitation Act are "preempted" by state laws regulating managed care organizations.

(Defendants Community Health and CHP joined this argument in their renewed motion to dismiss plaintiffs' amended complaint, but they did not include their own argument on this issue until their reply brief, so I have not considered it.) Wisconsin Care relies on the McCarran-Ferguson Act, which states that "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance." 15 U.S.C. § 1012(b).

Defendant Wisconsin Care's short discussion of this issue in its opening brief lacks clarity, but I understand plaintiff to be arguing that the Wisconsin laws governing managed care organizations are state laws enacted "for the purpose of regulating the business of insurance" and that plaintiffs' claims require an interpretation of the disability discrimination statutes that would "invalidate, impair or supercede" those laws. Wisconsin Care lists a number of Wisconsin laws that regulate managed care organizations, but missing from its brief is any explanation regarding why these are *insurance* regulation laws. Even in its reply brief, defendant Care simply makes vague and unsupported assertions that it is "actively engaged in risk sharing and cost containment activities," Dft.'s Br., dkt. #51, at 3, but it does not explain how any particular state law at issue "targets practices or provisions that have the effect of transferring or spreading a policyholder's risk," is "an integral part of the policy relationship between the insurer and the insured" or is "limited to entities within the insurance industry," as required by the case law interpreting the McCarran-Ferguson Act. Rush Prudential HMO, Inc. v. Moran, 536 U.S. 355, 373 (2002) (internal quotations and

alterations omitted). Its argument that plaintiffs' claims are in conflict with state law is equally conclusory. At this stage of the proceedings, defendant Wisconsin Care has failed to show that plaintiffs' claims are barred by the McCarran-Ferguson Act.

2. Discrimination

Each of the defendants argues that some of plaintiffs' claims under the Rehabilitation Act and the Americans with Disabilities Act fail because plaintiffs are not alleging that defendants are discriminating against them in favor of nondisabled people. Rather, plaintiffs are alleging that defendants are discriminating among different types of individuals with disabilities, which defendants say is not prohibited by the statutes.

Defendants rely primarily on Grzan v. Charter Hospital of Northwest Indiana, 104 F.3d 116 (7th Cir. 1997), in which the plaintiff was a psychiatric patient who alleged that a counselor interfered with her treatment for her mental illness by entering into a sexual relationship with her. She sued under § 794(a) of the Rehabilitation Act, which prohibits discrimination "solely by reason of . . . disability" against a person who is "otherwise qualified" to participate in the program. The court rejected this claim:

> To succeed in her claim, however, Grzan must have been "otherwise qualified" for the benefit sought, which in this case was psychiatric treatment. Grzan was not "otherwise qualified" to receive psychiatric treatment from Charter. "Otherwise qualified" means that were she not handicapped, Grzan would have qualified for the program or treatment she was denied because of her handicap. . . . Grzan is not "otherwise qualified" because, absent her handicap, she would not have been eligible for treatment in the first place. Charter Hospital treats psychiatric patients. Grzan was a psychiatric patient. She therefore qualified for Charter's program, and was in fact treated, albeit negligently according to her complaint. Had she not suffered from the

> psychiatric condition, she would not have qualified for Charter's program and would not have been treated, negligently or otherwise. "Without a showing that the non-handicapped received the treatment denied to the 'otherwise qualified' handicapped, the appellants cannot assert that a violation of section [794] has occurred.

Id. at 120-21.

The court reaffirmed this holding a few months later in Mallett v. Wisconsin Division of Vocational Rehabilitation, 130 F.3d 1245 (7th Cir. 1997), which also involved a claim under the Rehabilitation Act. The plaintiff had been receiving tuition assistance for college because of his disabilities, but the defendant later withdrew its funding. Id. at 1247-48. The court concluded that the plaintiff "was not 'otherwise qualified' to receive vocational benefits from" the defendant because he "would not have been eligible to receive any rehabilitative services in the absence of his handicap. Without a showing that the non-handicapped received the treatment denied to the 'otherwise qualified' handicapped, the appellant cannot assert that a violation of section [794] has occurred." Id. at 1257 (internal quotations and alterations omitted).

I agree with defendants that, under Grzan and Mallett, a plaintiff cannot prevail under § 794 unless she can show that a nondisabled person would have received the benefit she was denied. Although neither Grzan or Mallett involved claims under the ADA, the holdings apply equally to plaintiffs' ADA clams because the court of appeals has consistently held that the two statutes have the same substantive scope. E.g., Jaros v. Illinois Dept. of Corrections, 684 F.3d 667, 671-72 (7th Cir. 2012); Jackson v. City of Chicago, 414 F.3d 806, 810 n.2 (7th Cir. 2005); Washington v. Indiana High Sch. Athletic Association, Inc.,

181 F.3d 840, 845-46 n.6 (7th Cir.1999). In any event, the court adopted a similar view under the ADA, when it rejected a claim that a benefit plan may not treat mental disabilities less favorably than physical disabilities: "Without far stronger language in the ADA supporting this result, we are loath to read into it a rule that has been the subject of vigorous, sometimes contentious, national debate for the last several years. . . . [T]he issue of parity among physical and mental health benefits is one that is still in the legislative arena." EEOC v. CNA Insurance Companies, 96 F.3d 1039, 1044 (7th Cir.1996).

Plaintiffs argue that Grzan is distinguishable because there was only one plaintiff in that case rather than a class and it involved medical decisions instead of funding decisions. (Plaintiffs do not discuss Mallett or CNA.) These are accurate distinctions, but they do not help plaintiffs avoid Grzan's holding. A substantive rule of law does not change depending on the number of parties bringing a claim. Plaintiffs do not cite any authority or principle of logic supporting this unusual view.

It is true that the court stated that § 794 "is ill suited for bringing claims of discriminatory medical treatment," Grzan, 104 F.3d at 121, but that view rests on the same logic discussed above: "if . . . a person was not . . . handicapped, he or she would not need the medical treatment and thus would not 'otherwise qualify' for the treatment." Regardless of the differences in the facts between this case and Grzan, I cannot ignore the court's ruling that the statute does not apply to situations in which the plaintiff is claiming discrimination with respect to a benefit that is available to individuals with disabilities only. Not surprisingly, plaintiffs do not address this language in their briefs or explain how it can be

distinguished in this case.

Alternatively, plaintiffs argue that the Grzan was overruled by Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 597 (1999), a case brought under Title II of the ADA and its implementing regulations. In that case, the plaintiffs were mentally disabled women who were residing at a state hospital even though their treatment professionals had concluded that they were eligible for a less restrictive placement in the community. The plaintiffs argued that state officials were violating 28 C.F.R. § 35.130(d), which requires a "public entity [to] administer . . . programs . . . in the most integrated setting appropriate to the needs of qualified individuals with disabilities."

The Court concluded that "[u]njustified isolation . . . is properly regarded as discrimination based on disability." Olmstead, 527 U.S. at 597. The Court relied on the fact that "Congress explicitly identified unjustified 'segregation' of persons with disabilities as a 'for[m] of discrimination'" in the statute. Id. at 600. In addition, the Court identified two reasons it makes sense to include institutionalization as a form of discrimination in some instances:

> First, institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life. Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment. Dissimilar treatment correspondingly exists in this key respect: In order to receive needed medical services, persons with mental disabilities must, because of those disabilities, relinquish participation in community life they could enjoy given reasonable accommodations, while persons without mental disabilities can receive the medical services they need without similar sacrifice.

Id. at 600-01.

I cannot infer from the Court's holding in Olmstead that it implicitly overruled Grzan. The question before the court was whether the meaning of "discrimination" could be broad enough to encompass a refusal to provide a community placement in the context of one regulation. It did not consider the broader question at issue in Grzan and in this case, which is whether a person may bring a discrimination claim under the ADA or the Rehabilitation Act for disparate treatment of individuals with different disabilities and without considering the defendant's treatment of nondisabled persons. In fact, in supporting its construction of "discrimination," the Court noted that institutional placement results in "dissimilar treatment" between disabled *and nondisabled* persons because "persons with mental disabilities must . . . relinquish participation in community life they could enjoy given reasonable accommodations, while persons without mental disabilities can receive the medical services they need without similar sacrifice."

I agree with plaintiffs that Olmstead includes language supporting their view. For example, the Court rejected the defendants' argument that "'discrimination' necessarily requires uneven treatment of similarly situated individuals." Olmstead, 527 U.S. at 598. And, in a footnote, the majority rejected the dissent's view that "this Court has never endorsed an interpretation of the term 'discrimination' that encompassed disparate treatment among members of the same protected class," citing O'Connor v. Consolidated Coin Caterers Corp., 517 U.S. 308, 312 (1996), in which the court held that one person in the protected class (persons over the age of 40) could sue under the Age Discrimination

Employment Act if his employer treated a younger person in the protected class more favorably. Olmstead, 527 U.S. at 598 n.10. A number of courts have relied on these statements to conclude that the ADA and the Rehabilitation Act prohibit discrimination among different kinds of disabilities. Johnson v. K Mart Corp., 273 F.3d 1035 (11th Cir. 2001); Fletcher v. Tufts University, 367 F. Supp. 2d 99, 109-12 (D. Mass. 2005); Iwata v. Intel Corp., 349 F. Supp. 2d 135, 149 (D. Mass. 2004); Salcido ex rel. Gilliland v. Woodbury County, 119 F. Supp. 2d 900, 937 (N.D. Iowa 2000). (I note that Johnson was vacated after en banc review was granted, but the court never issued a new opinion because the defendant filed for bankruptcy while the appeal was pending. Johnson v. K Mart Corp., 281 F.3d 1368 (11th Cir. 2002).)

However, it is one thing to say that Olmstead suggests that the Court of Appeals for the Seventh Circuit should re-examine its holding in Grzan and it is quite another to say that I may disregard Grzan (and Mallett and CNA) in light of Olmstead. The court of appeals has not considered the effect of Olmstead on its precedent and I do not have the authority to depart from controlling circuit law simply because I think that later cases undermine that law. In at least one case decided after Olmstead, the court seemed to adhere to a view that the ADA requires a comparison with a nondisabled person, but it made no mention of Olmstead. Hancock v. Potter, 531 F.3d 474, 479 (7th Cir. 2008) (ADA claim failed in part because plaintiff could not "point to a single similarly situated employee *outside the protected class* who was treated more favorably") (emphasis added).

Further, I am not aware of any decisions in this circuit or others in which courts have

concluded that Olmstead implicitly overruled cases rejecting claims for discrimination against one kind of disability in favor of another. (I uncovered one case in which the court noted "tension" between Olmstead and circuit precedent on this issue, but the court did not resolve the tension because it decided the case on other grounds. Buchanan v. Maine, 469 F.3d 158, 175 n.10 (1st Cir. 2006).) In fact, a number of courts have rejected the argument that Olmstead had any effect on cases like Grzan. E.g., Weyer v. Twentieth Century Fox Film Corp., 198 F.3d 1104, 1117 (9th Cir. 2000); Witham v. Brigham & Women's Hospital, Inc., Civil No. 00–268–M, 2001 WL 586717, *3 (D.N.H. May 31, 2001); El-Hajj v. Fortis Benefits Insurance Co., 156 F. Supp. 2d 27, 31-32 (D. Me. 2001); Wilson v. Globe Specialty Products, Inc., 117 F. Supp. 2d 92, 97 (D. Mass. 2000). See also EEOC v. Staten Island Savings Bank, 207 F.3d 144, 152 (2d Cir. 2000) ("Title I of the ADA does not require equal coverage for every type of disability.").

In these cases, the courts note that disparate treatment of different disabilities was not at issue in Olmstead and that the footnote cited above was a summary of past cases, not an extension of current law. In addition, they note that the Court did not purport to overrule Traynor v. Turnage, 485 U.S. 535, 548 (1988), in which the Court stated that "[t]here is nothing in the Rehabilitation Act that requires that any benefit extended to one category of handicapped persons also be extended to all other categories of handicapped persons."

Accordingly, I conclude that Olmstead did not overrule Grzan. If plaintiffs believe that Grzan was wrongly decided or should be revisited, they will have to raise that issue with

the court of appeals.

Even if I agreed with plaintiffs that Olmstead implicitly overruled Grzan, it is far from clear that plaintiffs' allegations would be sufficient with respect to their discrimination claims. Plaintiffs allege that defendants have reduced funding for the most expensive disabilities, but they do not allege that defendants are providing more funding for the less expensive disabilities. Rather, plaintiffs' theory seems to be that defendants are "discriminating" by failing to devote a disproportionate amount of funding to plaintiffs. Although it may make sense as a policy matter to provide more assistance to those who need it the most, that does not necessarily mean that plaintiffs have a right to it. In fact, granting plaintiffs' request for relief could violate the very nondiscrimination principle on which they rely. However, because I am concluding that plaintiffs' discrimination claims fail for other reasons, I need not resolve that question.

All the parties to address the issue seem to agree with plaintiffs that Grzan, Mallett and CNA do not bar all of their claims under the ADA and the Rehabilitation Act. In particular, plaintiffs' claims that defendants are not providing plaintiffs "the most integrated setting" and are not providing the non-ambulatory plaintiffs "accessible" facilities do not require plaintiffs to show that a similarly situated person (nondisabled or disabled) received more favorable treatment. E.g., Radaszewski ex rel. Radaszewski v. Maram, 383 F.3d 599 (7th Cir. 2004). Accordingly, I will consider defendants' other objections to those claims.

3. Integrated setting

The regulations under both Title III of the ADA and the Rehabilitation Act require services to be provided to individuals with disabilities in "the most integrated setting." 28 C.F.R. § 41.51(d) ("Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons."); 28 C.F.R. § 36.203(a) ("A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual."). See also Radaszewski, 383 F.3d at 607 (applying same standard to ADA and Rehabilitation Act claims for failure to provide integrated setting); Bruggeman, 324 F.3d at 911-12 ("[B]oth [the Rehabilitation] Act and the Americans with Disabilities Act entitle disabled persons . . . to care in the least restrictive possible environment."). As illustrated in Olmstead, a common claim under these provisions is that the defendants are providing care to individuals with disabilities in an institution rather than a community setting. See also Ligas ex rel. Foster v. Maram, 478 F.3d 771 (7th Cir. 2007); Radaszewski, 383 F.3d 599; KP ex rel. SP v. Hamos, 2012 WL 6761900 (C.D. Ill. 2012); Karvelas v. Milwaukee County, 2012 WL 3881162 (E.D. Wis. 2012); N.B. ex rel. Buchanan v. Hamos, 2012 WL 1953146 (N.D. Ill. 2012); B.N. ex rel. A.N. v. Murphy, 2011 WL 5838976 (N.D. Ind. 2011).

Defendant Wisconsin Care argues that plaintiffs do not state a claim upon which relief may be granted under this provision because there are no allegations in the amended complaint supporting a view that plaintiffs are being deprived or likely will be deprived of an "integrated" setting for treatment. In response, plaintiffs cite Fisher v. Oklahoma Health

Care Authority, 335 F.3d 1175, 1182 (10th Cir. 2003), for the proposition that they need not wait until they are placed in an institution to obtain relief. That is undoubtedly true, but this is not a situation like Fisher in which a transfer to an institution is imminent. Even if I assume that plaintiffs likely will be discharged from their current residences without an increase in funding, there are no allegations in the complaint supporting a view that plaintiffs will end up in an institution or a "less integrated" setting than they are in now. Plaintiffs have a right under the ADA and the Rehabilitation Act to an integrated setting, not to remain at a particular residence. Thus, until plaintiffs actually are threatened with a transfer to a particular place, it is impossible to evaluate whether defendants might be violating their duty under the statute.

Perhaps sensing that it is too speculative at this point to claim that any particular individual will be placed in an institution, plaintiffs raise two alternative theories in their opposition brief. First, they argue that discharge alone is sufficient to constitute a violation because "they will be uprooted from established personal relationships and activities they value." Plts.' Br., dkt. #48, at 26. However, this argument assumes that the meaning of "most integrated setting" extends to the place the individual prefers to live, regardless of the reason. That is obviously not the case. Although I recognize that plaintiffs may have important personal reasons for wanting to maintain their current residence, the word "integrated" in the context of these statutes and regulations is about preventing individuals with disabilities from being segregated from nondisabled people. Radaszewski, 383 F.3d

at 607 ("The 'most integrated setting appropriate' is . . . defined as 'a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.'") (quoting 28 CFR pt. 35, App. A, p. 450 (1998)). If plaintiffs' view were correct, it would make discharge presumptively unlawful in every case.

Finally, plaintiffs say that defendants are violating the integration provisions by reducing transportation services, which limits plaintiffs' ability to be part of the community. Of plaintiffs' three arguments, this is the strongest because there is a more direct connection between the alleged deprivation and access to the community. However, one potential problem with this claim is that plaintiffs are not seeking an order requiring that transportation services be provided, but only that funding be restored to previous rates. Thus, plaintiffs must show that the integration provisions carry with them a duty to provide a certain level of funding in order to allow the providers to offer certain services. This would require an assumption that the lack of transportation services is a direct result of defendants' inadequate funding rather than independent choices of the providers and that the providers would increase transportation services if defendants' restored funding. Although for the purpose of deciding plaintiffs' standing, I agree with plaintiffs that they have alleged that defendants' reduction in funding has harmed them, this does not mean that the reduction in funding is itself a violation of the integration provisions, particularly if the funding is not specifically for transportation.

In any event, the Supreme Court has rejected the view that "the ADA requires States

to provide a certain level of benefits to individuals with disabilities." Olmstead, 603 n.14. See also M.R. v. Dreyfus, 697 F.3d 706, 714-15 (9th Cir. 2012) (en banc) (ADA's integration provision "does not require the states to 'provide' or 'maintain' programs to avoid discrimination"). In fact, I am not aware of aware of any cases from this circuit in which the integration provisions have been applied in any context other than the setting of an individual's residence. That does not necessarily mean that the provisions are limited to that one situation, but it does demonstrate that plaintiffs are seeking a dramatic extension of existing law. In light of the language in Olmstead and the absence of any authority interpreting the integration provisions as plaintiffs suggest, I must dismiss this claim.

3. Accessible facilities

The scope of this claim is not entirely clear. In their amended complaint, plaintiffs simply allege that defendants have "policies and practices that limit the number of accessible community residential settings that are available to non-ambulatory members of the Family Care program." Am. Cpt. ¶¶ 210 and 244, dkt. #22. They do not cite any particular language in a statute or regulation that defendants are violating, but instead cite a string of provisions that relate generally to making facilities accessible to individuals with disabilities.

In their briefs, plaintiffs acknowledge that none of the defendants operate a facility, but they argue that defendants have a duty to insure that the providers have "accessible" facilities to the non-ambulatory plaintiffs. However, plaintiffs do not allege that any

particular facility or group of facilities is physically inaccessible to non-ambulatory individuals. Presumably, plaintiffs' theory is that defendants' reduction in funding is making the facilities "inaccessible" to plaintiffs because the providers cannot afford to continue providing services. However, plaintiffs cite no authority for the view that "accessible" means "affordable." Rather, the only case they cite involved claims regarding "physical access to providers' offices." Anderson v. Pennsylvania Dept. of Public Welfare, 1 F. Supp. 2d 456, 463 (E.D. Pa. 1998). Accordingly, I am dismissing this claim as well.

4. Arguments specific to individual defendants

Defendants Community Health and CHP argue that they cannot be sued under the Rehabilitation Act because they do not receive federal funds or under the ADA because they do not operate a residential facility. Defendants Wisconsin Care, Community Health and CHP all argue that they cannot be sued under the ADA because they are not public accommodations. Because I am concluding that all of plaintiffs' claims fail for other reasons, it is unnecessary to consider these arguments.

ORDER

IT IS ORDERED that the motions to dismiss filed by defendants Wisconsin Department of Health Services and Dennis Smith, dkt. #45, defendants Community Health Partnership, Inc. and CHP-LTS, Inc., dkt. #35, and defendant Care Wisconsin First, Inc.,

dkt. #37, are GRANTED because the amended complaint fails to state a claim upon which relief may be granted. The clerk of court is directed to enter judgment in favor of defendants (including defendant Northwest Long-Term Care District) and close this case.

Entered this 23d day of January, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge