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

D. A. *et al.*,	)	
	)	
Plaintiffs,	)	Case No. 20-cv-3082
	)	
v.	)	Hon. Martha M. Pacold
	)	
The United States of America, *et al.*,	)	
	)	
Defendants.	)	

PLAINTIFFS' RESPONSE IN OPPOSITION TO
THE HEARTLAND DEFENDANTS' MOTION TO DISMISS

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Plaintiffs in this action, by their undersigned attorneys, respond herein to the motion to dismiss Plaintiffs' First Amended Complaint ("FAC") (ECF 35), filed by defendants Heartland Alliance for Human Needs and Human Rights ("Heartland Alliance") and Heartland Human Care Services ("HHCS") (collectively "Heartland") (ECF 39) as well as Heartland's memorandum in support (ECF 40).

BACKGROUND

Heartland took custody of Plaintiffs A.A. and D.A. after federal agents separated them from their mother and brought them from Texas to Chicago. FAC ¶ 31. Heartland, which receives federal funding to provide "shelter care and other related services for unaccompanied [foreign] children," FAC 18, provides daily programming and routines to the children in its care. FAC ¶ 43. This programming is intended to provide a safe, non-traumatizing setting in which children can sleep, learn, play, and thereby develop in a way that is psychologically healthy, allowing the children, during the time they spend at Heartland, to "grow up" in a healthy manner. FAC ¶ 43.

A.A. and D.A., however, were traumatized by their time at Heartland. Heartland employees mocked both children, exacerbating the trauma of their separation by telling them that they deserved to be separated from their parents, and that they would have new parents, FAC ¶¶ 34, 37, 45. Heartland failed to provide the children with medical care, FAC ¶ 40, punished them for crying by depriving them of food, FAC ¶ 38, and allowed them to be bullied. FAC ¶ 38. Heartland also denied A.A. and D.A. calls with their mother, and it only made sporadic efforts to contact the children's father, such that at one point five-year-old A.A. was unable to speak with his father for a week. FAC ¶ 36. Heartland also limited the time that any such phone calls could last. FAC ¶¶ 34, 36, 37.

Furthermore, Heartland gave the children in its care no privacy, FAC ¶ 34; it forbid them any physical contact, even a hug between siblings, FAC ¶ 34; its routines did not provide time for siblings housed in the same facility to spend time with each other, FAC ¶ 34; and it forbid children in the facility from forming personal bonds with each other, FAC ¶ 39. While some children could benefit from Heartland's services notwithstanding the rigid and unaccommodating way Heartland delivered them, severely traumatized children like A.A. and D.A. could not. Hours before they arrived at Heartland's doorstep they had been abruptly separated from their mother after a harrowing journey with her to a strange country, and the regimentation and isolation imposed by Heartland exacerbated the trauma of their family separation. FAC ¶ 43. As a result, Heartland's programs—intended to promote healthy childhood development—did not benefit them at all.

ARGUMENT

"The purpose of a motion to dismiss is to test the sufficiency of the complaint, not to decide the merits." *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). Plaintiffs need to pass only "two easy-to-clear hurdles" to survive a motion to dismiss: (1) "the complaint must describe the claim in sufficient detail to give the defendant fair notice of what the claim is and the grounds on which it rests," and (2) "its allegations must plausibly suggest that the plaintiff has a right to relief, raising that possibility above a 'speculative level.'" *Tamayo v. Blagojevich*, 526 F.3d 1074, 1084 (7th Cir. 2008). This means merely that the complaint must "give enough details about the subject-matter of the case to present a story that holds together. In other words, the court will ask itself *could* these things have happened, not *did* they happen." *Swanson v. Citibank, N.A.*, 614 F.3d 400, 404 (7th Cir. 2010) (emphasis original).

Plaintiffs assert federal claims against Heartland under the Rehabilitation Act, as well as state law claims for breach of fiduciary duty and negligence. Heartland argues that all of the claims

against it should be dismissed, but as Plaintiffs explain herein, Heartland's arguments misstate the law and ignore the well-pleaded allegations in Plaintiffs FAC.

I. Plaintiffs have stated a claim under the Rehabilitation Act.

The Rehabilitation Act ("Rehab Act") prohibits discrimination against qualified persons with disabilities by entities which receive federal funds. 29 U.S.C. § 794(a).[1] To establish a violation, a plaintiff must show that (1) they are each a qualified individual with a disability; (2) the defendant denied them the benefits of its services, programs, or activities, or otherwise subjected them to discrimination; and (3) the denial or discrimination occurred "by reason of" their disability. *Wagoner v. Lemmon*, 778 F.3d 586, 592 (7th Cir. 2015). One way to prove this discrimination is a failure to provide reasonable accommodations for a person's disability. *Richard v. Pfister*, No. ___ F. Supp. 3d. ___, 2020 WL 5210829, at *2 (N.D. Ill. Sept. 1, 2020).

Heartland seeks to dismiss the Rehab Act claim against it as insufficiently pleaded, but in making this argument Heartland ignores the portions of the FAC explaining why A.A. and D.A. were disabled within the meaning of the Rehab Act, what programming and services Heartland provided, how Heartland failed to accommodate A.A. and D.A.'s disabilities in the provision of those programs and services, and how both children were unable to benefit from those programs and services as a result. Only by way of passing over those allegations does Heartland assert that Plaintiffs have failed to sufficiently plead the Rehab Act claim. On that basis alone Heartland's challenge to Plaintiffs' Rehab Act claim should be rejected.

[1] Courts treat the applicable elements of the Rehab Act as essentially identical to the Americans with Disabilities Act ("ADA"). *Lacy v. Cook County*, 897 F.3d 847, 852 n.1 (7th Cir. 2018). The only functional distinction between the two laws is the Rehab Act's requirement that the defendant-entity be the recipient of federal funds. *Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 746 (7th Cir. 2006). Plaintiffs have alleged that Heartland receives federal funds, FAC ¶ 18, and Heartland does not dispute that allegation.

A. Plaintiffs have alleged that A.A. and D.A. were disabled.

Heartland first argues that Plaintiffs have not pleaded that A.A. and D.A. were disabled within the meaning of the Rehab Act. ECF 40 at 4. This misunderstands Plaintiff's allegations, however. Under the Rehab Act, a "disability" includes (1) a mental impairment that (2) substantially limits someone in one or more major life activities. *Ogborn v. United Food & Commercial Workers Union, Local No. 881*, 305 F.3d 763, 767 (7th Cir. 2002). The FAC's allegations satisfy both these criteria.

The FAC alleges in detail that immense emotional trauma was inflicted on A.A. and D.A., from the danger they faced in Honduras, from their harrowing trip from that country to the United States border, and especially from their abrupt and purposefully traumatic separation from their mother by government officials, which occurred a matter of hours before they arrived at Heartland. FAC ¶¶ 5-8; 40-42. It alleges that they were severely traumatized by their experience, and experienced anxiety, depression and symptoms of post-traumatic stress disorder. FAC ¶ 43. These are recognized as qualifying mental impairments under the Rehab Act. *See Arroyo v. Volvo Grp. N. Am.*, LLC, No. 12-CV-6859, 2019 WL 4749869, at *4 (N.D. Ill. Sept. 30, 2019) ("PTSD is a disability under the ADA."); *Brookins v. Indianapolis Power & Light Co.*, 90 F. Supp. 2d 993, 1002 n.9 (S.D. Ind. 2000) (noting that "[d]epression has been recognized by the Seventh Circuit as a "disability" within the meaning of the ADA").

The FAC also alleges that these impairments substantially limited life activities for both children. It alleges that the trauma A.A. and D.A. experienced caused anxiety and depression and substantially limited their ability to think, sleep, eat, learn, and engage in safe play, and interact with others, all of which inhibited their childhood development. FAC ¶¶ 38, 43, 156. These are major life activities under the Rehab Act. *See* 29 C.F.R. § 1630.2(i)(1)(i) (describing "major life activities" as including *inter alia* ("but not limited to") sleeping, learning, concentrating, thinking,

and "interacting with others"). Indeed, the Rehab Act's mandate is that the definition of disability "shall be construed in favor of broad coverage." 42 U.S.C. § 12102(4)(A). And enabling regulations provide that "substantially limits" is "not meant to be a demanding standard," 29 C.F.R. § 1630.2(j)(1)(i). The activity need only be "important." 29 C.F.R. § 1630.2(i). As set forth below, the FAC alleges that these activities were indeed important, as A.A. and D.A.'s impairments meant they were unable to benefit from the programming that Heartland offered.

B. Plaintiffs have alleged that Heartland failed to accommodate their disability.

Heartland argues that Plaintiffs have not sufficiently pleaded "how [A.A. and D.A.'s] particular impairments" limited their ability to take advantage of programs provided by Heartland, since the FAC "fails to make any specific allegations at all" about Heartland's services. ECF 40 at 4, 5. That is simply not so. The Rehab Act does not define the phrase "services, programs, or activities." Instead, that phrase is given a deliberately broad construction, which defines "program or activity" as "all of the operations of" the qualifying entity. 29 U.S.C. § 794(b)(1)(A). *See Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 782 (7th Cir. 2002) ("Although the ADA does not explicitly define 'services, programs, or activities,' the regulations promulgated pursuant to the act state that 'title II applies to anything a public entity does.'" (citation omitted)).

In this case, Plaintiffs have alleged that Heartland provides services and activities that are intended to provide a "safe and non-traumatizing environment in which [children] may sleep, play, learn, and develop" in a healthy manner and thus experience the basic features of a "health[y] childhood, which are necessary for each child's development." FAC ¶ 43. Specifically, the FAC describes numerous components of this service, including settings in which children sleep together FAC ¶ 39, engage in recreation FAC ¶ 34, take classes FAC ¶ 41, speak with their parents FAC ¶ 35, and simply interact with one another FAC ¶¶ 34, 39. These are all "programs or activities"

under the Rehab Act's broad construction of "program or activity"—indeed one presumes that providing a psychologically healthy setting to grow and develop as a child is the basic service that Heartland provides. The FAC alleges that the daily routines that Heartland created were meant to be in service of this goal. FAC ¶ 43.

Plaintiffs allege, however, that the manner in which Heartland operated, organized, and restricted the daily life of the children under its care inhibited A.A. and D.A., who came to Heartland severely traumatized from their family separation, from receiving the benefits of this essential service. That is, the restrictions and regimentations Heartland imposed on the manner in which children sleep, play, learn, and develop inhibited A.A. and D.A. from benefitting from those services in a manner that promoted their healthy development as children. Specifically, the FAC alleges that Heartland imposed severe restrictions on routine forms of human interaction among children, preventing them from speaking privately together FAC ¶ 34, preventing even siblings from engaging in basic human interactions and physical contact FAC ¶ 34, providing no privacy even to teenagers FAC ¶ 39, barring children from having personal conversations or becoming friends FAC ¶ 39, and severely restricting phone conversations with family FAC ¶ 35. The FAC alleges that these restrictions exacerbated A.A. and D.A.'s existing psychological conditions, which impose further emotional trauma on them and prevented them from taking advantage of the services that Heartland offers. FAC ¶ 43.

Put simply, the FAC alleges that Heartland had programming that provided benefits for children including opportunities to learn, form relationships, play, receive care and treatment consistent with their needs, and provide for their healthy development in a safe and non-traumatic environment. But the benefits of that programming were not available to A.A. and D.A. That is because the manner in which Heartland delivered its daily programs, as described above,

exacerbated the traumas of severely traumatized children like A.A. and D.A. As a result, while non-traumatized children may have had an opportunity to have a healthy growing-up experience as a result of the programming offered by Heartland, for severely traumatized children, like A.A. and D.A., it was the opposite: an isolating experience, just when they needed human connection the most. Instead of benefitting, A.A. and D.A. were further traumatized by Heartland's failure to make simple accommodations to support them: additional time together for siblings, basic intimacies like hugging, more frequent phone contact with parents, allowing a young girl the chance to make personal connections after she had just been separated from her mother.

Heartland further argues that Plaintiffs have not alleged that Heartland knew A.A. and D.A. were traumatized. ECF 40 at 8. But Plaintiffs have alleged that it was well known to Heartland that children arriving at its facilities in the wake of family separations at the border were uniquely traumatized and required accommodation. FAC ¶ 42. Indeed, as the FAC notes, Heartland's executive director reported that such children were "severely traumatized" by these experiences. FAC ¶ 43 n.3. And, Plaintiffs have alleged, Heartland knew that A.A. and D.A., in particular, had been brought to Heartland specifically because they had just been separated from their mother in a manner that Heartland itself recognized as severely traumatizing. FAC ¶ 32. Furthermore, after they arrived, Heartland staff saw A.A. and D.A. attempt to take solace with one another FAC ¶ 7, while A.A. was unable to sleep. FAC ¶ 38. Plaintiffs have more than adequately pleaded that Heartland knew A.A. and D.A. were traumatized by an exceptionally damaging experience that culminated in their abrupt separation from their mother just days before.

Heartland also argues that the FAC fails to allege that Heartland could have made reasonable modifications to accommodate A.A. and D.A.'s disabilities. ECF 40 at 7. Plaintiffs, however, make precisely such allegations, noting that Heartland did indeed have a duty to make

reasonable modifications to its programs and services. FAC ¶ 155. Plaintiffs explain that in order to benefit from the services Heartland offered—*i.e.*, the provision of a healthy setting for children's development, A.A. and D.A. required the ability to interact and develop in a setting that did not restrict basic human interaction including, physical touch and hugging between the siblings, greater access to phone calls with family and relatives, and personal conversation. FAC ¶ 156. Essentially, Plaintiffs assert that the programs could have been modified to permit basic human interaction, but were not. FAC ¶ 157. Plaintiffs further charge that such modifications would not fundamentally alter the nature of the various programs and activities that Heartland provided in order to promote childhood development. FAC ¶¶ 155, 157, 159.

There is no reason to think that the modest modifications Plaintiffs identified would not have changed the nature of services that Heartland provided—nor does Heartland claim they would. At the motion to dismiss stage, it is plausible that such modifications could have been made without fundamentally altering the nature of the services that Heartland offered.

* * *

Plaintiffs allege that in order to permit severely traumatized children like A.A. and D.A. to benefit from Heartland's routines and programs in a manner that allowed them to realize healthy childhood development, Heartland's routines had to be modified to provide more opportunity for human interaction, rather than the regimented and isolating routines that Heartland actually offered. FAC ¶ 43. In other words, Plaintiffs assert that they needed Heartland to modify the manner in which it delivered it services in order for A.A. and D.A. to take advantage of them, but Heartland failed to do so. That is a straightforward claim under the Rehab Act.

C. Plaintiffs have alleged they are entitled to damages under the Rehab Act

Heartland also argues that Plaintiffs have not stated a plausible claim for damages. ECF 40 at 9. As an initial matter, while Plaintiffs do seek punitive damages in this case, they do not seek them under the Rehab Act. Heartland's punitive damages argument, *see* ECF 40 at 9, is therefore inapposite. Heartland also argues that Plaintiffs cannot obtain compensatory damages because they have not pleaded intentional discrimination on Heartland's part. (*Id.*) Plaintiffs' allegations, however, satisfy that requirement.

The decision Heartland cites, *Phipps v. Sheriff of Cook County*, 681 F. Supp. 2d 899 (N.D. Ill. 2009), makes this clear. As *Phipps* explains, "intentional discrimination" "does not require personal animosity or ill will." 681 F. Supp. 2d at 918. Instead, intentional discrimination can be inferred from "a defendant's deliberate indifference to the strong likelihood that pursuit of its questioned policies will likely result in a violation of federally protected rights." *Id.* (quotation omitted). This requires "knowledge that a harm to a federally protected right is substantially likely, and a failure to act upon that the likelihood." *Id.* (quotation omitted).

In this case, Plaintiffs have alleged that it was well known to the defendants that children like Plaintiffs, who were arriving at Heartland as the result of the government's rampant family separation practices, were severely traumatized. *See* FAC ¶¶ 43-44. And, Plaintiffs have alleged, Heartland knew that A.A. and D.A. *in particular* were from Central America and were victims of such a family separation. FAC ¶ 32. Despite this, they split up the children, limited their opportunities to interact with each other, prohibited them from physical contact and affection, and made mocking and psychologically damaging comments. Accepting these facts as true and drawing reasonable inferences therefrom, it is plausible that Heartland staff knew that their failure to accommodate A.A. and D.A.'s trauma would mean that the two children would not be able to

benefit from the child development services that Heartland offered, and would suffer as a result. In failing to modify its programs to account for the trauma that A.A. and D.A. had suffered, it is plausible that Heartland was deliberately indifferent to the harm such a failure was likely to cause.

II. Plaintiffs Have Pleaded Breach of Fiduciary Duty

Heartland next seeks to dismiss Plaintiffs' breach of fiduciary duty claim. ECF 40 at 9-10. Its arguments are similarly unavailing. Heartland is correct that a claim for breach of fiduciary duty must allege (1) that a fiduciary duty exists; (2) that the fiduciary duty was breached; and (3) that such breach proximately caused the injury of which the party complains. ECF 40 at 9-10. Heartland misapplies these elements to the allegations in the FAC, however.

First, Heartland argues that the FAC's allegations do not support the existence of a guardian-ward relationship between itself and A.A. and D.A., because Heartland was never legally appointed as their guardian. FAC 40 at 10. That is wrong. Fiduciary relationships may indeed be established formally, but a fiduciary relationship also arises as a matter of law, without a court order. *See Parks v. Kownacki*, 737 N.E.2d 287, 291 (Ill. 2000) (once individual "accepted the responsibility of plaintiff's care and education, he took on the role of her guardian, even though he was not given that title by a court"); *Clayton v. Millers First Ins. Co.*, 892 N.E.2d 613, 619 (Ill. Ct. App. 2008) (recognizing that "[i]n *Parks*, Illinois recognized that the term 'ward' could be used to describe a person despite no prior adjudication of that status."). Indeed, courts have been clear that such a fiduciary relationship exists in the analogous circumstance of juvenile detention. In *T.S. v. Twentieth Century Fox Television*, No. 16-cv-8303, 2017 WL 1425596 (N.D. Ill. Apr. 20, 2017), for example, the superintendent of a juvenile detention center argued that he had no fiduciary duty to the youth detained there because there had been no adjudication that they were his wards. 2017 WL 1425596 at *10. Citing *Parks* and *Clayton*, the court disagreed, holding that

having assumed control over the youth at the facility, the superintendent had fiduciary duties towards them. *Id.*

Plaintiffs have sufficiently alleged that such a duty existed here. Plaintiffs allege that A.A. and D.A. were placed in Heartland's custody after being separated by their mother, and they allege that Heartland exercised control over both A.A. and D.A. for the next several weeks until they were reunited with their family. FAC ¶¶ 27-51. Heartland's control and custody over A.A. and D.A. establishes a fiduciary relationship. ECF 40 at 10.

Heartland next argues that even if a fiduciary duty did exist, Plaintiffs have not alleged that Heartland breached that duty. Heartland correctly notes that Plaintiffs do not allege that Heartland breached a duty of loyalty. ECF 40 at 11. However, Heartland is incorrect in arguing that the FAC does not allege facts pleading a breach of the duty of care. As an initial matter, Heartland incorrectly argues that the standard of care for breach of fiduciary duty is "gross negligence." ECF 40 at 11. That is incorrect—the authority from which Heartland derives that proposition, *In re Discover Financial Services Derivative Litig.*, 2015 WL 1399282 (N.D. Ill. Mar. 23, 2015), was construing Delaware law regarding the duty of corporate officers to shareholders. In Illinois, a guardian has an affirmative "duty to watch out for the well-being of the child" who is its ward, *People v. Watson*, 431 N.E.2d 1350, 1355 (Ill. Ct. App. 1982) (holding fiduciary duty of guardian can be breached by an omission), and to "protect the child from harm." *Clayton*, 892 N.E.2d at 619 (citing *Watson*).

The FAC's allegations set out how these duties were breached. Heartland took in two young siblings that it had every reason to know would be severely traumatized from being separated by their mother, and instead of providing them with a nurturing and supportive environment that would help salve those psychological injuries and comfort them, it split them up,

isolated them, and then restricted their interactions with other children. FAC ¶¶ 31-39. This amounted to a failure to provide needed care, which exacerbated their trauma. To make matters worse, Heartland's agents mocked the children for the tragic events that brought them there FAC ¶ 32, ignored requests for lice medication FAC ¶ 40, treated the children perceptibly worse than other children at the facility, FAC ¶ 40, and mistreated five-year-old A.A. when he cried for his mother, including by forcing medication on him and depriving him of food. FAC ¶ 38. These allegations permit the inference that Heartland departed from its duty to watch out for the wellbeing of the two children, thus breaching its fiduciary duties to them.

Heartland also argues that even if Plaintiffs have alleged that it breached its fiduciary duties to A.A. and D.A., the FAC does not show that this mistreatment was the proximate cause of the injuries Plaintiffs allege. ECF 40 at 11. This conclusory argument simply ignores the facts that Plaintiffs have alleged. A proximate cause is one "one which produces the injury through a natural and continuous sequence of events," *Lawrence v. Bridgestone/Firestone, Inc.*, 963 F. Supp. 685, 687 (N.D. Ill. 1997) (quotation omitted), and it is ordinarily a question of fact for a jury unless "reasonable people could not differ as to the inference to be drawn from the undisputed facts." *Id.* In this case, the facts alleged in the FAC permit a reasonable inference that Heartland's alleged breach of fiduciary duty could have contributed to A.A. and D.A.'s psychological injuries. Aside one day at the outset, A.A. and D.A. were in Heartland's custody the entire month that they were separated from their parents. *See* FAC ¶¶ 27, 51. It was there that they were subject to the regimented and isolating existence described in the Rehab Act discussion, and it was there that they were mocked by employees, had their medical needs ignored, and were subject to arbitrary punishments like removal of food. After being released from Heartland, both A.A. and D.A. have manifested serious psychological symptoms. FAC ¶¶ 61-63. It is plausible A.A. and D.A.'s

injuries were compounded when they were held in an austere, regimented environment that deprived them of the human interactions that might have mitigated the pain of their separation from their mother.

Heartland finally argues that Plaintiffs' fiduciary duty claims should be dismissed because they are duplicative of their negligence claims. ECF 40 at 12. This argument, however, is predicated on Heartland's misidentified duty of care as "gross negligence," which, as described *supra*, is incorrect. Defendants have not demonstrated that the claims are actually duplicative, and at this juncture at least dismissal is unnecessary. *See Willborn v. Sabbia*, No. 10-cv-5382, 2011 WL 1900455, at *6 (N.D. Ill. May 19, 2011) (declining to dismiss claims as duplicative stating that "this action is merely at the pleadings stage and . . . [i]t can be properly ascertained whether the . . . claims are truly duplicative at the summary judgment stage after discovery has been conducted").[2]

III. Plaintiffs have adequately pleaded negligence.

Heartland contends that Plaintiffs' negligence claims should be dismissed as well, arguing in cursory fashion that Plaintiffs have not alleged facts showing that Heartland breached any duty to A.A. or D.A. and that Plaintiffs have not alleged facts showing that any breach proximately caused the children's injuries. ECF 40 at 12-13. This is simply not so—Plaintiffs have pleaded facts supporting their negligence claim.

[2] If the Court does determine that Plaintiff's negligence claim is duplicative of its breach of fiduciary duty claim, either now or in the future, the appropriate remedy would be to dismiss the negligence claim, not the fiduciary duty claim. *Cf. Fabricare Equip. Credit Corp. v. Bell, Boyd & Lloyd*, 767 N.E.2d 470, 476 (Ill. Ct. App. 2002) ("When a breach of fiduciary duty claim is based on the same operative facts as a legal malpractice claim, and results in the same injury, the later claim should be dismissed as duplicative.").

Notably, Heartland takes no issue with Plaintiff's allegation that Heartland and its employees "had a duty [to A.A. and D.A.] to act with ordinary care and prudence so as not to cause harm or injury" to the Plaintiffs. FAC ¶ 122. The existence of a duty looks to the relationship between the plaintiff and the defendant, and whether an injury to the plaintiff by the defendant's conduct is reasonably foreseeable, including the likelihood of injury, the magnitude of the burden of guarding against it and the consequences of placing that burden on the defendant. *Kirk v. Michael Reese Hosp. & Med. Ctr.*, 513 N.E.2d 387, 396 (Ill. 1987) (discussing elements of duty). *Accord* Restatement (Third) of Torts: Phys. & Emot. Harm § 3 (2010) ("A person acts negligently if the person does not exercise reasonable care under all the circumstances. Primary factors to consider . . . are the foreseeable likelihood that the person's conduct will result in harm, the foreseeable severity of any harm that may ensue, and the burden of precautions to eliminate or reduce the risk of harm.").

In this case, the FAC alleges that Heartland took charge of and controlled the daily routines of two young children whom it had every reason to believe were severely traumatized by among other things the recent separation from their mother. *See supra* at 7-8. Knowing this, it would have been reasonably foreseeable to Heartland that the conditions and routines it imposed on the children could compound this trauma, and as such it had a duty to avoid doing so. Yet Plaintiffs allege that instead, Heartland imposed regimented and isolating routines on the children, allowed its employees to speak cruelly to them (including statements about the separation from their parents), provided them with inadequate and inappropriate medical care, and punished them by withholding food. *See supra* at 13. This, Plaintiffs allege, traumatized the children—a foreseeable outcome given the circumstances of their arrival at Heartland.

Heartland finally argues that causation has not been alleged because Plaintiffs have not explained how Heartland's negligence "as opposed to other factors" caused the harm Plaintiffs allege, but this is not so. (ECF 40 at 12.) It is certainly true that A.A. and D.A.'s injuries stem in part from the conduct of Heartland's co-defendant in this case. But a proximate cause of an injury "need not be the only or last cause; rather, the combination of multiple causes may result in the injury." *Atchley v. Univ. of Chi. Med. Ctr.*, 64 N.E.3d 781, 794 (Ill. Ct. App. 2016). Here, as Plaintiffs explained in discussing their breach of fiduciary duty claim, the facts they have alleged permit the reasonable inference that Heartland's treatment of the children was a proximate cause of their injuries. *See supra* at 12-13. Plaintiffs have stated a negligence claim against Heartland.

IV. Withdrawn claims.

Heartland seeks dismissal of Count VII, the negligent supervision claim against it. ECF 40 at 13. Upon consideration, Plaintiffs withdraw Count VII, reserving the right to re-assert the claim should it be warranted by facts identified in discovery.

Plaintiffs have brought this action against two Heartland entities: Heartland Alliance for Human Needs and Human Rights, and its subsidiary, Heartland Human Care Services. Heartland seeks dismissal of Heartland Alliance for Human Needs and Human Rights on grounds that it did not operate the shelter where A.A. and D.A. were held. ECF 40 at 14. Upon consideration, Plaintiffs withdraw their claims against Heartland Alliance for Human Needs and Human Rights, reserving the right to re-assert the claim should it be warranted by facts identified in discovery. Plaintiffs therefore proceed against Heartland Human Care Services.

CONCLUSION

Plaintiffs have withdrawn certain claims upon consideration of Heartland's arguments, as set forth above. Heartland is wrong, however, to argue that that Plaintiffs' claims under the Rehab

Act and its common law claims of negligence and breach of fiduciary duty should be dismissed. For the reasons set forth herein, the Court should deny Heartland's motion to dismiss those claims.

Dated: November 13, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Stephen H. Weil, an attorney, hereby certify that on November 13, 2020, I caused a copy of the foregoing to be filed using the Court's CM/ECF system, which effected service on all counsel of record.

/s/ Stephen H. Weil
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