

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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UNITED STATES OF AMERICA, )  
Plaintiff, ) Civil Action No.: 92-2062 D/P  
v. )  
STATE OF TENNESSEE, et al., )  
Defendants, and )  
PEOPLE FIRST OF TENNESSEE, et al., )  
and )  
PARENT-GUARDIAN ASSOCIATION )  
OF ARLINGTON DEVELOPMENTAL )  
CENTER, )  
Intervenors. )

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**CONSENT ORDER IN CONJUNCTION WITH THE APPROVAL OF 2006  
SETTLEMENT AGREEMENT**

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On May 5, 2006, Plaintiff the United States of America (“United States”), Intervenors/Plaintiffs People First of Tennessee, Inc. (“People First”), and Defendants the State of Tennessee, et al. (“State”) executed a settlement agreement (the “2006 Settlement Agreement”). Thereafter, on or about February 15, 2007, Intervenor Parent Guardian Association of Arlington Developmental Center (“PGA”) joined the United States, People First and the State in the submission of a proposed consent order approving the 2006 Settlement Agreement. [Dkt No. 2085]. The 2006 Settlement Agreement was filed therewith. [Dkt. No. 2085]. Following a hearing on February 15, 2007, the Court approved the 2006 Settlement Agreement. The Court has entered the All-Party Consent Order To Motion To Approve

Settlement Agreement (“Order Approving Settlement”). [Dkt. No. 2174]. Among other things, the Order Approving Settlement orders that the 2006 Settlement Agreement is a fair and reasonable compromise, and is approved.

One of the issues resolved by the 2006 Settlement Agreement related to filing of a motion to show cause by People First and the resulting Order Requiring Defendants To Appear and Show Cause (the “Show Cause Order”) entered by this Court on April 5, 2004. [See 2006 Settlement Agreement, Sections I and X.B.]. Another issue resolved by the 2006 Settlement Agreement is the appropriate interpretation of that portion of the class definition in this case that reads “all persons at risk of being placed at Arlington Developmental Center” (commonly referred to as the “at-risk” portion of the class). [See 2006 Settlement Agreement, Sections I, X, and XI].

Section XI reads as follows (*quoted in italics*):

#### **XI. AT-RISK PORTION OF THE CLASS**

*The Parties to this Agreement agree that the class definition in People First v. Arlington Developmental Center, No. 2:92-cv-2213 (W.D. Tenn.), that reads “all persons at risk of being placed at Arlington Developmental Center,” shall be construed as limited to the following persons:*

*All persons who reside in the geographic region served by ADC, i.e., West Tennessee, and who:*

- (1) *meet Medicaid eligibility criteria for ICF/MR level of care; and*
- (2) *demonstrate a current need or desire for institutional placement by satisfying one of the following criteria:*
  - a. *persons residing in a nursing home, or in a public or private mental health facility on or after September 1, 2005;*
  - b. *persons residing in a private ICF/MR on or after September 1, 2005;*
  - c. *persons currently residing in the West Tennessee Region who are placed by the State in a public ICF/MR in Middle or East Tennessee on or after September 1, 2005; or*

*d. persons who are hospitalized on or after September 1, 2005, and who at the time of their discharge from the hospital, or from a respite, transition, or rehabilitation facility if they transitioned to it from the hospital following discharge, can no longer be supported appropriately at their pre-hospitalization place of residence due to their need for more intensive healthcare services and/or greater assistance/accommodations in meeting their daily personal care, training, treatment or mobility needs.*

*Furthermore, no additional persons can or will be added to the class pursuant to the “at risk” provision of the class definition once the State closes ADC, as evidenced by the transition of all ADC residents out of current residential units at ADC.*

The “at-risk” portion of the class previously had been interpreted by this Court in an order issued on July 17, 2000 (the “July 17 Order”). [Dkt. 1302]. The State appealed the July 17 Order and that appeal was pending before the United States Court of Appeals for the Sixth Circuit as of date on which the Order Approving Settlement was entered by this Court. Under its terms, once the 2006 Settlement Agreement was approved by this Court, People First and the State were required to file a joint motion with the Sixth Circuit dismissing the “at-risk” appeal. Accordingly, on or about March 28, 2007, the parties filed a Joint Motion of Parties United States, People First of Tennessee, West Tennessee Parent Guardian Association, and State of Tennessee To Dismiss Appeal with the Sixth Circuit. On or about April 5, 2007, the Sixth Circuit Court of Appeals granted the joint motion of the parties and dismissed the “at-risk” appeal.

The 2006 Settlement Agreement also provides that upon dismissal of the “at-risk” appeal, this Court will enter an Order vacating the July 17 Order regarding the scope of the “at-risk” portion of the class and issue a substitute Order construing the “at-risk” portion of the class as set forth in Section XI of the settlement agreement. [See 2006 Settlement Agreement, Section X, para. B.1.]. The Settlement Agreement also provides that upon approval of the 2006 Settlement Agreement, the Court will enter an Order vacating the Show Cause Order.

The Court, having approved the 2006 Settlement Agreement and finding that it is a fair

and reasonable compromise, hereby FINDS that an order consistent with Section X.B. of the agreement should be entered.

The Court therefore ORDERS as follows:

1. That the July 17, 2000 Order regarding the "at risk" class should be and is hereby vacated in all respects;
2. That the "at-risk" portion of the class definition in this cause shall be construed as limited to the following persons:

All persons who reside in the geographic region served by ADC, i.e., West Tennessee, and who:

- (1) meet Medicaid eligibility criteria for ICF/MR level of care; and
- (2) demonstrate a current need or desire for institutional placement by satisfying one of the following criteria:
  - a. persons residing in a nursing home, or in a public or private mental health facility on or after September 1, 2005;
  - b. persons residing in a private ICF/MR on or after September 1, 2005;
  - c. persons currently residing in the West Tennessee Region who are placed by the State in a public ICF/MR in Middle or East Tennessee on or after September 1, 2005; or
  - d. persons who are hospitalized on or after September 1, 2005, and who at the time of their discharge from the hospital, or from a respite, transition, or rehabilitation facility if they transitioned to it from the hospital following discharge, can no longer be supported appropriately at their pre-hospitalization place of residence due to their need for more intensive healthcare services and/or greater assistance/accommodations in meeting their daily personal care, training, treatment or mobility needs.

Furthermore, no additional persons can or will be added to the class pursuant to the "at risk" provision of the class definition once the State closes ADC, as evidenced by the transition of all ADC residents out of current residential units at ADC.

3. That the Show Cause Order, entered by this Court on April 5, 2004, is hereby

vacated in all respects.

**IT IS SO ORDERED this 11<sup>th</sup> day of September, 2007.**

s/Bernice B. Donald

BERNICE B. DONALD

U.S. DISTRICT COURT JUDGE