

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARY HUNT, et al.
Plaintiffs

v.

LOIS MESZAROS, et al.
Defendants.

Civil Action No. PJM-91-2564

Hunt v. Meszaros

* * * * *

AMENDED COMPLAINT

I. INTRODUCTION



MR-MD-002-001

1. Plaintiffs, persons with developmental disabilities confined by the State of Maryland in the Great Oaks Center in Silver Spring, Maryland, have been severely physically and emotionally injured and continue to be at risk of such injury. In this action, plaintiffs seek to enforce their constitutional "right to protection while in [state] custody" enunciated by this Court in L.J. By And Through Darr v. Massinga, 699 F.Supp. 508, 538 (D.Md. 1987) (Howard, J.), aff'd, 838 F.2d 118 (4th Cir. 1988), cert. denied, 481 U.S. 1018 (1989). Like the plaintiffs in L.J., the plaintiffs here face unnecessary and intolerable threats to their lives, health and safety while in state custody.

2. Great Oaks Center is a dangerous place to live. While in the Great Oaks Center plaintiffs have been and continue to be subjected to injury, abuse, neglect, and unnecessary physical restraints. They have been denied necessary medical care, as well as habilitative training and services needed to prevent their deterioration.

3. Plaintiffs bring this action on behalf of themselves and all others similarly situated for declaratory and injunctive relief to redress the hazardous unconstitutional and illegal conditions imposed by defendants under color of state law on persons with developmental disabilities who are confined and segregated in Great Oaks Center. Plaintiffs seek, inter alia, to enforce the federal constitutional and statutory rights of the

residents of Great Oaks Center to protection from bodily harm and other serious injury, to freedom from bodily restraint, to training needed to prevent their deterioration, to implementation of the judgments of their treating professionals that they should be transferred from Great Oaks Center into services in the community, and to nondiscrimination in programs and activities receiving federal financial assistance.

II. JURISDICTION

4. This action is brought under 42 U.S.C. § 1983 to remedy violations of the laws and constitution of the United States. Appropriate declaratory and injunctive relief is authorized pursuant to 28 U.S.C. §§ 2201 and 2202.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

6. Plaintiffs have no adequate remedy at law to address the deprivations of federal statutory and constitutional rights. They will continue to suffer irreparable harm from defendants' illegal actions unless injunctive relief is issued.

III. CLASS ACTION ALLEGATIONS

7. Approximately 250 persons with developmental disabilities are confined and segregated at the Great Oaks Center.

8. Plaintiffs bring this action on their own behalf and on behalf of a class of all persons now or who in the future may be confined at Great Oaks Center, including persons transferred after the filing of this action from Great Oaks Center into

residential settings that do not protect their rights under federal law.

9. Class certification is proper under Rule 23 of the Federal Rules of Civil Procedure because (a) the class is so numerous as to make joinder of all members impracticable, (b) there are substantial questions of law and fact common to the claims of the class, (c) the claims of the plaintiffs are typical of the class, (d) the named plaintiffs and their counsel will adequately and fairly represent the interests of the class and (e) defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

10. The undersigned attorneys of the Maryland Disability Law Center, the Mental Health Law Project, and the American Civil Liberties Union of Maryland are experienced in handling federal litigation of this nature. In addition, the Maryland Disability Law Center has been designated by the Governor to be the Protection and Advocacy system for persons with developmental disabilities within this state and thus is charged with the responsibility for pursuing "legal, administrative and other appropriate remedies or approaches to ensure the protection and advocacy for, the rights of such persons..." 42 U.S.C. § 6042(a)(2)(A)(i); see also Md. Health Gen. Code Ann. § 7-1003 (m)(3).

11. The questions of law and fact common to the claims of the class include but are not limited to:

a. Have defendants subjected residents of Great Oaks Center to injury, abuse and neglect, unnecessary physical restraints, and deprived the residents of necessary medical care and habilitative training and services needed to prevent deterioration?

b. Does confinement at Great Oaks Center violate plaintiffs' entitlement to, inter alia, protection from bodily harm and other serious injury, freedom from bodily restraint, and training needed to prevent their deterioration?

c. Have the defendants failed to implement the judgment of treating professionals that plaintiffs should be provided services in community settings?

d. Do the defendants have an obligation under federal law to implement the judgment of treating professionals that plaintiffs should be transferred from Great Oaks Center into services in the community and to cease discriminating against plaintiffs based on their disabilities in programs and activities receiving federal assistance?

IV. PLAINTIFFS

MARY HUNT

12. Mary Hunt is a 50-year-old woman who has been at Great Oaks Center since 1975. She has lived in Maryland institutions for persons with developmental disabilities since she was eight years old. Her current diagnoses include mental retardation, spastic quadriplegia, severe spastic cerebral palsy, multiple flexion contractures, gastroesophagal reflux, cataracts, and

optic atrophy. Although Ms. Hunt is non-verbal, she can communicate through vocalizations, facial expression and body movement and express pleasure, pain and sadness. She makes eye contact with people she is familiar with, and responds with smiles and laughter. A +

13. Ms. Hunt lives in Cottage 3 with 24 other males and females. Because of injuries she received at Great Oaks Center, she recently spent approximately one month in the Great Oaks Center infirmary where she received no habilitation services. . .

14. (Ms. Hunt's medical records indicate that she requires careful handling and positioning.) Apparently denied such care, A she has suffered serious injury while at Great Oaks Center. For example, in November 1990, staff noted she was suffering from skin breakdown. On May 13, 1991, Ms. Hunt's left arm was broken. Staff noted that the fracture "seems to have been caused by improper lifting or straightening of her arm."

15. Staff have recommended that Ms. Hunt be provided a new wheelchair so that she could have greater freedom of movement; however, a new wheelchair has not been obtained for her. Ms. Hunt has also been denied recommended habilitative therapy.

16. The professional staff at Great Oaks Center, since 1983, have been of the opinion that Ms. Hunt should be placed in a community residential program. Defendants have failed to implement the judgments of her treatment professionals and Ms. Hunt remains at Great Oaks Center. She has not been placed because Maryland lacks sufficient community living arrangements,

especially those that are designed to meet the needs of persons with disabilities who need to use a wheelchair.

17. Ms. Hunt brings this action by her next friend, Cristine E. Boswell, who has been an advocate for persons with mental retardation for over 14 years. Ms. Boswell is currently the Executive Director of the Association for Retarded Citizens of Maryland. In the past, she has been the Executive Director of the Denver Association for Retarded Citizens, the Associate Executive Director of the Minneapolis Association for Retarded Citizens, and on the staff of the Minnesota Department of Public Welfare's Mental Retardation Program Office, where she helped develop community day and residential programs for persons with mental retardation.

MATROY FOSTER

18. Matroy Foster is a 71-year-old woman who has been at Great Oaks Center since 1982. Her current diagnoses include mental retardation due to head trauma, seizure disorder, and non-ambulatory. She has normal hearing and vocalizes some sounds.

19. Ms. Foster has suffered serious injury while at Great Oaks Center. Apparently denied the careful lifting and positioning she needs, she has sustained several fractured bones during the past two years. Although she is non-ambulatory, her left leg was broken in February 1990. In April 1991, when Ms. Foster indicated she was in pain, staff discovered that her left hip was broken. In January 1991, she was admitted to the Great Oaks Center infirmary with severe dehydration, acute renal

failure and altered mental status, which resulted from staff's failure to properly feed Ms. Foster and provide her sufficient fluids.

20. While at Great Oaks Center, Ms. Foster has failed to receive necessary habilitative therapy and training consistent with professional judgment. She does not participate in community programming.

21. Ms. Foster brings this action by her next friend, Barbara Nelson, an attorney with expertise in advocacy on behalf of elders and persons with disabilities. Ms. Nelson has served as legal counsel for the United Blind of Minnesota, staff attorney for the American Council of the Blind in Washington, D.C., Assistant Staff Director of the American Bar Association's Commission on Legal Problems of the Elderly, and staff attorney for the Maryland Disability Law Center.

MICHAEL WADE

22. Michael Wade is a 30-year-old man who was been at Great Oaks Center since 1970. He has been in Maryland institutions for persons with developmental disabilities since he was 5 years old. His diagnoses include profound mental retardation, self-injurious behavior and aggression. He is ambulatory, has receptive language skills, follows simple directions, is aware of his environment, has normal hearing and good appetite, and expresses likes and dislikes. He likes to walk, eat, look at magazines, dress himself, and interact with certain staff.

23. Mr. Wade lives in Cottage 4, which is a locked building

housing 26 adult male clients.

24. To prevent him from injuring himself or others, Mr. Wade requires both effective behavioral management and protection from assaults by other residents. (When Mr. Wade engages in self-injurious behavior, it is often following an attack on him by other residents.) Having been denied such necessary care, he has been seriously injured while at Great Oaks Center. For example, on December 12, 1990, he suffered a black eye and multiple fractures to his right upper arm and dislocation of his right shoulder. On December 18, 1990 his left arm was injured because staff allowed Mr. Wade to bang it against a wall, failing to redirect him to a more appropriate activity as required by his behavior program.

(25. On January 1, 1991, his back was scratched and injured by another Great Oaks Center resident. On February 13, 1991, his back was again scratched. On March 2, 1991, he severely cut his head when he banged it on a wall and a chair. On March 23, 1991, he cut his head again when he hit his head on a wall. On May 6, 1991, he was attacked by another resident in a classroom. He then banged his head on the table and cut his forehead. On May 19, 1991, he banged his head and reopened the cut. On June 17, 1991, he banged his head, cutting his right ear and bruising his right shoulder. On July 9, 1991, he cut his right cheek and suffered swelling of his face and forehead.

26. Since at least 1985 Mr. Wade's treating professionals have recommended that he be placed in a community setting.

However, defendants have failed to implement the judgments of the treatment professionals and Mr. Wade remains at Great Oaks Center.

27. Michael Wade brings this action by his next friend, Mark A. Mlawer, an advocate for people with disabilities. Mr. Mlawer has worked for the Massachusetts Department of Mental Health. He is currently the Executive Director of the Maryland Coalition for Integrated Education. In that capacity, he works on behalf of a coalition of parents of students with disabilities and professionals who are seeking to ensure that students with disabilities have the opportunity to be educated in their neighborhood schools with appropriate supports and services.

TIMOTHY WADE

28. Timothy Wade is a 33-year-old man who was admitted to Great Oaks Center in 1975. His current diagnoses include profound mental retardation, aggressive and self-injurious behavior. He is non-verbal and communicates through gestures.

29. Mr. Wade lives in cottage four, which is a locked building housing 26 adult male clients. He shares a bedroom with several other men.

30. As a result of inadequate supervision and behavioral management, Mr. Wade has suffered numerous physical injuries at Great Oaks Center. A 1986 entry in his medical record noted that it is "clear that there is, in general, a lack [of] adequate staff and supervision to effectively provide for the programming needs for this man...It's essential that adequate numbers of

staff be available to provide the support for the programs developed for this client."

31. On October 21, 1989, Mr. Wade struck his forehead on an unused steel bedframe left in his room. Staff had noted the existence of an unused bedframe standing in his room and requested its removal.

32. On March 27, 1990, Mr. Wade was bitten on the forehead by another resident. On November 18, 1990, he was bitten on his arms and hands by another resident while asleep. The person who bit him was a carrier of Hepatitis B. According to staff "closer supervision would have prevented the incident."

33. On May 8, 1991, Mr. Wade received two black eyes. Several other residents in the cottage also were found with black eyes. Staff noted that "closer supervision must be given to prevent incidents, especially at night."

34. While at Great Oaks Center, Mr. Wade became infected with Hepatitis B.

35. The professional staff at Great Oaks Center, since 1985, have been of the opinion that Timothy Wade should be placed in a community residential program that can provide close supervision. However, defendants have failed to develop sufficient appropriate community placements to implement the judgments of the treating professionals and as a result Mr. Wade remains at Great Oaks Center.

36. Timothy Wade brings this action by his next friend, Paul Marchand. For the past 19 years Mr. Marchand has been the

Director of Governmental Affairs of the Association for Retarded Citizens of the United States. In this position he has advocated for federal public policies that promote rights protection and development of community-based services for persons with developmental disabilities. He previously was Executive Director of the State Developmental Disabilities Council for Rhode Island, Chief Executive Officer of the North Rhode Island Association for Retarded Citizens, and a special education teacher in Massachusetts. He is a member of the U.S. Rehabilitation Services Administration facilities task force and the Executive Committee of the President's Commission on Employment of Persons with Disabilities. He was an advisor to the President's Commission on Mental Retardation, and has received the Distinguished Service Award from President Bush for "promoting the dignity, equality, independence and employment of people with disabilities."

JOHN MCCLELLAND

37. John McClelland is 49 years old and has been a resident of Great Oaks Center since 1987. He has spent 40 of his 49 years in Maryland institutions. His current diagnoses include spastic quadriplegia and profound mental retardation. He is non-ambulatory and non-verbal. Although he requires assistance with hygiene and grooming he is able to feed himself.

38. He resides in Cottage C1 and attends a day program at Great Oaks Center. He has little opportunity to participate in community activities.

39. Mr. McClelland has been seriously and repeatedly injured at Great Oaks Center. On or about January 1991, Mr. McClelland was dropped by staff when they were attempting to transfer him from one chair to another. The report of this incident states "Staff used unreasonable force and dumped the client on the wheelchair."

40. In April 1991, Mr. McClelland was bitten by another resident and the skin on his shoulder was broken. Staff were instructed to watch the residents more closely.

41. In May 1991, Mr. McClelland received three scratch marks several inches long from another resident. In June 1991, Mr. McClelland's nose was broken when he hit his face on the floor.

42. Mr. McClelland's training program is inadequate and fails to foster independence and prevent deterioration of existing skills. His most recent plan, dated October 31, 1990, contains activities such as ball rolling that are neither age-appropriate nor functional.

43. Mr. McClelland needs surgery on his foot to make him more mobile and less dependent on use of a wheelchair.

44. The professional staff at Great Oaks Center have determined that Mr. McClelland should be placed in a community residential program. However, defendants have failed to identify or develop such a program and as a result Mr. McClelland remains at Great Oaks Center.

45. Mr. McClelland brings this action through his next

friend, Cristine E. Boswell.

SARAH HORVITZ

46. Sarah Horvitz is a 68-year-old woman who lives in Cottage 2 in Great Oaks Center. She is able to talk, to participate in a conversation, and to enjoy music. She can feed herself. A

47. Ms. Horvitz does not receive active training or treatment while at Great Oaks Center. She is rarely allowed to participate in any activities in the community.

48. Ms. Horvitz has not been provided the close monitoring and supervision that staff recognizes she needs, and as a result Ms. Horowitz has been seriously injured while at Great Oaks Center. In March 1990, her right armpit, breast and upper shoulder were bruised. In the same month, she developed a bedsore (pressure sore) on her buttocks. In July 1990, staff noted that she had open sores on her buttocks.

49. In July 1990, Ms. Horvitz suffered a swollen nose and bruising under her left eye. Staff noted a blister and a scraped area on her thigh. In October 1990, staff noted an ulcer on Ms. Horvitz' left foot. On November 5, 1990, staff noted a cut on her jaw and upper lip with blood running from her mouth. On November 6, 1990, staff found that her left toe was bleeding. In April 1991, staff noted that she suffered a black eye.

50. Her treating professionals have directed that, to prevent skin breakdown, she receive frequent periods of time out of her wheelchair and be repositioned every hour. On many days,

these requirements have not been carried out.

51. In November 1990 and again in January 1991, medical staff recommended that Ms. Horvitz receive a new wheelchair to prevent skin breakdown. As of June 4, 1991, she had not yet received the wheelchair. In February 1991, staff noted that she suffered from skin breakdown and bedsores on her sacral area. Defendants have failed to obtain the wheelchair in a timely manner despite her dire need for proper positioning. Records state that staff are waiting for the client's funds to accumulate.

52. Ms. Horvitz has expressed a desire to leave Great Oaks Center and be moved to the community. However, in contravention of professional standards and norms, she has been denied the opportunity to live in the community.

53. Ms. Horvitz brings this action through her guardian, a sister.

54. All the named plaintiffs are subjected to or at risk of being subjected to the unsafe and dangerous conditions, excessive and unnecessary use of restraints, inadequate training and treatment, discrimination on the basis of disability, and failure to implement professional judgments described below.

V. DEFENDANTS

55. The individual defendants are sued in their official capacity only.

56. The conditions described in this complaint are the result of acts and omissions of the defendants committed under

color of state law.

57. Defendant Lois Meszaros is the Director of the Developmental Disabilities Administration ("DDA") within the Department of Health and Mental Hygiene ("DHMH"). As Director, she is its chief executive and administrative officer and is responsible for insuring that state facilities for persons with developmental disabilities, including Great Oaks Center, are operated in compliance with federal law. She is responsible for submitting to the Secretary of DHMH budget requests for both Great Oaks Center and community-based services.

58. Defendant Nelson Sabatini is the Secretary of DHMH. As Secretary, he is the chief executive and administrative officer of the Department and is responsible for insuring that it, including its DDA which operates Great Oaks Center, fulfills its obligations under federal law. He is charged under state law with providing "services to insure the protection of the individual rights and liberties of individuals with a developmental disability." Md. Health Gen. Code Ann. § 7-303(a)(1)(viii); see also Md. Health Gen. Code Ann. §§ 7-301 et seq. (State Plan requirements).

59. Defendant Allan Radinsky is Administrator of the Great Oaks Center. He is responsible for the operation, administration, and supervision of all aspects of the facility, including the custody, care, treatment and discharge of residents. He is responsible for insuring that the facility operates in compliance with federal law.

60. The State of Maryland is a defendant herein only for purposes of plaintiffs' claims under the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§720, 721 and 794.

VI. UNSAFE AND DANGEROUS CONDITIONS

61. Great Oaks Center is an unsafe and dangerous institution, with a long history of subjecting its residents to severe physical and emotional injury. Defendants have failed to take adequate steps to protect residents of Great Oaks Center from physical injury, abuse by others, self-abuse and neglect. As a result, residents' lives, health and safety are in jeopardy. Residents are at continual risk of dying, breaking limbs, losing their eyesight and choking. In recent years, several residents have needlessly died. One resident died after swallowing a rubber glove, and another died after squeezing her head between the rails of a bed. Many residents have needlessly suffered serious physical and other injuries, including severe cuts and broken bones.

62. Adequate training and treatment programs have not been developed or implemented to deal with residents' aggressive or self-abusive behaviors. Staff are not sufficiently trained to understand the causes of aggressive or self-abusive behavior nor how to intervene and modify it. As a result, self-abusive, aggressive and other interfering behaviors occur virtually unchecked. Resident self-abuse is virtually an hourly occurrence at Great Oaks Center.

63. Staff do not know how to safely lift or move residents

or properly position their limbs and bodies. Residents with severe physical disabilities are fed improperly or too quickly, causing them discomfort, health-related problems, and even life-threatening conditions.

64. Residents do not receive the habilitative therapy, services, training, stimulation and attention they need -- and that professional standards require -- to prevent deterioration of and injury to their bodies, deterioration of and injury to their psychological well-being, and regression in basic life-skills such as mobility, eating and communication. As a result, residents suffer bedsores, contractures and deformities, and residents lose or are at risk of losing basic self-care skills such as dressing, mobility, eating, toileting, and communication.

VII. EXCESSIVE AND UNNECESSARY USE OF RESTRAINTS

65. Residents of Great Oaks Center are subject to undue restraint in their freedom of movement. Residents are excessively and unnecessarily locked behind closed doors. In addition, they are excessively and unnecessarily locked into chairs, wheelchairs, helmets, wrist restraints and papoose boards.

66. Restraints at Great Oaks Center are used in lieu of professionally designed and implemented training programs and when the demands of individual residents clients become overwhelming for Great Oaks' Center's untrained and inadequate staff.

VIII. INADEQUATE TRAINING AND TREATMENT

67. Contrary to basic professional norms, residents are denied necessary and appropriate training and treatment services, including medical and dental care and treatment, nursing care, psychological services, personal care and protection, social work services, physical and occupational therapy, speech pathology and audiology services, recreation, and vocational and rehabilitative training. In many cases, the services denied have been prescribed by treating professionals.

68. Programs of training and treatment at Great Oaks Center exist mainly on paper. Idleness is ubiquitous. Programs prescribed in resident individual habilitation plans are often not implemented.

69. Insofar as training programs exist at Great Oaks Center, they are directed primarily to persons with moderate disabilities, and not to residents with severe and profound retardation and multiple disabilities. Programs, therapies and services for persons with more severe disabilities are virtually nonexistent at Great Oaks Center.

70. The training actually provided residents is woefully inadequate. In day programs, residents spend much of their time repetitively placing nails in cans or removing nails from cans, crushing cans, or unscrewing screws from nuts. A great deal of time is spent sitting idly.

71. Residents are not provided adequate opportunities to develop their vocational, leisure and self-care skills. Although

many persons at Great Oaks Center could participate actively in a vocational program, only the persons with the least severe disabilities are given opportunities to do so. Residents receive little marketable training in job skills. There are few structured recreational or leisure time activities available and residents are forced to spend most of their time indoors. Little age appropriate activity is available for adult residents; they color pictures and pursue other projects designed for children. Education in daily living skills is rarely integrated into the routine of residents in a normalized fashion. Residents who have toileting programs are expected to learn these skills at the staff's convenience, and not necessarily at the time when they would ordinarily go to the bathroom. Programming for many residents does not include adequate opportunities to learn about life in the community. Trips into the community are infrequent and almost always in groups. Many residents have little opportunity to leave the institution's grounds and learn how to live in society.

72. Defendants receive federal Medicaid funds to support the operation of Great Oaks Center, which is classified as an Intermediate Care Facility for the Mentally Retarded ("ICF/MR") under the Medicaid Program.

73. As residents of an ICF/MR, the residents of Great Oaks Center are entitled under federal Medicaid law to receive "active treatment." Active treatment requires the aggressive and consistent implementation of a program of training, treatment,

health services and related services designed to enable residents to function with as much self-determination and independence as possible and to prevent or decelerate residents' regression or loss of skills. Medicaid regulations require that active treatment be implemented pursuant to an individual plan that sets forth measurable goals and objectives.

74. The residents of Great Oaks Center are not receiving the active treatment to which they are entitled. Moreover, residents' individual plans of care are inappropriate. They are not individually tailored to the needs of the resident but consist of boilerplate objectives and methods. Plans are not changed even when they are manifestly unsuccessful in achieving their stated goals. Most residents receive the same generic program.

75. Defendants' failure to provide plaintiffs with programs of training and treatment that meet professional norms has caused residents to experience regression and the loss of skills they possessed when they entered Great Oaks Center or place them at risk of such regression.

IX. DISCRIMINATION ON THE BASIS OF DISABILITY

76. Great Oaks Center is a self-contained facility. All residential and recreational facilities, and most educational, training and medical care programs are provided inside the institution. Residents are segregated in this institution, many for their entire lives.

77. The self-contained environment of Great Oaks Center

militates against community involvement. Residents are isolated from the rest of society and deprived of opportunities to interact with people without disabilities in non-custodial relationships and in normal community settings. Residents are denied the experiences of observing how other people behave and interact and of learning to carry out age-appropriate and acceptable social behavior. Individuals who have more severe disabilities rarely leave the institution.

78. By segregating the residents of Great Oaks Center from the rest of society and congregating them together, defendants have compounded and aggravated residents' self-injurious, self-stimulating or aggressive behaviors, leading to their devaluation as individuals and placing them at increased risk of injury.

79. Great Oaks Center is designed for mass management and custodial convenience. The gross scale of institutional living at Great Oaks Center discourages personal, intimate, primary relationships such as those enjoyed in normal living situations. Living and activity space at Great Oaks Center is inadequate in design, inappropriate in setting and dehumanizing in condition. The physical layouts are devoid of warmth, individuality, or dignity. The physical settings at Great Oaks Center do not permit privacy, individuality, or freedom of association among residents.

80. Residents are not provided the opportunity to experience a variety of environments during the day, as are other citizens, and thus are deprived of important learning

what ways they relate to their friends.

84. Residents are denied training to enable them to utilize hygienic supplies or to exercise self-care skills necessary for acceptance within the larger community, as well as for personal health and comfort.

85. Residents are denied the experiences, interactions, enjoyment, and opportunity for growth and development enjoyed by other members of society. They are denied the developmental opportunities, sensory and intellectual stimulation, comfort and pleasure that community residents receive from their experiences in homes, schools, restaurants, work places and recreational facilities.

86. Residents are denied the dignity and freedom of living in the community as normally as they are able.

87. In a five-year study commissioned by the Secretary of the U.S. Department of Health and Human Services of the growth and development of persons with severe developmental disabilities who were placed in community living arrangements from an institution much like Great Oaks Center, researchers found that:

- a. Persons with severe disabilities placed in community living arrangements increased in skills and development while residents of the institution did not; and
- b. Persons with severe disabilities in community living arrangements were receiving and benefitting from greater amounts of structured services than residents of the institution, even though the cost of serving clients in the community was less than the cost of services in the institution.

The study concluded that persons with severe developmental disabilities who moved from the institution to the community were

it is in the national interest to offer persons with developmental disabilities the opportunity, to the maximum extent feasible ... to live in typical homes and communities where they can exercise their full rights and responsibilities as citizens,

42 U.S.C. § 6000(a)(9), communicate and socialize in age- and culturally-appropriate ways and utilize community resources as other citizens do.

90. Similarly, Maryland has affirmed that it is its policy:

to foster the integration of individuals with developmental disability into the ordinary life of the communities where these individuals live;

to support and provide resources to operate community services to sustain individuals with developmental disability in the community, rather than in institutions; [and]

to require the administration to designate sufficient resources to foster and strengthen a permanent comprehensive system of community programming for individuals with developmental disability as an alternative to institutional care.

Md. Health Gen. Code Ann. § 7-102(4)-(6).

91. Residents of Great Oaks Center have been denied placement in community living arrangements and other community services on the basis of the severity of their disabilities. Residents who have challenging behaviors, physical disabilities or special medical needs are especially likely to be denied community residential and other services.

92. Many residents who have severe developmental disabilities are precluded from leaving the institution and living in community settings because defendants have allowed

deciding whether a resident should be provided community services and in formulating discharge plans and making discharge recommendations; and

f. Failing to implement the judgments of treating professionals that residents should be provided community services.

COUNT II: SOCIAL SECURITY ACT

99. Defendants have violated the rights of plaintiffs and the class secured by Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 and 1396a, and the regulations promulgated pursuant thereto.

COUNT III: REHABILITATION ACT OF 1973

100. Plaintiffs and the class are otherwise "qualified handicapped individuals" under the Rehabilitation Act of 1973, as amended.

101. Defendants have violated the rights of plaintiffs and the class secured by Sections 100, 101 and 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 720, 721 and 794, and the regulations promulgated pursuant thereto.

COUNT IV: EQUAL PROTECTION

102. Defendants have violated the rights of plaintiffs and the class secured by the Equal Protection Clause of the Fourteenth Amendment by establishing, subsidizing, or otherwise sanctioning policies and practices that have excluded, separated, and segregated persons with disabilities from the rest of society.

disabilities."

g. confining plaintiffs in an institution that is unnecessary for their care or treatment instead of discharging them to effective community programs. In so doing, defendants violate the ADA, 42 U.S.C. §§12132 and 12182(b)(1)(iv), and its implementing regulations, 28 CFR §35.130(b)(1)(iv), which prohibit defendants from providing services that are unnecessarily "separate" and not as effective as those they could receive in the community.

h. utilizing criteria or methods of administration which result in institutionalizing plaintiffs against the recommendation of the treating professionals and thus, discriminating against them on the basis of disability in violation of 28 CFR 35.130(b)(3)(i)(ii).

XII. RELIEF REQUESTED

WHEREFORE, plaintiffs respectfully request that this Court certify the class and;

1. Enjoin defendants from admitting persons to Great Oaks Center and from transferring residents of Great Oaks Center to residential settings that do not protect their rights under federal law;

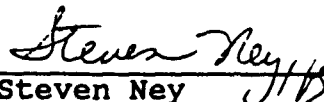
2. Enjoin defendants to transfer residents to community living arrangements in accordance with the recommendations of the treating professionals;

3. Enjoin defendants to cease the violations of law alleged above;

4. Award plaintiffs their costs and reasonable attorneys fees; and

5. Award such other and further relief as this Court
deems necessary and appropriate.

Respectfully submitted,


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