

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT, WAYNE COUNTY
2 Woodward Ave., Detroit, MI 48226
(313) 224-5510

1392

LYNN KOPE, by Her Guardian, SALLY KOPE,
GERARD CIARAMITARO, by His Guardian, SAM
CIARAMITARO, GRACE CIARAMITARO, by Her
Guardian, SAM CIARAMITARO, and DALE VASHER,
by His Guardian, SHARLENE DATINI, indivi-
dually and on behalf of all others similar-
ly situated,

Plaintiffs,

v

31-84774-02 EX-101-
2161 KAYE VERTIG
KOPE SALLY GUARDIAN
VS
WATKINS THOMAS DIRECTOR

THOMAS WATKINS, individually and in his offi-
cial capacity as Director of Michigan Depart-
ment of Mental Health; C. PATRICK BABCOCK,
individually and in his official capacity as
Director of the Michigan Department of Social
Services; RAJ WEINER, individually and in her
official capacity as Acting Director of the
Michigan Department of Public Health; and
JAMES BLANCHARD, individually and in his offi-
cial capacity as Governor, State of Michigan,
jointly and severally,

Defendants.

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Kope v. Watkins

FIRST AMENDED COMPLAINT

MICHIGAN PROTECTION AND ADVOCACY SERVICE
SUITE 423 NEW CENTER BUILDING
7430 SECOND AVENUE
DETROIT, MICHIGAN 48202
(313) 875-2130



MR-MI-001-001

PRELIMINARY STATEMENT

This action is brought on behalf of the residents of Greenbrook Manor, Kalamazoo Total Living Center, Mt. Pleasant Total Living Center, Taylor Total Living Center and Wayne Total Living Center, specialized nursing homes for developmentally disabled persons located in Monroe, Kalamazoo, Mt. Pleasant, Taylor and Wayne, Michigan, respectively, to redress Defendants' deprivations of Plaintiffs' rights, guaranteed by state and federal law, to appropriate habilitation services, ancillary services, and other services designed to improve their overall level of functioning, independence, and integration into the community and to assure their safety and freedom from undue restraint.

JURISDICTION

1. This Court has jurisdiction of Counts I, II, III, IV, VI, VII in this action pursuant to Section 605 of the Revised Judicature Act, MCLA 600.605; and has jurisdiction of Count V pursuant to Section 608 of the Michigan Handicappers' Civil Rights Act, MCLA 37.1606.

NAMED PLAINTIFFS

2. Plaintiff LYNN KOPE is a 25 year old woman who at all times relevant to this Complaint has been a resident of Wayne Total Living Center (hereinafter WTLC), a nursing home located in

the City of Wayne, Wayne County, Michigan. Plaintiff KOPE has resided at WTLC since 1975.

3. Plaintiff KOPE has profound mental retardation, spastic quadriplegia, a seizure disorder, gingival hyperplasia, behavioral problems and is non verbal and non-ambulatory.

4. SALLY KOPE is the duly appointed guardian for Plaintiff KOPE.

5. Plaintiff GERARD CIARAMITARO is a 33 year old man who at all times relevant to this Complaint has been a resident of WTLC, located in the city of Wayne, Wayne County, Michigan. He has resided at WTLC since 1974.

6. Plaintiff GERARD CIARAMITARO has profound mental retardation, a visual impairment, bilateral club feet, spasticity, a seizure disorder, muscle deterioration, severe contractures, behavioral problems and is non-verbal and non-ambulatory.

7. SAM CIARAMITARO is the duly appointed guardian for Plaintiff GERARD CIARAMITARO.

8. Plaintiff GRACE CIARAMITARO is a 38 year old woman, who at all times relevant to this Complaint has been a resident at WTLC, located in the City of Wayne, Wayne County, Michigan. She has resided at WTLC since 1974.

9. Plaintiff GRACE CIARAMITARO has profound mental retardation, spastic quadriplegia, a visual impairment, a seizure disorder, a hearing impairment, bilateral club feet, and behavioral problems and is non-verbal and non-ambulatory.

10. SAM CIARAMITARO is the duly appointed guardian for Plaintiff GRACE CIARAMITARO.

11. Plaintiff DALE VASHER is a 32 year old man who at all times relevant to this Complaint has been a resident at WTLC, located in the City of Wayne, Wayne County, Michigan. He has resided at WTLC since 1974.

12. Plaintiff VASHER has severe mental retardation, spastic quadriplegia, a visual impairment, behavioral problems, and is non-ambulatory.

13. SHARLENE DATINI is the duly appointed guardian for Plaintiff VASHER.

14. Plaintiff ANNE GILMORE is a 32 year old woman who at all times relevant to the Complaint has been a resident of Kalamazoo Total Living Center, a nursing home located in the City of Kalamazoo, Michigan. She has resided at Kalamazoo Total Living Center since 1986. Prior to her transfer to Kalamazoo Total Living Center, Plaintiff Gilmore resided at Mt. Pleasant Total Living Center, a nursing home located in the city of Mt. Pleasant, Michigan.

15. Plaintiff GILMORE has profound mental retardation, a seizure disorder, dorsal kyphoscoliosis, a gastrostomy, self-injurious behaviors, and is non-ambulatory.

16. DOUGLAS GILMORE is the duly appointed guardian for Plaintiff Gilmore

CLASS ALLEGATIONS

17. Plaintiffs KOPE, GERARD CIARAMITARO, GRACE CIARAMITARO, VASHER and GILMORE sue on their own behalf and pursuant to MCR

3.501 on behalf of the class of developmentally disabled persons who are now or who may be residents at Greenbrook Manor, Kalamazoo Total Living Center, Mt. Pleasant Total Living Center, Taylor Total Living Center or Wayne Total Living Center. Almost all of the proposed class members are Medicaid recipients due to the severity of their disabilities and level of income.

18. Greenbrook Manor, Kalamazoo Total Living Center, Mt. Pleasant Total Living Center, Taylor Total Living Center, and Wayne Total Living Center, are nursing homes licensed by the Michigan Department of Public Health and certified as skilled nursing facilities for purposes of participation in the Medicaid and Medicare programs pursuant to the Social Security Act, 42 USC 1395 et seq.; 42 USC 1396, et seq. These facilities serve exclusively persons with developmental disabilities.

19. The Department of Mental Health contracts with Greenbrook Manor, Kalamazoo Total Living Center, Mt. Pleasant Total Living Center, Taylor Total Living Center, and Wayne Total Living Center (hereafter specialized nursing homes) to provide services to the residents of these facilities in addition to those provided by the nursing home.

20. The class Plaintiffs seek to represent includes approximately 535 members and as such, is so numerous that joinder of all members is impracticable.

21. There are questions of law or fact common to the members of the class that predominate over questions affecting individual members, which by way of illustration and not limitation include: whether Defendants have systematically failed to provide

Plaintiffs with adequate habilitation services, ancillary services, and other mental health services; whether this failure violates the Michigan Mental Health Code and the administrative rules promulgated by the Department of Mental Health and the provisions of Title XIX of the Social Security Act (Medicaid) and the regulations promulgated under that Act by the United States Department of Health and Human Services; whether Defendants have systematically failed to protect Plaintiffs' privacy; whether this failure violates Plaintiffs' right to due process under the Michigan and U.S. constitutions; whether Defendants have systematically failed to provide Plaintiffs with adequate habilitation and training and to place Plaintiffs in community residential settings; whether this failure violates Plaintiffs' right to due process under the Michigan and U.S. constitutions; whether Defendants have provided a disproportionately lower level of services to Plaintiffs than they provide to residents of state regional centers for developmental disabilities or to residents of small group homes funded with state funds; whether this disproportionate level of services violates Plaintiffs' rights under the Michigan Handicappers' Civil Rights Act, Section 504 of the Rehabilitation Act of 1973 and the Michigan Department of Mental Health policy.

22. Plaintiffs' claims are typical of the claims of the class.

23. Plaintiffs, as representative of the class, will fairly and adequately assert and protect the interests of the class.

24. Maintenance of this action as a class action will be

superior to other available methods of adjudication in promoting the convenient administration of justice.

DEFENDANTS

25. Defendant THOMAS WATKINS is the Director of Michigan Department of Mental Health, appointed by Defendant GOVERNOR JAMES BLANCHARD pursuant to MCLA 330.1104. Defendant WATKINS is vested with all executive authority within the Department of Mental Health.

26. The Michigan Department of Mental Health (hereafter DMH) is required by law to continually and diligently work to ensure that adequate and appropriate mental health services are available to all citizens throughout the state. MCLA 330.1116.

27. The DMH is required to give priority to the areas of mental retardation and mental illness in its delivery of services. MCLA 330.1116(a).

28. Pursuant to Section 21717 of the Public Health Code, MCLA 333.21717, and Rule 325.21702, the DMH is required to approve the admission of a person with mental retardation to a nursing home in this state and to approve the plan of care for each such person.

29. The DMH, by interagency agreement with the Michigan Department of Social Services (hereafter DSS) and the Michigan Department of Public Health (hereafter DPH), performs semi-annual Level of Care Determinations of each resident in a specialized nursing home, as required under Medicaid regulations, to determine

the proper residential placement for individuals in these facilities.

30. The DMH, by interagency agreement with the DSS, also performs annual Inspections of Care, as required under Medicaid regulations, 42 CFR 456.600, et seq., to determine the adequacy, appropriateness, and quality of all services provided to residents in the specialized nursing homes.

31. Defendant C. PATRICK BABCOCK is the Director of the DSS, the designated "single state agency" for the Medicaid program in the State of Michigan, pursuant to 42 CFR 431.10. As the designated "single state agency" the DSS is responsible for the implementation, operation, and enforcement of the federal Medicaid program under Title XIX of the Social Security Act.

32. Defendant RAJ WEINER is the Acting Director of the DPH, the "state survey agency" designated in the state Medicaid plan to conduct at least annual surveys to determine whether or not long term care facilities are in compliance with the conditions of participation governing Medicaid providers under Title XIX of the Social Security Act. 42 USC 1396a(a)(33).

33. The DPH is authorized by state law, pursuant to the provisions of the Public Health Code, MCLA 380.20101 and MCLA 333.21701, and by virtue of its designation as the "single state agency" in the state Medicaid plan, to enforce the federal and state laws and regulations applicable to nursing homes.

34. Defendant JAMES BLANCHARD is the Governor of the State of Michigan and as such is vested with the executive power of the government of the State of Michigan. Mich. Const. Art. 5 §1. In

accordance with his executive powers, Defendant BLANCHARD is charged with faithfully executing the laws of the State.

STATEMENT OF FACTS - NAMED PLAINTIFFS

35. Plaintiff KOPE has "pica syndrome" which is defined as "a hunger for substances not fit for food."

36. Plaintiff KOPE needs assistance in activities of daily living.

37. Plaintiff KOPE is able to stand with support from staff, can move all extremities and can propel her own wheelchair.

38. Plaintiff KOPE attends school in the community.

39. Plaintiff KOPE has been permitted to ingest inedible substances, sometimes as often as ten times per hour. Plaintiff KOPE is unable to distinguish materials that may be harmful to her and those which are not, and is therefore at risk of ingesting materials that could cause serious injury or a life-threatening condition.

40. Defendants have failed to assure that an effective behavior management plan was implemented to prevent Plaintiff KOPE from ingesting inedible objects.

41. Defendants have failed to assure that Plaintiff KOPE is provided with reasonable training and activities to ensure Plaintiff's safety.

42. Plaintiff GERARD CIARAMITARO engages in the self-injurious behavior of repeatedly hitting his head against his wheelchair and has been forced to wear a helmet, allegedly to

prevent him from injuring himself.

43. Plaintiff GERARD CIARAMITARO needs assistance in activities of daily living.

44. Plaintiff GERARD CIARAMITARO is unable to perform weight bearing during transfers and is dependent on staff for wheelchair mobility.

45. Defendants have failed to assure that an effective behavior management plan was implemented to prevent Plaintiff GERARD CIARAMITARO from engaging in self-injurious behavior.

46. Defendants have failed to assure that Plaintiff GERARD CIARAMITARO is provided with reasonable training and activities to ensure Plaintiff's safety and to facilitate his ability to function free from bodily restraints.

47. Plaintiff GERARD CIARAMITARO's wheelchair does not fit his physical stature which causes him great discomfort.

48. Defendants have failed to assure that Plaintiff GERARD CIARAMITARO is provided with a wheelchair that is suited to his physical stature.

49. Plaintiff GRACE CIARAMITARO engages in the self-injurious behavior of hitting her head with her hand or fist, resulting in numerous bruises on her face. She also bites her hands and chews on her fingers.

50. Plaintiff GRACE CIARAMITARO needs assistance in activities of daily living.

51. Plaintiff GRACE CIARAMITARO is unable to perform weight bearing during transfers and is dependant on staff for wheelchair mobility.

52. Plaintiff GRACE CIARAMITARO has been forced to wear a helmet, allegedly to prevent her from injuring herself.

53. On various occasions WTLC staff has forcibly held Plaintiff GRACE CIARAMITARO's hands down to stop her from hitting herself.

54. Defendants have failed to assure that an effective behavior management plan was implemented to prevent Plaintiff GRACE CIARAMITARO from engaging in self-injurious behavior.

55. Defendants have failed to assure that Plaintiff GRACE CIARAMITARO receives reasonable training and activities to ensure her safety and to facilitate her ability to function free from bodily restraints.

56. Plaintiff VASHER engages in the self-injurious behavior of repeatedly hitting his hands against his head and biting his hands.

57. Plaintiff VASHER is capable of assisting in activities of daily living.

58. Plaintiff VASHER has limited expressive and receptive language and is capable of following three-step directions.

59. Plaintiff VASHER is capable of partial weight bearing transfers and can propel his wheelchair using side rails.

60. On or about 1976, Plaintiff VASHER was placed on the psychotropic medication Mellaril to allegedly remedy Plaintiff's self-injurious behaviors.

61. Plaintiff VASHER's self-injurious behavior did not change while he was on Mellaril.

62. Plaintiff VASHER continued to take Mellaril until on or

about April, 1986.

63. Plaintiff VASHER is forced to wear bandages on his hands, allegedly to prevent him from biting open wounds.

64. Defendants have failed to assure that an effective behavior management plan was implemented to prevent Plaintiff VASHER from engaging in self-injurious behaviors.

65. Defendants have failed to assure that Plaintiff VASHER receives reasonable training and activities to ensure Plaintiff's safety and to facilitate his ability to function free from bodily restraints.

66. Plaintiff GILMORE engages in the self-injurious behavior of rubbing and scratching her face, particularly her eyes, resulting in irritation and infections.

67. A behavior management plan was developed for Plaintiff GILMORE with the goal of eliminating her self-injurious behavior. However, her October, 1987 Plan of Care notes that "due to the intenseness and time involvement required with this program, the Total Living Center staff are not capable of providing it."

68. Plaintiff GILMORE needs assistance in activities of daily living.

69. Plaintiff GILMORE needs physical and occupational therapy services in order to maintain her current abilities and range of motion, and to increase her trunk symmetry and extension. Her October, 1987 Plan of Care recognizes her need for these services, but notes that the facility is "currently unable to provide due to staffing shortage."

70. Plaintiff GILMORE has a limited awareness of her

surroundings and some tactile defensiveness. In order for her to develop a greater awareness of her surroundings and overcome her defensiveness, an intensive schedule of social and sensory stimulation activities is essential.

71. Despite Plaintiff Gilmore's need for an effective behavior management plan, physical and occupational therapy, and an activity program, Defendants have failed to assure that Plaintiff Gilmore receives such services.

STATEMENT OF FACTS - CLASS OF PLAINTIFFS

72. Defendants have failed to assure that the named Plaintiffs and the proposed class members (hereafter Plaintiffs) are provided with a comprehensive program of habilitation services.

73. Defendants have failed to assure that Plaintiffs are provided with a structured daily program of activities. Plaintiffs spend the major portion of their day unattended with no organized activity.

74. Defendants have failed to assure that Plaintiffs' needs for physical therapy are evaluated on an annual basis.

75. Defendants have failed to assure that Plaintiffs who need physical therapy are provided with physical therapy.

76. Defendants have failed to assure that Plaintiffs' needs for occupational therapy are evaluated on an annual basis.

77. Defendants have failed to assure that Plaintiffs who need occupational therapy are provided with occupational therapy.

78. Defendants have failed to assure that Plaintiffs' needs for speech and language therapy are evaluated on an annual basis.

79. Defendants have failed to assure that Plaintiffs who need speech and language therapy are provided with speech and language therapy.

80. Defendants have failed to assure that Plaintiffs are provided with adequate dental care.

81. Defendants have failed to assure that Plaintiffs receive a comprehensive psychological evaluation on an annual basis.

82. Defendants have failed to assure that Plaintiffs who need psychological services, including behavior management services, are provided with psychological services.

83. Defendants have failed to assure that Plaintiffs' levels of adaptive behaviors and self-care skills are evaluated on an annual basis and that plans are developed and implemented to improve Plaintiffs' level of functioning.

84. Defendants have failed to assure that Plaintiffs are provided with regular and frequent opportunities for physical exercise, recreational activity and social interaction.

85. Defendants have failed to assure that Plaintiffs' rights to privacy are protected, such as allowing staff to leave Plaintiffs exposed and unattended in the bathrooms with the doors left open.

86. Defendants have failed to assure that Plaintiffs are provided with adequate and appropriate durable medical equipment suited to their needs, such as wheelchairs, walkers, communication devices, special commodes and adaptive equipment.

87. Defendants have failed to assure that Plaintiffs are provided with proper physical positioning during their daily activities.

88. Defendants have failed to assure that Plaintiffs were placed in community residential settings such as small group homes or foster care (hereinafter community placements) despite the fact that Plaintiffs' plans of care deem them appropriate for community placements.

89. In the past two fiscal years the DMH has sought and received funds to provide services to residents of the specialized nursing homes in addition to those provided by the nursing home.

90. In Fiscal Year 1987, the DMH received an appropriation of \$179,000.00 for ancillary services, which includes physical therapy, speech and language therapy, dental services, occupational therapy, and psychological services, and an appropriation of \$190,000 for durable medical equipment for residents of the specialized nursing homes.

91. In Fiscal Year 1988, the DMH received the same appropriations for ancillary services and durable medical equipment as it received in Fiscal Year 1987. However, due to the DMH's overspending of the Fiscal Year 1987 appropriations, the entire allocation for Fiscal Year 1988 is not available.

92. The DMH does not have funds in its budget to provide habilitation services including day programming, or regular recreational and social activities for Plaintiffs.

93. The DMH does not have funds in its budget to develop community placements for all Plaintiffs who have been determined

to be appropriate for community placement.

94. According to procedures developed by the DMH, each time a determination is made that a resident in a specialized nursing home needs ancillary services or durable medical equipment, a prior authorization request must be sent to the DMH Division of Licensing and Accreditation.

95. On or about January 7, 1988, Mary Schnoor, Acting Director of the Specialized Nursing Home Division of the DMH, sent a memo to the administrators of the specialized nursing homes. The memo reminded the administrators that the funds allocated for durable medical equipment and ancillary services are not unlimited and that the DMH "must assure that the available funds are utilized on a priority basis in order to maximize their positive impact on the quality of clients' lives." The memo further states that each prior authorization request will be evaluated on a priority of service need basis. (Exhibit A, incorporated herein by reference).

96. Approximately 535 persons who reside in the specialized nursing homes are eligible for the ancillary services and durable medical equipment covered under the DMH budget appropriation.

97. The specialized nursing homes receive a per diem rate of approximately \$58.00 for each resident, primarily from federal and state funds under the Medicaid program, pursuant to Title XIX of the Social Security Act, 42 USC 1396, et seq.

98. The DMH budgets a per diem rate of approximately \$125.00 per day for residents in its Alternative Intermediate Services for the Mentally Retarded (AIS/MR) group homes.

99. The per diem rate for the residents of AIS/MR group homes is based on the assumption that only two non-ambulatory persons will be present in a six bed small group home. A non-ambulatory person will typically require a greater level of services than an ambulatory person.

100. If more than two non-ambulatory persons are present in a six bed small group home, the DMH increases the per diem rate.

101. The DMH budgets a per diem rate of approximately \$125.00 per day for residents of Beecher Manor, in Flint, a private non-profit facility that provides, under contract with the DMH, skilled nursing care to developmentally disabled persons.

102. The average per diem rate for residents of the state regional centers for developmentally disabled persons, which the DMH directly operates, is in excess of \$100.00 per day.

103. Approximately 90 per cent of the residents in specialized nursing homes are non-ambulatory.

104. Approximately 80 per cent of the residents in specialized nursing homes are profoundly mentally retarded.

105. Approximately 20 per cent of the residents in DMH funded small group homes are non-ambulatory and approximately 50 per cent of such residents are profoundly mentally retarded.

106. Approximately 35 per cent of the residents in the state regional centers for developmentally disabled persons are non-ambulatory and approximately 70 per cent are profoundly mentally retarded.

107. The per diem rates and other funding which the DMH has made available to residents of state regional centers and small

group homes affords those residents a substantially higher level of habilitation services, ancillary services, durable medical equipment, and recreational and social activities than is afforded to residents of the specialized nursing homes.

108. Defendant BLANCHARD has been on notice of the conditions in the specialized nursing homes and the disparity in levels of services, but he has failed to take action within the scope of his official authority, including but not limited to: seeking additional funding to provide Plaintiffs with appropriate habilitation services, ancillary services, durable medical equipment and recreational and social activities.

109. The Medicaid Assistance Program (Medicaid) is a cooperative federal-state program established under Title XIX of the Social Security Act, 42 USC 1396, et seq.

110. Pursuant to the Act, the designated "single state agency" must submit a State Plan to the U.S. Department of Health and Human Services (hereafter HHS) which details the programs and funding requirements for which Medicaid funds are to be used.

111. Upon approval of the State Plan by HHS, the state becomes entitled to grants of federal funds as reimbursement for a portion of the expenditures made in providing specific types of medical assistance to eligible individuals.

112. Among the services that a state may fund under its Medicaid program are services furnished in three types of long term care facilities: skilled nursing facilities (SNFs), intermediate care facilities (ICFs) and intermediate care facilities for the mentally retarded (ICF/MRs).

113. An SNF is a facility whose primary purpose is to provide skilled nursing care to an individual who needs on a daily basis skilled nursing services or skilled rehabilitation services which cannot be provided on an out-patient basis or in an alternative facility such as an ICF/MR.

114. The facilities in which the plaintiffs reside are certified as SNFs under the Medicaid program. They are referred to as "SNF/MRs" in the Inspection of Care reports prepared by the DMH, but "SNF/MR" is not a recognized facility designation under Medicaid regulations.

115. SNFs are required to develop individual plans of care for the residents to determine what services are required to meet each resident's needs, pursuant to 42 CFR 405.1124.

116. Under the Medicaid regulations an SNF may not accept the admission of a person whose needs cannot be met by the facility or by the persons/agencies with whom the facility contracts or who does not require an SNF level of care.

117. All persons with developmental disabilities can grow and develop through education, training, and various therapies to help them function in society. These needs are addressed through a plan of active treatment. Active treatment as defined in the Medicaid regulations, 42 CFR 435.1009, has as its purpose to assist the individual to function at the greatest physical, intellectual, social or vocational level which he/she can potentially achieve.

118. The Health Care Financing Administration (hereafter HCFA) is the Medicaid policy and enforcement office within HHS.

119. The HCFA has issued policy statements indicating that only developmentally disabled persons whose physical condition necessitates skilled medical care on an inpatient basis should be retained in an SNF and that even when placement in an SNF is appropriate due to the medical needs of the individual, the individual's developmental needs must still be met. HCFA Medicaid Manual §4395.

120. The Plaintiffs are not receiving active treatment as required by Medicaid policies and regulations.

121. In the most recent Level of Care determinations performed by the DMH for each resident of the specialized nursing homes it was determined that at least 30% (approximately 162 out of 535 residents) of the residents required an ICF/MR rather than an SNF level of care.

122. Of those residents who are currently determined to require an ICF/MR Level of Care, approximately 86% had been determined to require an ICF/MR Level of Care in previous determinations.

123. Approximately 49 residents who in the most recent Level of Care determinations were determined by DMH to require an SNF level of care had previously been determined to require an ICF/MR level of care.

124. In performing annual surveys of facilities which participate in the Medicaid program the DPH Long Term Care Survey team is to determine whether a facility meets the standards and conditions of participation specified in the Medicaid regulations, which include the provision of active treatment.

125. Even though the five SNF facilities in which the Plaintiffs reside serve exclusively persons with mental retardation, a qualified mental retardation professional (QMRP) is not routinely a member of the DPH survey team.

126. The DPH survey teams for the specialized nursing homes use a survey form that does not refer to the elements of active treatment, and thus the teams do not determine whether this requirement of care for an individual with developmental disabilities is being met.

127. In performing the annual Inspection of Care (IOC) for each resident of a specialized nursing home the DMH must submit a report to the DSS containing, inter alia, conclusions on whether the services delivered to each resident are adequate and appropriate and whether these services enable each resident to maintain his/her maximum physical, mental, and psychosocial functioning. 42 USC 1396a(a)(26)(B) and (C); 1396a(a)(31)(B) and (C).

128. In many instances the observations contained in the IOC reports demonstrate that the Plaintiffs' active treatment needs are not being met, and yet the report concludes that the services provided in the facility meet the needs of the Plaintiffs.

129. In cases where the IOC report contains a determination that the services in the facility do not meet the needs of the residents, the DMH gives the facility a substantial period of time to submit a Plan of Correction.

130. The Defendants have not developed or implemented any enforcement mechanism to sanction a facility in the event that the

facility fails to take timely and appropriate action to remedy the deficiencies noted in the IOC reports.

131. In performing Level of Care Determinations, Long Term Care Surveys, and Inspections of Care, the Defendants have a inherent conflict of interest in that the DSS, the DPH and the DMH have a significant fiscal interest in obtaining continued Medicaid reimbursement for services provided in the specialized nursing homes.

132. The monitoring and regulation of the specialized nursing homes by the DMH, DSS and DPH is fragmented and uncoordinated.

COUNT I - MENTAL HEALTH CODE AND ADMINISTRATIVE RULES

133. Plaintiffs incorporate by reference Paragraphs 1 to 132 of this Amended Complaint. For purposes of Count I, "Defendants" refers to Defendants WATKINS and BLANCHARD only.

134. WTLC and the other specialized nursing homes with which the DMH contracts for services are facilities within the meaning of the Mental Health Code (hereafter Code), in that they are residential facilities which provide mental health services, are licensed by the state, and are operated under contract with a public agency. MCLA 330.1700(c).

135. Plaintiffs are residents, within the meaning of the code, in that they reside in a "facility" as defined in the Code. MCLA 330.1700(d)

136. The Code provides that a resident in a facility is entitled to mental health services suited to his condition and to

a safe, sanitary, and humane living environment. MCLA 330.1708.

137. The Code requires that each resident shall receive a comprehensive physical and mental examination upon admission and periodically thereafter, but not less often than annually. MCLA 330.1710. This examination serves as the basis for the development of a resident's individualized plan of service. 1979 AC, R 330.7181.

138. The Code requires that an individualized written plan of service be developed for each resident, and further requires that such a plan be kept current and shall be modified when indicated. MCLA 330.1712.

139. DMH Administrative Rule 330.5025 provides that individuals who are admitted to facilities are entitled to the highest possible quality of care and habilitation without regard to race, nationality, religious or political belief, sex, age or handicap. 1981 AACs, R 330.5025.

140. DMH Rule 330.7151(1) provides that a resident has the right to basic human dignity and privacy provided in a manner consistent with the care and treatment setting and is entitled to a humane living environment. 1979 AC, R 330.7151(1).

141. DMH Rule 330.7151 requires that provisions for the safety, sanitation and comfort of the residents comply with standards established by the department and with certain enumerated requirements, including: the provision of facilities and equipment for regular physical exercise and, in the absence of contrary medical considerations, an opportunity to be outdoors at regular and frequent intervals, with supervision as necessary.

1979 AC, R 330.7151.

142. DMH Rule 330.7171 provides that residents are entitled to assistance and training to enable them to exercise maximum capability in personal grooming practices. 1981 AACs, R 330.7171.

143. Pursuant to DMH Rule 330.7185, mental health services suited to a resident's condition and in accordance with the written plan of service, shall include:

- (a) Diagnosis and treatment of disturbances, intellectual deficiencies, biological defects, illnesses, and injuries,
- (b) Protection against communicable disease and personal injury,
- (c) Minimum restriction on movement,
- (d) Habilitation or rehabilitation which maximizes ability to cope with as normal environment as possible and which develops and realizes potential abilities.
- (e) Treatment in the shortest practicable time.

1979 AC, R 330.7185.

144. Pursuant to DMH Rule 330.7195(4) a resident involuntarily admitted or admitted on a formal voluntary or administrative status based on application of a parent, person in loco parentis, or guardian shall be provided treatment and care which consists of not less than:

- (a) Weekly therapeutic consultation with a mental health professional for a documented duration,
- (b) Habilitation or rehabilitation services.

1979 AC, R 330.7195(4).

145. Pursuant to DMH Rule 330.7231(2), a resident has the

right to the least restrictive conditions necessary to achieve the purposes of treatment and habilitation, with due safeguards for safety of persons and property, and to this end, a facility is required to make every attempt to provide maximum freedom and to move residents from segregation from the community to integrated community living. 1986 MR 12, R 330.7231(2).

146. Defendants have failed to provide Plaintiffs with appropriate habilitation services, including:

(a) Development of basic self care skills, such as ambulation, toileting, dressing, grooming, eating, bathing, basic receptive and expressive communication, and dexterity and agility.

(b) Development of advanced daily living skills, such as skills for the procurement of daily living needs (e.g. shopping, food preparation, housekeeping, money management) and social-educational skills (e.g. community resource utilization, use of leisure time).

(c) Development of work related skills such as prevocational work activity, sheltered employment, and supported employment.

147. Defendants have failed to provide Plaintiffs with appropriate psychological services and behavior management services which are designed to reduce or eliminate maladaptive behaviors or self-injurious behaviors.

148. Defendants have failed to provide Plaintiffs with appropriate ancillary services which they need in order to improve their condition and their level of functioning, including physical therapy services, occupational therapy services, dental services and speech and language therapy services.

149. Defendants have failed to provide Plaintiffs with adequate and appropriate durable medical equipment suited to their needs.

150. Defendants have failed to provide Plaintiffs with regular and frequent opportunities for physical exercise, to be out of doors, and for other recreational and social activities.

151. Defendants have failed to place Plaintiffs in appropriate community placements despite qualified professional staff's determination that Plaintiffs are appropriate for community placement, and that community placement would be the least restrictive environment for Plaintiffs.

152. Defendants' failure to provide the habilitation services described in Paragraph 146 violates MCLA 330.1708 and Rules 330.5025, 330.7171, 330.7185 and 330.7195(4).

153. Defendants' failure to provide Plaintiffs with the appropriate psychological services and behavior management services described in Paragraph 147 violates MCLA 330.1708 and Rules 330.5025, 330.7185, and 330.7195(4).

154. Defendants' failure to provide Plaintiffs with appropriate ancillary services and durable medical equipment, described in Paragraphs 148 and 149 violates MCLA 330.1708 and Rules 330.5025, 330.7185, and 330.7195(4).

155. Defendants' failure to provide Plaintiffs with regular and frequent opportunities for physical exercise, to be out of doors, and for other recreational and social activities violates MCLA 330.1708 and Rules 330.5025, 330.7151, 330.7185 and 330.7195(4).

156. Defendants' failure to provide Plaintiffs with comprehensive physical and mental examinations including evaluations for ancillary services, such as physical therapy, occupational therapy, dental services, speech and language therapy and psychological services, on at least an annual basis, violates MCLA 330.1710 and 330.1712.

157. Defendants' failure to place Plaintiffs in community placements violates MCLA 330.1708 and Rule 330.7231(2).

158. Defendants' failure to provide Plaintiffs with the services described in Paragraphs 146 through 157 of this Complaint has caused and is continuing to cause Plaintiffs irreparable harm in that they are being denied services that would allow them to become more independent, to become more integrated into the community, to assure their safety and freedom from undue restraint, and to prevent the loss of previously acquired skills and which would prevent deterioration of their physical and mental health, including increased contractures and disability, loss of adaptive skills, muscle atrophy, and generalized failure to thrive.

COUNT II - UNITED STATES CONSTITUTION

159. Plaintiffs incorporate by reference Paragraphs 1 to 132 of this Amended Complaint. For purposes of Count II, "Defendants" refers to Defendants WATKINS and BLANCHARD only.

160. 42 USC 1983 provides that any person acting under color of state law who deprives any other person of rights guaranteed by

the Constitution or laws of the United States shall be liable to the party injured in an action for legal or equitable relief.

161. The actions of Defendants described in Paragraphs 39, 40, 41, 45, 46, 48, 54, 55, 64, 65, 71-108 and 120-132 of this Complaint were taken under color of state law.

162. Defendants' failure to provide Plaintiffs with adequate habilitation and training as described in Paragraphs 40, 41, 45, 46, 54, 55, 64, 65, 71, 72, 73, 82 and 83 of this Complaint, Defendants' failure to protect Plaintiffs' privacy, as described in Paragraph 85 of this Complaint and Defendants' failure to place the Plaintiffs in community placements, as described in Paragraph 88 violate Plaintiffs' right to due process guaranteed by the 14th Amendment to the U.S. Constitution .

163. Defendants' failure to provide Plaintiffs with the services described in this Complaint has caused and is continuing to cause them irreparable harm in that they are being denied services that would allow them to become more independent, to become more integrated into the community, to assure their safety and freedom from undue restraint, and to prevent the loss of previously acquired skills and which would prevent deterioration of their physical and mental health, including increased contractures and disability, loss of adaptive skills, muscle atrophy, and generalized failure to thrive.

COUNT III - VIOLATION OF MICHIGAN CONSTITUTION

164. Plaintiffs incorporate by reference Paragraphs 1 to 132

of this Amended Complaint. For purposes of Count III, "Defendants" refer to Defendants WATKINS and BLANCHARD only.

165. The Defendants' failure to provide the Plaintiffs with adequate habilitation, ancillary services and other mental health services, the Defendants' failure to protect Plaintiffs' privacy and the Defendants' failure to place the Plaintiffs in community placements, as described in Paragraphs 40, 41, 45, 46, 54, 55, 64, 65, 71-88 of this Complaint violate Plaintiffs' right to due process guaranteed by Article 1, Section 17, of the Michigan Constitution of 1963.

166. Defendants' failure to provide Plaintiffs with the services described in this Complaint has caused and is continuing to cause them irreparable harm in that they are being denied services that would allow them to become more independent, to become more integrated into the community, to assure their safety and freedom from undue restraint, and to prevent the loss of previously acquired skills and which would prevent deterioration of their physical and mental health, including increased contractures and disability, loss of adaptive skills, muscle atrophy, and generalized failure to thrive.

COUNT IV - SECTION 504 OF THE REHABILITATION ACT OF 1973

167. Plaintiffs incorporate by reference Paragraphs 1 to 132 of this Amended Complaint. For purposes of Count IV, "Defendants" refer to Defendants WATKINS and BLANCHARD only.

168. Section 504 of the Rehabilitation Act of 1973, 29 USC

794, requires that:

No otherwise qualified handicapped individual in the United States, as defined in section 706 (7) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

169. The DMH receives federal financial assistance under Title XIX of the Social Security Act (Medicaid), 42 USC 1396 et seq., from the U.S. Department of Health and Human Services and is a "recipient" pursuant to 45 CFR 84.3.

170. Plaintiffs have physical or mental impairments which substantially limit one or more major life activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, and are thus "qualified handicapped persons" pursuant to 45 CFR 84.3(j),(k),(l).

171. Subpart F of the regulations promulgated by the U.S. Department of Health and Human Services applies specifically to health, welfare and other social service programs and activities that receive or benefit from federal financial assistance and to recipients that operate or benefit from federal financial assistance for the operation of such programs or activities. 45 CFR 84.51, et seq.

172. Under Subpart F, a recipient may not, on the basis of handicap:

A. Deny a qualified handicapped person benefits or services;

B. Provide a qualified handicapped person with benefits or services that are not as effective (as defined in §84.4(b) as the benefits or services provided to others.

45 CFR 84.52(a).

173. To be deemed equally effective, aids, benefits and services must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs. 45 CFR 84.4(b)(2).

174. As set forth in Paragraphs 103 through 106 of this Complaint, there is a disproportionately higher percentage of persons who are non-ambulatory and who are profoundly retarded residing in the specialized nursing homes as compared with persons residing in the DMH funded state regional centers or small group homes.

175. The DMH transferred most of Plaintiffs from state regional centers to the specialized nursing homes because of the greater severity of their handicapping conditions and their alleged need for higher levels of medical and nursing care.

176. By virtue of the greater severity of their handicapping conditions, Plaintiffs as a class require a proportionately higher frequency and greater scope of services as compared with the persons residing in the DMH funded state regional centers or small group homes.

177. As a result of Defendants' failure to adequately fund the DMH budget for ancillary services and durable equipment for residents of specialized nursing facilities, Plaintiffs have been

excluded from participation in activities and have been denied services and equipment in violation of Section 504 and the regulations thereunder.

178. Defendants' failure to provide residents of specialized nursing facilities with appropriate habilitation, psychological and other mental health services at a level comparable to that for persons in state regional centers or small group homes has resulted in Plaintiff's exclusion from participation in activities and a denial of services and equipment in violation of Section 504 and the regulations thereunder.

179. More specifically, Defendants' actions have violated Section 504, to wit:

A. Plaintiffs who need physical and occupational therapy are not being provided with such services;

B. Plaintiffs who need speech and language therapy services are not being provided with such services;

C. Plaintiffs who need durable medical equipment or modifications to their current equipment are not being provided with such equipment or modifications;

D. Plaintiffs who need psychological services, including behavior management services to prevent self-injurious behavior, are not being provided with such services;

E. Plaintiffs who need habilitation services in the form of day programming, self care, daily physical activity, or independent skill training, are not being provided with such services;

F. Plaintiffs who are appropriate for community placement

have not been provided with such placements.

180. Defendants' failure to adequately fund the DMH budget for ancillary services and durable equipment for residents of specialized nursing facilities, and their failure to provide appropriate habilitation, psychological and other mental health services at a level comparable to that for persons in state regional centers or small group homes, violates Plaintiffs' rights under Section 504 and the regulations thereunder because they are not afforded benefits or services as effective as those provided to handicapped persons in small group homes and state regional centers.

181. Defendants' failure to adequately fund the DMH budget for ancillary services and durable equipment for residents of specialized nursing facilities, and their failure to provide appropriate habilitation, and other mental health services at a level comparable to that for persons in state regional centers or small group homes, violates Plaintiffs' rights to an equal chance to benefit from a service that the DMH provides to residents in state regional centers or small group homes.

182. Defendants' discriminatory practices have caused and continue to cause Plaintiffs irreparable harm, in that they are denied services that would allow them to become more independent, to become more integrated into the community, to assure their safety and freedom from undue restraint, and to prevent the loss of previously acquired skills and which would prevent deterioration of their physical and mental health, including increased contractures and disability, loss of adaptive skills,

muscle atrophy, and generalized failure to thrive.

COUNT V - MICHIGAN HANDICAPPERS' CIVIL RIGHTS ACT

183. Plaintiffs incorporate by reference Paragraphs 1 to 132 of this Amended Complaint. For purposes of Count V, "Defendants" refers to Defendant WATKINS and BLANCHARD only.

184. The Michigan Handicappers' Civil Rights Act (hereafter MHCRA), MCLA 37.1101, et seq., guarantees the opportunity to obtain full and equal utilization of public services without discrimination because of handicap. MCLA 37.1102(1).

185. Defendant WATKINS constitutes a "person" under the MHCRA. MCLA 37.1103(e).

186. Defendant BLANCHARD constitutes a "person" under the MHCRA. MCLA 37.1103(e).

187. Defendants in their official capacities administer and provide services within the definition of "public service" contained in the MHCRA. MCLA 37.1301(b).

188. Plaintiffs are "handicapped" in that they have determinable physical or mental characteristics which result from disease, injury, congenital condition of birth, or functional disorder which characteristics are unrelated to Plaintiffs' ability to utilize and benefit from Defendants' services. MCLA 37.1103(b), (c), (d).

189. Defendants are prohibited from denying an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a public service

because of a handicap that is unrelated to the individual's ability to utilize and benefit from the services or because of the individuals use of adaptive devices or aids. MCLA 37.1302(a).

190. Plaintiffs' handicapping conditions are unrelated to their ability to utilize and benefit from the public accommodations and public services.

191. Plaintiffs utilize adaptive aids and devices.

192. Defendants have discriminated against Plaintiffs by failing to adequately fund the DMH budget for ancillary services and durable medical equipment for residents of specialized nursing facilities and by failing to provide appropriate habilitation, psychological and other mental health services which they need, thereby denying Plaintiffs the full and equal access to the services Defendants provide to residents of small group homes and state regional centers.

193. Defendants have discriminated against Plaintiffs by failing to adequately fund the DMH budget for ancillary services and durable equipment for residents of specialized nursing facilities and by failing to provide appropriate habilitation, psychological and other mental health services for Plaintiffs at a level comparable to that provided to residents small group homes and regional centers.

194. Defendants' discriminatory actions have caused and continue to cause Plaintiffs irreparable harm, in that Defendants are denying Plaintiffs services that would allow them to become more independent, to become more integrated into the community, to assure their safety and freedom from undue restraint, and to

prevent the loss of previously acquired skills and which would prevent deterioration of their physical and mental health, including increased contractures and disability, loss of adaptive skills, muscle atrophy, and generalized failure to thrive.

COUNT VI - MICHIGAN DEPARTMENT OF MENTAL HEALTH POLICY

195. Plaintiffs incorporate by reference Paragraphs 1 to 132 of this Amended Complaint. For purposes of Count VI, "Defendants" refer to Defendants WATKINS and BLANCHARD only.

196. The DMH is authorized to fulfill the duties and to exercise the powers given to the DMH and which are not otherwise prohibited by law. MCLA 330.1116(1).

197. The DMH is authorized to establish declarations of policy which the DMH intends to follow and which bind the DMH. MCLA 24.203(6).

198. Pursuant to the DMH's general authority to fulfill its duties to recipients and pursuant to its authority to develop policy, the DMH established a policy on non-discrimination in the provision of its services. Public Mental Health Manual, Vol. III, Ch. I, Sec. 004, Subject 0002.

199. The DMH policy referred to in Paragraph 198 above provides:

It is the policy of the Department of Mental Health that:

A. No otherwise qualified person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any mental health programs or related activities on the basis of race, color, national

origin, religion, certain age limitations, sex, marital status, political affiliation, physical or mental handicap, ability or inability to pay, county of residence or sexual orientation.

200. Plaintiffs have handicaps and are handicapped individuals under the DMH policy.

201. The DMH policy defines discrimination as illegal treatment either intentional or unintentional, of a person or group based on physical or medical handicap, including the failure to remedy the effects of past discrimination.

202. The DMH policy further provides that a provider of service must put forth an effective effort to afford handicapped persons an equal chance to benefit from a service, in the most integrated setting appropriate to the handicapped person's needs.

203. Defendants' failure to adequately fund the DMH budget for ancillary services and durable equipment for residents of specialized nursing facilities, and their failure to provide appropriate habilitation, psychological and other mental health services at a level comparable to that for persons in state regional centers or small group homes, has resulted in Plaintiffs' exclusion from participation in mental health programs or related activities in violation of the DMH policy.

204. Defendants' failure to adequately fund the DMH budget for ancillary services and durable equipment for residents of specialized nursing facilities, and their failure to provide appropriate habilitation, psychological and other mental health services at a level comparable to that for persons in state regional centers or small group homes, has denied Plaintiffs' an

equal chance to benefit from a service in the most integrated setting appropriate to their needs.

205. Defendants' discriminatory practices have caused and continue to cause Plaintiffs irreparable harm, in that Defendants are denying Plaintiffs services that would allow them to become more independent, to become more integrated into the community, to assure their safety and freedom from undue restraint, and to prevent the loss of previously acquired skills and which would prevent deterioration of their physical and mental health, including increased contractures and disability, loss of adaptive skills, muscle atrophy, and generalized failure to thrive.

COUNT VII - TITLE XIX OF THE SOCIAL SECURITY ACT

206. Plaintiffs incorporated by reference Paragraphs 1 to 132 of this Amended Complaint.

207. 42 USC 1983 provides that any person acting under color of state law who deprives any other person of rights guaranteed by the Constitution or laws of the United States shall be liable to the party injured in an action for legal or equitable relief.

208. The actions of Defendants described in Paragraphs 39, 40, 41, 45, 46, 48, 54, 55, 64, 65, 71-108 and 120-132 of this Complaint were taken under color of state law.

209. Defendants have violated the Plaintiffs' rights secured by Title XIX of the Social Security Act, 42 USC 1396, et seq. and the corresponding regulations; 42 CFR 405, subpart K; 42 CFR 485.1009, et seq.; 42 CFR 442.1, et seq.; and 42 CFR 456, subparts

E and I by:

A. Failing to adequately review or evaluate the appropriateness of the Plaintiffs' continued residence in SNFs or the feasibility of meeting their needs in more appropriate settings;

B. Failing to determine whether services provided in the SNFs are adequate to promote Plaintiffs' maximum physical, mental and psychosocial functioning;

C. Failing to take timely corrective action for Plaintiffs inappropriately placed in SNFs'

D. Failing to properly evaluate each Plaintiff's need for admission prior to placement in an SNF;

E. Failing to ensure that SNFs where Plaintiffs reside meet standards for Title XIX certification including, but not limited to, the standards for:

- 1) Individualized plans of care, treatment, rehabilitative services and therapies, professionally designed and developed to help each Plaintiff achieve his or her potential;
- 2) Active treatment, including developmental services and therapies required for each person residing in an SNF;
- 3) Health, hygiene and safety; and
- 4) Resident rights, including the right to privacy and the right to be free from abuse and neglect; and

F. Allowing Plaintiffs determined to need an ICF/MR Level of Care to be admitted to or retained in an SNF.

RELIEF

Plaintiffs respectfully request this Court to grant the following Relief:

As to COUNT I - Defendants WATKINS and BLANCHARD

- A. Declare that Defendants have failed to provide Plaintiffs with the appropriate habilitation services;
- B. Declare that Defendants have failed to provide Plaintiffs with appropriate psychological services and behavior management services needed to reduce or eliminate maladaptive behaviors or self-injurious behaviors;
- C. Declare that Defendants have failed to provide Plaintiffs with appropriate ancillary services and durable medical equipment needed to improve Plaintiffs' condition and Plaintiffs' level of functioning;
- D. Declare that Defendants have failed to provide Plaintiffs' with opportunities for regular and frequent recreational and social activities;
- E. Declare that Defendants have failed to place Plaintiffs in community placements;
- F. Declare that Defendants have failed to provide Plaintiffs with comprehensive physical and mental examinations on at least an annual basis;
- G. Declare that Defendants' failure to provide Plaintiffs with services set forth in Paragraphs A - F constitutes irreparable harm to Plaintiffs;
- H. Enter an Order preliminarily and permanently enjoining

Defendants from refusing to provide Plaintiffs with the following:

- 1) Appropriate habilitation services;
- 2) Appropriate psychological services;
- 3) Appropriate ancillary services and durable medical equipment;
- 4) Placement into appropriate community placements;
- 5) Comprehensive physical and mental examinations on at least an annual basis;

As to COUNT II - Defendants WATKINS and BLANCHARD

A. Declare that Defendants have violated Plaintiffs' rights to liberty, freedom from undue restraint, adequate habilitation services, and placement in community residential settings under the 14th Amendment to the United States Constitution;

B. Declare that Defendants have violated Plaintiffs' rights to privacy under the 14th Amendment to the United States Constitution;

C. Enter an Order preliminarily and permanently enjoining Defendants from refusing to provide Plaintiffs with adequate habilitation and other mental health services, from refusing to place the Plaintiffs in community residential settings, and from violating Plaintiffs' right to privacy;

D. Award damages;

As to COUNT III - Defendants WATKINS and BLANCHARD

A. Declare that Defendants have violated Plaintiffs' rights to liberty, freedom from undue restraint adequate habilitation services, and placement in community residential settings under Article 1 Section 17 of the Michigan Constitution of 1963;

B. Declare that Defendants have violated Plaintiffs' rights to privacy under Article 1, Section 17 of the Michigan Constitution of 1963;

C. Enter an Order preliminarily and permanently enjoining Defendants from refusing to provide Plaintiffs with adequate habilitation and other mental health services, from refusing to place the Plaintiffs in community residential settings, and from violating Plaintiffs' right to privacy;

D. Award damages;

As to COUNT IV - Defendants WATKINS and BLANCHARD

A. Declare that Defendants have discriminated against Plaintiffs on the basis of handicap;

B. Enter an Order preliminarily and permanently enjoining Defendants from discriminating against Plaintiffs to wit: refrain from failing to provide Plaintiffs with physical and occupational therapy, refrain from failing to provide speech and language therapy services, refrain from failing to provide durable medical equipment or modification to Plaintiffs' current equipment, refrain from failing to provide psychological services and behavior management services, refrain from failing to provide habilitation services, refrain from failing to place Plaintiffs in small group homes in residential neighborhoods, and to adequately fund the DMH budget for ancillary services and durable medical equipment, habilitation, psychological and other mental health services at the same level of funding provided to residents of small group homes and state regional centers;

C. Award damages;

As to COUNT V - Defendants WATKINS and BLANCHARD

A. Declare that Defendants have discriminated against Plaintiffs on the basis of their handicaps;

B. Enter an Order preliminarily and permanently enjoining Defendants from discriminating against Plaintiffs to wit:

- 1) Refrain from denying Plaintiffs full and equal access to ancillary services, durable medical equipment, habilitation services, psychological and other mental health services currently provided to residents of small group homes and state regional centers;
- 2) Refrain from refusing to adequately fund the DMH budget for ancillary services and durable medical equipment, habilitation, psychological and other mental health services at the same level of funding provided to residents of small group homes and state regional centers;

C. Award compensatory damages;

D. Award exemplary damages;

As to COUNT VI - Defendants WATKINS and BLANCHARD

A. Declare that Defendants have discriminated against Plaintiffs on the basis of their handicaps.

B. Enter an Order preliminarily and permanently enjoining Defendants from discriminating against Plaintiffs, to wit:

- 1) Refrain from excluding Plaintiffs from participating in mental health programs and services which are provided to residents in community placements and state regional centers.

- 2) Refrain from denying Plaintiffs the opportunity to benefit from services provided by the Defendants in the most integrated setting appropriate to their needs, equal to that which is provided to residents in community placements and state regional centers.

As to COUNT VII - All Defendants

A. Declare that Defendants have violated Plaintiffs' rights under Title XIX of the Social Security Act and its implementing regulations;

B. Enter an Order preliminarily and permanently enjoining the Defendants from failing to take the actions described in Paragraph 209 A through E.

C. Enter an Order preliminarily and permanently enjoining the Defendants from allowing those Plaintiffs who are determined to need an ICF/MR level of care to be admitted to or retained in an SNF.

As to All Counts

A. Certify this case as a class action on behalf of all persons who are now or may become residents of Greenbrook Manor, Kalamazoo Total Living Center, Mt. Pleasant Total Living Center, Taylor Total Living Center or Wayne Total Living Center.

B. Enjoin Defendant WATKINS from approving the admission of any person with developmental disabilities into any of the five specialized nursing homes and any state regional centers;

C. Enjoin Defendants from diminishing the level of services and funding for said services provided to recipients of mental health services who are not class members in order to increase the

level of services for Plaintiffs;

D. Enjoin Defendants from failing to provide adequate staffing necessary for provisions of mental health services to Plaintiffs;

E. Enter an Order requiring Defendants to take steps to make available a special advocate to each Plaintiff to assist him or her in securing the rights referred to above;

F. Award costs and attorney fees; and

G. Award any other relief this Court deems just.

Respectfully submitted,

Dated: April 27, 1988

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