

✓✓

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK.SS

SUPERIOR COURT
CIVIL ACTION
NO.

80352

ROBIN McDONALD, FRANCES HILL,
JACQUELINE LOPES, MARY CONNOLLY, et al.,
Plaintiffs,

SUFFOLK, ss

SUPERIOR COURT
DEPARTMENT

v.

Dec 20 19 85

FILED BY LEAVE OF COURT.

Abon 13

MICHAEL V. FAIR,
Individually and in his
official capacity as
Commissioner of Correction of
the Commonwealth of Massachusetts,
his successors in office, agents and employees,

ATTEST:

John Flynn
ASSISTANT CLERK

JOYCE MURPHY,
Individually and in her
official capacity as
Superintendent of MCI Framingham,
her successors in office, agents and employees,

ALFRED F. DESIMONE,
Individually and in his
official capacity as
Director of Medical Services for
the Massachusetts Department of Correction,
his successors in office, agents and employees,

DEC 20 1985
RECEIVED
SECRETARY OF COURT

MARK HABERMAN,
Individually and in his
official capacity as
Director of Medical Services for
MCI Framingham,

JOHN A. DELOGE,
Individually and in his
official capacity as
Physician at MCI Framingham,
Defendants.

McDonald v. Fair

COMPLAINT



PC-MA-001-002

1. This is a class action for declaratory and
injunctive relief and money damages brought by pregnant
inmates at the Massachusetts Correctional Institution at

Framingham, Massachusetts [hereinafter "MCI Framingham"], the correctional facility for women prisoners serving sentences or awaiting trial in Massachusetts. Plaintiffs seek relief from defendants' gross, wanton, systematic and continuing failure to provide adequate prenatal medical care to pregnant inmates confined at MCI Framingham. The representative plaintiffs are proceeding on their own behalf and on behalf of all others similarly situated who are currently, or will be pregnant at MCI Framingham.

2. Pregnant inmates have serious medical needs, both to address their own medical requirements, and to safeguard the future of their unborn children, who have never been charged with nor convicted of any crime. Prisoners who are pregnant while confined at MCI Framingham are totally dependent upon the Department of Correction for their medical care. No health care personnel, other than those sanctioned by the Department, have access to these pregnant women.

3. The moral and legal duty to ensure that pregnant inmates receive competent and adequate medical care lies with the Department of Correction. The failure of the Department of Correction to provide adequate medical care to pregnant inmates of MCI Framingham has subjected the health and well-being of the inmates and their unborn children to grave and immediate danger. The level of care provided constitutes deliberate

indifference to the needs of the pregnant women placed in the Department of Correction's custody and violates federal and state prohibitions against cruel and unusual punishment, fundamental principles of due process and equal protection, and state statutory and regulatory schemes designed to protect the health and welfare of incarcerated women in Massachusetts.

4. Plaintiffs seek relief pursuant to G.L. c. 12, §§11H and 11I and 42 U.S.C. §1983 for violation of rights secured by the Constitution and laws of the Commonwealth and the Constitution of the United States.

Class Allegations

5. The named individual plaintiffs bring this action pursuant to Mass. R. Civ. P. Rules 23 (a) and 23(b) on their own behalves and on behalf of all other women who are, or will be at any time in the future, pregnant while confined at MCI Framingham.

6. The membership of the class is constantly fluctuating. Members leave and new members enter the class on a daily basis. Further, approximately twenty-five persons are members of the class at any given time, thereby making joinder of all members impractical.

7. There are questions of law and of fact common to all members of the class. Furthermore, the questions of law and fact common to the class members predominate over any question affecting any individual class member. A class action is superior to other available methods

for the fair and efficient adjudication of the controversy.

8. Those persons named as representative plaintiffs will fairly and adequately protect the interests of all class members in the prosecution of this action and in the administration of all matters relating to claims stated herein.

9. Defendants have acted or refused to act on grounds generally applicable to the plaintiff class, wherefore final injunctive and declaratory relief with respect to the class as a whole is appropriate. The prosecution of separate actions by individual members of the plaintiff class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct.

Parties

10. Plaintiffs - Robin McDonald, Frances Hill, Jacqueline Lopes, and Mary Connolly - are each pregnant while confined as a prisoner at MCI Framingham pursuant to criminal charges. Each plaintiff has personally been deprived of adequate medical care during the pendency of her pregnancy while confined at MCI Framingham in one or more of the ways detailed below. Each plaintiff has standing to maintain this action in a representative capacity.

11. Defendant Michael V. Fair is Commissioner of

Correction of the Commonwealth of Massachusetts. His responsibilities include but are not limited to the following: the establishment and enforcement of standards relating to the administration of medical services, nutrition, sanitation, safety, care and custody for all persons confined to state and county correctional facilities; the making of necessary rules and regulations to insure compliance with those standards; the execution of contracts and agreements necessary to fulfill the responsibilities of his office, including contracts to provide services to inmates; and the appointment, supervision and training of superintendents and all other officers and employees of the state correctional institutions and of the Massachusetts Department of Correction.

12. Defendant Joyce Murphy is Superintendent of MCI Framingham. Her duties as Superintendent include but are not limited to the following: the administration and supervision of all personnel at MCI Framingham; the care, custody and kind treatment of all MCI Framingham inmates; enforcement of rules and regulations promulgated by the Commissioner of Correction and of rules and regulations promulgated specifically for MCI Framingham; and the provision of adequate medical care to the inmates of MCI Framingham.

13. Defendant Alfred DeSimone is the Director of Health Services for the Massachusetts Department of Correction. His duties as Director of Health Services

include responsibility for the provision and supervision of adequate medical care to inmates in all state correctional institutions, including MCI Framingham.

14. Defendant Mark Haberman is a physician and the Director of Medical Services at MCI Framingham. His duties as Director of Medical Services at MCI Framingham include: responsibility for the quality of medical services at MCI Framingham and the administration of these services; and supervision of the MCI Framingham Health Services Unit staff to ensure that adequate medical care is provided to all inmates, including the pregnant women.

15. Defendant John A. DeLoge is a physician who has responsibility for the prenatal and postpartum medical care of pregnant inmates at MCI Framingham. In such capacity, he is responsible for the quality of prenatal and postpartum medical services rendered to the pregnant inmates at MCI Framingham.

STATEMENT OF FACTS

16. The prenatal and postpartum medical care provided pregnant inmates confined at MCI Framingham is inadequate to meet the serious medical needs of pregnant inmates.

17. The MCI Framingham Health Services Unit is inadequately equipped to care for pregnant women.

18. The pregnant women confined at MCI Framingham have special nutritional and dietary needs, yet are not

provided with and do not receive the diets required by their medical condition nor as prescribed by treating medical personnel. As a consequence, pregnant inmates are not receiving adequate nourishment or nutritional supplementation.

19. Pregnant women housed in the cottages at MCI Framingham can keep food in their housing unit and have the use of a refrigerator and stove in their cottage to supplement their diet. Pregnant women housed in the Health Services Unit, Awaiting Trial Unit, the Module or the Max Unit, or who are in lock-up, are not permitted to keep food in their housing area, and do not have use of a refrigerator or stove.

20. The pregnant inmates at MCI Framingham who are or have been drug users have specialized medical needs during pregnancy which stem from their medical and social histories as drug users. The prenatal medical care at MCI Framingham is insufficient to meet these medical needs and endangers the health and well-being of the pregnant inmates and their unborn children.

21. Intake physical examinations and screenings of all new inmates arriving at MCI Framingham have not been conducted as required to protect the general inmate population from exposure to serious infectious diseases. Inmates with infectious diseases have not been isolated from the general population, nor have they been isolated from pregnant inmates. General population inmates and pregnant inmates, as well as the unborn children of

pregnant inmates, are thereby dangerously exposed to serious communicable diseases in their living, eating, sleeping and working environments at MCI Framingham.

22. The Health Services Unit at MCI Framingham is used to house inmates, which includes new inmates who have not been medically cleared and may have serious infectious diseases. The Health Services Unit is at times used to confine pregnant inmates. As a result, pregnant inmates are being confined with inmates with infectious diseases, thereby exposing both the women and their unborn children to serious communicable diseases.

23. Inmates in cottages and the Module at MCI Framingham have regular out-of-cell exercise. But the inmates, including the pregnant inmates, who are housed in locations other than the cottages and the Module, or who are subject to some form of lock-up, are denied regular out-of-cell exercise.

24. The medical care provided to pregnant inmates at MCI Framingham presents a grave and immediate danger to their physical well-being and endangers their health and the health of their unborn children.

25. Defendants Haberman and DeLoge have failed to take steps to ascertain or to certify to the appropriate board or officer whether the best interests of any inmate about to give birth to a child during her imprisonment or the best interests of her unborn child require that she be permitted to be at liberty or

discharged, as mandated by G.L. c. 127 §142.

26. Defendants have failed to establish procedures to notify pregnant inmates confined at MCI Framingham of the availability of permits to be at liberty or of discharge. Defendants have failed to promulgate standards, regulations or procedures to ensure compliance with the requirements of G.L. c. 127 §142.

27. The defendants are aware of the serious medical needs of the pregnant women at MCI Framingham but have deliberately failed and refused to provide them with adequate medical care.

28. The defendants have acted and are acting under color of state law.

Claims for Relief

1. The failure of defendants to provide adequate prenatal and postpartum medical care including but not limited to adequate diet to the plaintiff class constitutes a dereliction of their duties and deliberate indifference to the serious medical needs of the plaintiff class for medical care. It has created and continues to pose a grave, serious and immediate danger to the health and physical well-being of members of the plaintiff class, constitutes cruel and unusual punishment, and denies members of the plaintiff class their rights to due process of law and equal protection of the law in violation of Arts. 1, 10, 12 and 26 of the Massachusetts Declaration of Rights; the Fifth, Eighth and Fourteenth

Amendments to the United States Constitution; G.L. c. 12, §§11H and 11I; and 42 U.S.C. §1983.

2. The defendants' failure to adequately examine and medically screen new MCI Framingham inmates and to isolate inmates with infectious diseases from the general population and from pregnant inmates constitutes a dereliction of defendants' duties and a violation of plaintiffs' rights provided by Art. 26 of the Massachusetts Declaration of Rights; G.L. c. 127 §§16 and 17; 103 C.M.R. 960.02 and 960.05; the Eighth and Fourteenth Amendments to the United States Constitution; G.L. c. 12, §§11H and 11I; and 42 U.S.C. §1983.

3. The failure of defendants Fair, Murphy and DeSimone to issue rules and promulgate regulations governing the provision of medical services including but not limited to adequate diet to pregnant inmates of MCI Framingham and the taking of physical examinations and screening of MCI Framingham inmates for communicable diseases, and their failure to establish and enforce compliance with standards for the provision of medical care including but not limited to adequate diet to pregnant inmates and the screening of MCI Framingham inmates for communicable diseases constitutes a dereliction of their duties and a violation of G.L. c. 124 §§1(c)(d) and (q); G.L. c. 125 §14; G.L. c. 127 §§16 and 17; G.L. c. 12, §§11H and 11I; and 42 U.S.C. §1983.

4. The failure of defendants Fair and Murphy to provide adequate prenatal and postpartum medical care

including but not limited to adequate diet to the plaintiff class and to adequately examine and medically screen and isolate MCI Framingham inmates with infectious diseases from the inmate class constitutes a dereliction of the duty of kindness which they owe the plaintiff class, in violation of G.L. c. 127 §32; G.L. c. 12, §§11H and 11I; and 42 U.S.C. §1983.

5. The failure of defendants Fair and Murphy to provide regular out-of-cell exercise to the plaintiff class constitutes a violation of their statutory and regulatory duties to the plaintiff class and denies members their rights to equal protection of the law in violation of 103 C.M.R. 421.10(2)(c) and 945.01; 105 C.M.R. 450.310-311; Art.1 of the Massachusetts Declaration of Rights; the Fourteenth Amendment to the United States Constitution; G.L. c. 127 §32; G.L. c. 12, §§11H and 11I; and 42 U.S.C. §1983.

6. The failure of defendants to establish procedures, standards, and regulations for the issuance of permits to be at liberty or discharge of pregnant MCI inmates and to notify inmates of said permits and implement a system for their issuance violates G.L. c. 127 §142; G.L. c. 127 §32; G.L. c. 124 §(c),(d) and (q); G.L. c. 125 §14; G.L. c. 12, §§11H and 11I; and 42 U.S.C. §1983.

Prayers for Relief

WHEREFORE, the plaintiffs, on behalf of themselves and others similarly situated, respectfully request that this Court:

1. Certify this lawsuit as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure on behalf of all persons who are or may become in the future pregnant inmates of MCI Framingham.

2. Declare that the defendants' actions complained of herein violate plaintiffs' rights under the Constitution and laws of the Commonwealth and the Constitution of the United States.

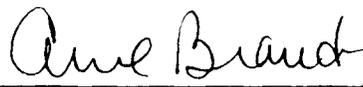
3. Preliminarily and permanently enjoin the defendants, their successors in office, their agents and their employees from continuing to deny plaintiffs adequate prenatal and postpartum medical care.

4. Grant the plaintiffs costs and reasonable attorney's fees in prosecuting this action.

5. Grant such other relief as may be just, equitable and appropriate.

Respectfully submitted,

By their attorneys:



ANNE BRAUDY



BARRY BARKOW

Massachusetts Correctional
Legal Services, Inc.
8 Winter Street, 9th floor
Boston, MA 02108
(617) 482-2773

DATED: December 20, 1985