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

ETHEL WILLIAMS AND JAN WRIGHTSELL,	)	
Plaintiffs,	)	
v.	)	No. 05 C 4673
ROD BLAGOJEVICH, et al.,	)	Judge Hart
Defendants.	)	

DEFENDANTS' ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

The defendants, Dr. Carol L. Adams, Dr. Lorrie Stone, Dr. Eric E. Whitaker, and Barry S. Maram, by their attorney, Lisa Madigan, Attorney General of Illinois, hereby answer plaintiffs' first amended complaint as follows:

Preliminary Statement

1. Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131, 12132, prohibits discrimination against individuals with disabilities. The United States Department of Justice has promulgated regulations under Title II stating that "a public entity shall administer services, programs, and activities *in the most integrated setting appropriate to the needs* of qualified individuals with disabilities." *See* 28 C.F.R. § 35.130(d) (emphasis added). Similarly, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, provides that no person with a disability shall "solely by reason of his or her disability, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

ANSWER: Defendants admit that paragraph 1 contains accurate partial quotations from various federal statutes and regulations.

2. In *Olmstead v. L.C.*, 527 U.S. 581 (1999) ("*Olmstead*"), the U.S. Supreme Court held that disability-based discrimination includes placing people with mental illness in "unjustified isolation."

ANSWER: Defendants admit Olmstead discussed the fact that discrimination can include placing mentally ill persons in unjustified isolation. Defendants deny this statement fully states

the entire holding of Olmstead.

3. This action is brought to compel Defendants to comply with these mandates with regard to Plaintiffs and those similarly situated. Plaintiffs are currently housed in private, intermediate care nursing homes classified as Institutions for Mental Diseases ("IMDs"), which are designed to warehouse -- often for private profit -- large numbers of people with mental illness in a segregated setting.[1]

ANSWER: Defendants deny they are violating federal mandates. Defendants admit the named plaintiffs reside in nursing homes classified as IMDs. (IMDs are nursing homes with a certain statistical percentage of residents with mental illness, and that percentage determines whether there is a federal match for Medicaid eligible residents). Defendants deny the characterization that IMDs "warehouse" people with mental illness in segregated settings.

4. Defendants have failed to assure that Plaintiffs, and those similarly situated, are placed in a more integrated setting where they could lead more independent and more productive lives within the community.

ANSWER: Defendants deny the allegations of paragraph 4.

5. More than five thousand individuals with psychiatric disabilities live in privately-owned IMDs in Illinois. These IMDs house dozens and often hundreds of people into the same building. They needlessly warehouse large numbers of people who could be served at the same or less cost to the State in far more integrated settings in their communities. The nursing home structure of the IMDs deprives residents of countless liberties and choices most citizens take for granted, such as the opportunity to read a book in private, to choose what to have for dinner, to decide when to wake up in the morning, and to come and go when desired. The IMDs range from cold and institutional to chaotic, unclean and unsafe. Few provide adequate staffing, psychiatric treatment, therapeutic activities or social rehabilitation. People frequently stay in IMDs only because they have nowhere else to go, a result of the Defendants' longstanding neglect of its basic obligations under the ADA.

ANSWER: Defendants admit that there are several thousand individuals with psychiatric disabilities living in privately-owned IMDs in Illinois, though the exact number is subject to change at any given time, and not all IMD residents are Medicaid patients. The defendants admit that some IMDs house dozens or hundreds of people. Defendants deny the characterization that

[1] Institutions for Mental Diseases ("IMDs") are defined by Title XIX of the Social Security Act, which prohibits federal Medicaid funding for IMD residents between 22 and 64 years old. *See Infra* ¶ 15.

IMDs "warehouse" people. As to the allegations of the third sentence, defendants admit that to the extent all nursing homes are by definition institutional settings, they may impose certain rules on the residents. Defendants have insufficient knowledge or information sufficient to form a belief as to the allegations of the remaining allegations of the third sentence and the fourth and fifth sentences. Defendants deny the allegations of the last sentence.

6. Plaintiffs, and those similarly situated, continue to languish in the segregated setting of the IMDs, despite the fact that equally affordable and more integrated residential settings exist and/or could be made available. Such residential settings would more appropriately meet Plaintiffs' needs.

ANSWER: Defendants deny the allegations of paragraph 6 to the extent it characterizes IMDs as "segregated." Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 6.

7. Defendants have violated Title II of the ADA and Section 504 of the Rehabilitation Act by failing to assure that their services are administered to Plaintiffs in the most integrated setting appropriate to their needs. Instead, they have isolated and institutionalized Plaintiffs, and those similarly situated, in IMDs.

ANSWER: Defendants deny the allegations of paragraph 7.

Nature and Statutory Basis of Action

8. This action includes claims for violation of Title II of the ADA, 42 U.S.C. §§ 12131, 12132, which prohibits state and local government entities from discriminating against individuals with disabilities.

ANSWER: Defendants admit the complaint includes claims for alleged violations of the ADA.

9. This action also includes claims for violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, which prohibits recipients of federal funding from discriminating against individuals with disabilities.

ANSWER: Defendants admit the complaint includes claims for alleged violations of Section 504 of the Rehabilitation Act.

Parties

10. Named Plaintiff Ethel Williams has been a resident of an Illinois IMD (Monroe Pavilion) for approximately thirteen years. Ms. Williams has been diagnosed with bipolar disorder. She is alert, active, and attends an occupational day program five days a week. Ms. Williams maintains close contact with her children and grandchildren. She also spends her weekends with her brother and sister-in-law, where she takes her medication independent of supervision.

ANSWER: Defendants admit Ms. Williams has been a resident of Monroe Pavilion for a number of years, and has been diagnosed with bipolar disorder and that, according to records, she has attended a day program and visits certain family members on weekends. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 10.

11. Named Plaintiff Jan Wrightsell has been a resident of an Illinois IMD (Monroe Pavilion) since early 2002. Ms. Wrightsell has been diagnosed with schizophrenia and has a history of major recurrent depression. She is alert and active; in fact, she currently cooks for staff and fellow members of an occupational day program, which she attends five days a week. Ms. Wrightsell maintains close contact with her family, and has substantial prior work experience as a sales clerk. She is well-educated and enjoys reading, writing short stories and composing poetry. Interacting with animals and pets is one of her favorite leisure activities.

ANSWER: Defendants admit Ms. Wrightsell has been a resident of Monroe Pavilion since 2002 and has been diagnosed with schizophrenia and major depression. Defendants admit that, according to records, she has attended a day program outside of Monroe Pavilion. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 11.

12. Named Plaintiff Donell Hall has been a resident of an Illinois IMD (Greenwood Care) for approximately twelve years. Mr. Hall has been diagnosed with bipolar disorder and schizophrenia. Mr. Hall is alert and active; in fact, he formerly served in the United States Army, from which he received an honorable discharge. He currently works at Anixter Center, a day program which he attends five days a week.

ANSWER: Defendants admits Donnell Hall has been a resident of Greenwood Care for some years and has been diagnosed with schizophrenia. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 12.

13. Named Plaintiff Edward Brandon has been a resident of an Illinois IMD (Wilson

Care) for approximately two years. Mr. Brandon has been diagnosed with schizophrenia. Mr. Brandon is alert and active. Mr. Brandon currently works five days a week at the Anixter Center, his day program, where he buses tables. He maintains close contact with his grandmother and a cousin.

ANSWER: Defendants admit Edward Brandon has been a resident of Wilson Care for some years and has been diagnosed with schizophrenia. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 13.

14. Plaintiffs, and those similarly situated, are Illinois residents who have mental illnesses that substantially limit their ability to perform major life activities. They also have a record of such mental illnesses, and are regarded by Defendants as having such mental illnesses. They are therefore individuals with disabilities for purposes of the ADA and the Rehabilitation Act. 42 U.S.C. § 12102, 29 U.S.C. § 705(20).

ANSWER: Defendants admit the four named plaintiffs have a record of mental illness and as such would be considered individuals with disabilities.

15. Plaintiffs and those similarly situated are currently housed in intermediate care nursing homes classified by the Illinois Department of Healthcare and Family Services ("DHFS") (formerly the Illinois Department of Public Aid) as "IMDs." This classification is based on the fact that these are institutions with more than sixteen beds that are primarily engaged in providing diagnosis, treatment or care of persons with mental disabilities. 42 U.S.C. § 1396d(i). Federal law prohibits Defendants from receiving any federal Medicaid reimbursement for the care of lMD residents, aged 22 to 64, and Defendants must therefore pay for their IMD placements solely out of state funds. Virtually all IMD residents receive Supplemental Security Income ("SSI"). SSI recipients must contribute all but thirty dollars ($30) of their monthly SSI checks directly to the IMD operators. DHFS funds the remaining expenses associated with Plaintiffs' shelter and board at the IMD.

ANSWER: Defendants admit the allegations of the first three sentences of paragraph 15, and the last sentence. IMDs are not funded by the state directly, but state funds do reimburse certain expenses for certain residents. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations concerning SSI contributions each resident is required to make.

16. Defendant Rod Blagojevich is the Governor of the State of Illinois, a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1). Governor Blagojevich is ultimately responsible for ensuring that Illinois operates its service systems in conformity with the ADA and the Rehabilitation Act. 20 ILL. COMP. STAT. 2407/20(c). He is sued in his official capacity.

ANSWER: Defendants admit Rod Blagojevich is Governor of the State of Illinois, and has all duties in that position as are imposed by law, and admit that the State is covered by Title II of the ADA.

17. Defendant Carol L. Adams is the Secretary of the Illinois Department of Human Services ("DHS"), the state agency responsible for assisting Illinois residents in achieving self-sufficiency, independence and health to the maximum extent possible by providing integrated family-oriented services, promoting prevention and establishing measurable outcomes in partnership with communities. DHS advertises itself as Illinois' largest agency, employing more than 15,000 people. It has an annual budget of nearly five billion dollars. DHS is a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1). DHS is the recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Carol L. Adams is responsible for the operation and administration of DHS and is ultimately responsible for ensuring that DHS provides services in conformity with the ADA and the Rehabilitation Act. 20 ILL. COMP. STAT. 2407/20(c). She is being sued in her official capacity.

ANSWER: Defendants admit Dr. Adams is Secretary of DHS. Defendants admit that DHS is a statutorily-created public entity that provides services for persons in Illinois with mental illness as specified under Illinois law and as funded by the legislature. Defendants clarify that the phrase “to help to achiev[e] self-sufficiency, independence and health to the maximum extent possible” is a description of the overall mission of DHS as to all Illinois families, which includes persons with mental illness. Defendants admit that Dr. Adams, as a state official, is responsible for the operation and administration of DHS and oversees the compliance of DHS with the ADA and Rehabilitation Act as they apply to DHS. Defendants admit that DHS’ website describes DHS as Illinois’ largest agency, employing more than 15,000 people. Defendants admit that Dr. Adams is being sued in her official capacity. Defendants deny the remaining allegations of paragraph 17.

18. Defendant Lorrie Stone is the Director of the Division of Mental Health ("DMH"), the division of DHS responsible for helping to maximize community supports and develop skills for persons with serious mental illness. DMH is responsible for administering mental health screening and assessment of individuals with mental disabilities considered for placement in nursing homes. DMH is responsible for the placement of individuals with mental illness in an appropriate facility or program. DMH is the recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. DMH is a public entity subject to the requirements of Title II of the ADA, 42 U.S.C. § 12131. Dr. Stone is responsible for the operation and administration of DMH and for ensuring that DMH, as the division of DHS responsible for providing residential and mental health services to people with mental illness, operates in conformity with the ADA and the Rehabilitation Act. She is being sued in her official capacity.

ANSWER: Defendants admit that Dr. Stone is the Director of DHS' Division of Mental Health ("DMH"). Pursuant to HFS rules, DMH, through local pre-admission screening ("PAS") agents, determines whether a person is eligible for a nursing home level of care. Defendants admit that DMH is the recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act and admit that DMH, as a subdivision of DHS, is a statutorily-created public entity subject to the requirements of Title II of the ADA. Defendants admit that Dr. Stone is responsible for the operation and administration of DMH and for overseeing the compliance of DMH with the ADA and Rehabilitation Act as they apply to DMH. Defendants admit that Dr. Stone is being sued in her official capacity. Defendants deny the remaining allegations of paragraph 18.

19. Defendant Eric E. Whitaker, M.D., is the Director of the Illinois Department of Public Health ("DPH"), the state agency responsible for licensing, regulating and inspecting all nursing homes, including IMDs, in the state of Illinois. DPH is responsible for certifying these facilities for participation in federal payment reimbursement: programs. DPH is also responsible for ensuring that persons with mental illness are appropriately screened and placed in nursing homes, and receive discharge planning. 77 Ill Admin. Code §§300.4010, 300.4060; 210 ILL. COMP. STAT. 45/3-202.2. DPH is a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1). DPH is the recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. DPH's regulations permit the placement of an individual with mental illness in a nursing home, including an IMD, "for a medical reason directly related to the person's diagnosis of serious mental illness, such as medication management." 77 Ill. Admin. Code § 300.4000(c). Dr. Whitaker is being sued in his official capacity.

ANSWER: Defendants admit the allegations of the first sentence of paragraph 14. Defendants admit that DPH sets criteria for the regulation and inspection of nursing homes, but deny the law makes DPH "responsible for ensuring" that nursing homes screen and discharge patients appropriately. Defendants admit the remaining allegations of paragraph 19.

20. Defendant Barry S. Maram is the Director of the Illinois Department of Healthcare and Family Services ("DHFS"), the state agency responsible for providing health care coverage for the citizens of Illinois and for administering medical assistance programs and other fiscal programs. DHFS funds IMDs for resident services, including assessment, care planning, discharge planning, and treatment. 89 Ill. Admin. Code § 145.20, subchapter d; 305 ILL. COMP. STAT. 5/5-5.5. DHFS is a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1). DHFS is the recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Barry S. Maram is responsible for operation and administration of DHFS and for ensuring that DHFS operates in conformity with the ADA and the Rehabilitation Act. He is being sued in his official capacity.

ANSWER: Defendants admit the allegations of the first sentence. Defendants deny DHFS

funds IMDs directly; it reimburses IMDs for eligible residents, in the same manner as other nursing homes. Defendants admit the remaining allegations of paragraph 20.

Class Action Allegations

21. The named Plaintiffs bring this action as a class action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

ANSWER: Defendants admit that plaintiffs have brought this case as a class action.

22. The class of individuals that the named Plaintiffs seek to represent consist of those persons in Illinois who (1) have a mental illness; (2) with appropriate supports and services, could live in the community; and (3) are institutionalized in privately-owned IMDs.

ANSWER: Defendants admit that plaintiffs are seeking to represent a class as defined in paragraph 22. Defendants deny the case should be a class action.

23. The class is so numerous that joinder of all Plaintiffs is impracticable. The exact number of individuals in the class is not known to Plaintiffs, but is believed to be in the thousands.

ANSWER: Defendants admit that there are thousands of residents in IMDs, and deny the remaining allegations of paragraph 23.

24. The claims of the named Plaintiffs are common to those of the class and raise common issues of fact and law, including, among others: whether Defendants adequately determine whether class members are eligible for community services; whether Defendants adequately inform IMD residents of their right to community services; whether Defendants are providing services to mentally ill individuals in the most integrated setting appropriate to their needs; whether Defendants have a comprehensive, effectively working plan for achieving that goal; whether Defendants efficiently administer a waiting list for community services that allows individuals to move out of IMDs and into more integrated settings at a reasonable pace; and whether Defendants violate the Americans with Disabilities Act and Section 504 of the Rehabilitation Act by failing to provide community-based services to qualified individuals.

ANSWER: Defendants deny the allegations of paragraph 24.

25. Plaintiffs' claims that Defendants have failed to administer the state's mental

health programs so as to provide services in the most integrated setting appropriate to their needs are typical of the claims of the class.

ANSWER: Defendants deny the allegations of paragraph 25.

26. Plaintiffs will fairly and adequately protect the interests of the class because they suffer from deprivations identical to those of the class members and have been denied the same federal rights that they seek to enforce on behalf of the other class members, many of whom are unable to pursue claims on their own behalf as a result of their disabilities, their limited financial resources, and/or the actions of the Defendants to deprive them of their rights. Plaintiffs' interests in obtaining injunctive relief for the violations of their legal rights and privileges are consistent with and not antagonistic to those of any person within the class. Furthermore, Plaintiffs' counsel has extensive experience in the areas of class action litigation and civil rights laws concerning people with disabilities.

ANSWER: Defendants admit plaintiffs' counsel has experience in the area of class action and civil rights litigation. Defendants deny the remaining allegations of paragraph 26.

27. Defendants have acted or refused to act on grounds generally applicable to all members of the class by unnecessarily segregating class members. For example, Defendants have failed to inform class members of their right to community services, failed to provide them with services in the most integrated setting appropriate to their needs, and failed to provide services with reasonable promptness. Therefore, declaratory and injunctive relief with respect to the entire class is appropriate.

ANSWER: Defendants deny the allegations of paragraph 27.

Jurisdiction and Venue

28. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 for civil actions arising under the laws of the United States and 28 U.S.C. § 1343 for actions arising under laws providing for the protection of civil rights.

ANSWER: Defendants admit the allegations of paragraph 28.

29. Venue in the Northern District of Illinois is proper under 28 U.S.C. § 1391, as it is the judicial district in which a substantial portion of the events or omissions giving rise to these claims occurred.

ANSWER: Defendants admit the allegations of paragraph 29.

30. Declaratory and injunctive relief are sought under 28 U.S.C. § 2201 *et seq*.

ANSWER: Defendants admit the allegations of paragraph 30.

Background

31. Beginning in the late 1960s the State of Illinois began releasing thousands of individuals with mental illness from its psychiatric institutions. As this "de-institutionalization" progressed, however, the state failed to create and develop adequate community housing and community services for large numbers of "de-institutionalized" individuals. Instead, the state funneled funds to nursing home operators who profited from the large numbers of mentally ill individuals recently de-institutionalized. Throughout the 1970s and 1980s, nursing home operators opened up large facilities ("IMDs") designed - often for profit - to house these individuals, oftentimes in settings nearly as segregated and restrictive as the state psychiatric institutions they had just exited. Today, individuals with mental illness continue to be discharged from psychiatric hospitals into these restrictive facilities, where they continue to be needlessly segregated from society-at-large. This segregation occurs under the supervision of state agencies which, rather than helping re-integrate these individuals back into their communities by funding community-based programming, endorse and fund the IMDs. These IMDs do not prepare their residents to live independently and deny residents privacy and control over their lives. In many cases, the choice for persons with mental illness is between residence in an IMD-and compliance with its restrictive and controlling environment-or homelessness.

ANSWER: Defendants admit that there was a de-institutionalization of persons from state mental hospitals, and defendants admit that mentally ill persons reside in IMDs. Defendants deny the remaining allegations of paragraph 31.

32. Some fortunate individuals are discharged from psychiatric hospitals and placed in residential programs that are designed to help them achieve independence and manage their illness. Many others, however, like Plaintiffs and those similarly situated, are instead discharged to nursing homes, many of which are IMDs. In most Illinois nursing homes designated as IMDs, virtually all IMD residents have been diagnosed with mental illness.

ANSWER: Defendants admit some mentally ill persons are discharged to residential programs and others to IMDs. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 32.

33. Federal law prohibits Medicaid reimbursement to any individual who is older than 21 years of age and under 65 years of age and who is a resident of an IMD (42 U.S.C. § 1396d(a)(1), (2), (4)). Plaintiffs and class members who receive SSI are required to contribute all but thirty dollars ($30) of their monthly SSI check directly to the IMD operators to be used for

their shelter and board. DHFS funds the remaining expenses associated with Plaintiffs' support and housing at the IMD.

ANSWER: Defendants admit the allegations of the first sentence of paragraph 33. Defendants admit that, as with any Medicaid patient, plaintiffs contribute their income to the cost of their per diem charges excluding $30. Defendants admit the allegations of the third sentence in that DHFS provides reimbursement for eligible residents for services provided to residents, as required by law.

34. Thus, the State of Illinois is not reimbursed by the federal government for serving residents between the ages of 22 and 64 in IMDs. However, the State of Illinois would receive significant federal reimbursement for serving these same individuals in the community. If the current system were altered, the savings to the State of Illinois would be immense.

ANSWER: Defendants admit the allegations of the first sentence of paragraph 34. Defendants admit that individuals served in the community may be eligible for federal assistance if the federal government permits home and community waivers. Defendants deny the general characterization that savings would be "immense", because an individual's ability to live more independently and the type of services required would determine how much savings, if any, there would be.

35. Defendants have failed to integrate the state's mental health system by failing to develop and fund community alternatives. Many lMD residents could be served in community-integrated settings; however, as a practical matter, the choice most residents face is either an lMD or homelessness. Because most of their money - including money earned by those working at jobs outside the IMDs - goes into the IMD operators' pockets, IMD residents have little to no hope to save enough money to move to any other place. Most residents of IMDs remain there for years, because they are provided few opportunities to obtain services in more integrated settings and because they are provided few rehabilitation services to enable them to become more independent within the surrounding community.

ANSWER: Defendants deny the allegations of the first sentence of paragraph 35. Because of their sweeping generality, defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 35.

36. Instead of serving individuals with mental illness in more integrated settings, Defendants continue to fund and operate a mental health system that segregates these individuals and, in many cases, restricts their access to the outside world.

ANSWER: Defendants deny the allegations of paragraph 36.

Facts

37. Illinois has historically provided, and currently provides, inpatient hospitalization to individuals with mental illness in public and private psychiatric hospitals.

ANSWER: Defendants admit the allegations of paragraph 37.

38. Some individuals discharged from psychiatric hospitals return home to family or friends. Others are discharged to various community residential programs for individuals with mental illness.

ANSWER: Defendants admit the allegations of paragraph 38.

39. In many of these residential programs, individuals live in their own apartments with greater privacy and with a greater choice of activities than now found in the IMDs. Individuals in community programs sometimes live in integrated buildings with individuals who do not have mental illnesses. They usually are able to receive and entertain visitors and communicate by phone in privacy. Individuals in community programs go to stores to shop for food and other necessities. Most of these individuals may go to doctors of their choice, as well as engage in social activities of their choice. They tend to these and other daily needs to the degree they are able, with supportive services provided by case managers. These programs are designed to foster independence and to enable individuals to become as self-sufficient as possible. Such programs are generally known as "supported housing." Unlike IMDs, they are not institutional in character.

ANSWER: Defendants admit there are “supported housing” programs of the type described in paragraph 39.

40. When state agencies fail to develop or fund community services, individuals with serious mental illness are discharged to nursing homes, including IMDs.

ANSWER: Defendants deny the allegations of paragraph 40.

Institutions for Mental Diseases ("IMDs")

41. The Named Plaintiffs and class members are currently housed in intermediate-care nursing homes classified as "IMDs." Most Illinois IMDs - of which there are approximately twenty seven - house over one hundred residents each. Virtually all IMD residents have been diagnosed with mental illness. Common diagnoses include bipolar disorder, schizophrenia and major recurrent depression.

ANSWER: Defendants admit the allegations of paragraph 41.

42. There is insufficient capacity and long waiting periods for admission into community residential programs, including supported housing, so people with serious mental illness are inappropriately discharged from psychiatric hospitals to IMDs. The decision to discharge individuals such as Plaintiffs and those similarly situated to an IMD, as opposed to supported housing, is not based on any relevant treatment criteria or diagnosis, but simply on the lack of availability of appropriate alternatives.

ANSWER: Defendants admit that there are shortages of community residential programs and supported housing capacity for people with serious mental illness. Defendants deny the remaining allegations of paragraph 42.

43. Once individuals, such as Plaintiffs, are placed in an IMD, opportunities for discharge to supported housing are rare.

ANSWER: Defendants deny the allegations of paragraph 43.

44. Most IMDs provide only beds, meals, and spartan rehabilitative services. For Plaintiffs and virtually all class members, the services provided by the IMDs could be better provided in a more integrated, community residential program.

ANSWER: Defendants deny the allegations of paragraph 44.

45. IMDs place many limitations on residents' autonomy and privacy. Residents are subjected to a highly regimented lifestyle in which most daily activities are conducted in one place in the company of large numbers of other individuals with mental illness, and which is characterized by restrictive rules and policies. In contrast, the more integrated community residential programs for individuals with mental illness afford residents much more choice, freedom and privacy, as well as the opportunity to maintain family relationships and to interact with and form friendships with people who do not have mental illness.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 45.

46. Meals at IMDs are provided with little choice. Typically, well over one hundred individuals share access to a single common area. Residents must line up for meals and for medication, which is only dispensed at specific times in the common areas.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 46.

47. IMDs provide very few recreational or other activities geared toward helping residents gain independence. Residents spend hours watching television in a common room or smoking cigarettes in a smoking room during the winter or outside on the sidewalk-beside the facility -when the weather allows. Residents wander aimlessly in and out of the common room and smoking room with nothing to do for the majority of the day. There are some activities on weekday afternoons that purportedly develop residents' practical skills; however, these activities are minimal, if not altogether ineffective. Some residents are able to attend day programs outside the facility, where they may learn skills to help them become more independent and more productive members of the community. However, at the end of the day, these residents must return to their IMDs.

ANSWER: Defendants admit that some residents at IMDs attend day programs outside the IMD and may attend other programs to develop their skills. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 47.

48. IMD residents have almost no control over their personal space. Most IMD residents share a bedroom and bathroom with several other people. Residents generally have no control over when or by whom their rooms are cleaned or who has access to their rooms.

ANSWER: Defendants admit some bedrooms and bathrooms are shared. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 48.

49. IMD residents have virtually no privacy. Payphones are located only in common areas, where anyone can overhear their conversation. Typically, IMD residents can receive calls only through the IMD switchboard, and are usually paged over a loudspeaker to come to a phone that is not in a private space.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 49.

50. The lack of privacy makes it very difficult for residents to exercise their rights. Since it is difficult for residents to make phone calls without IMD staff knowing they are doing so, residents may be reluctant to call advocates when they have a problem. This serves as a further disincentive to residents exercising any kind of independence.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 50.

51. Residents have little contact with members of the community outside the facility. Outsiders' visits are generally limited and most visitors may not be received in privacy.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 51.

52. Typically, no food, liquids or medicines can be brought into the facility without permission of the IMD Administrator or nurse in charge.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 52.

53. The depersonalization and lack of mental stimulation in the facility erodes residents' ability to live independently.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 53.

54. Moreover, IMDs have policies and practices that prevent residents from moving out of the institution. Such policies inhibit the ability of residents to obtain appropriate services and supports that will provide them an opportunity to lead more fulfilling and more independent lives outside the IMD. Discharge planning is not regularly conducted. Furthermore, residents receive virtually no education or information about the limited alternatives to nursing homes.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 54.

55. IMD residents are typically not given a choice of which doctors and pharmacies to use. Residents' doctors and pharmacies are chosen by the facility.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 55.

56. IMD operators usually serve as the representative payee for residents and thus control the residents' finances. As the representative payees, the operators receive residents' Supplemental Security Income ("SSI") checks directly from the government and distribute to residents the small personal needs allowance the residents are permitted to retain from these checks. This "personal needs allowance" is usually $30.00 a month, or about $1.00 per day. The remaining amount is retained for use by the IMD. This renders residents completely dependent upon the IMD for all basic needs.

ANSWER: Defendants admit that, as with any Medicaid patient, plaintiffs contribute their income to the cost of their per diem charges excluding $30. Defendants have insufficient knowledge to form a belief as to the truth of the remaining allegations of paragraph 56.

57. IMDs provide little or no rehabilitative treatment designed to promote recovery, independence and integration into the community. Some IMD residents are able to participate in work programs, where they hold "jobs" inside the facility; however, those who hold these positions are only allowed to work for short periods of time each day.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 57.

58. IMDs lack a sufficient number of trained staff necessary to provide adequate care to individuals with mental illness and to provide them with the opportunities to lead happy, independent, and productive lives.

ANSWER: Defendants deny the general statement that IMDs lack staffing to provide adequate care. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 58.

59. Many IMD residents are subject to Behavior Management Programs ("BMPs"). These BMPs are similar to those behavior management systems used in psychiatric hospitals. A resident's freedom to leave the facility is restricted based on the staffs assessment of how the individual complies with institutional rules. In short, residents must meet the behavioral standards set by the institution in order to obtain greater freedom. Residents who fail to perform required activities or who violate the rules are punished by having their liberties restricted.

ANSWER: Defendants admit that at least one IMD (Monroe Pavilion) uses a “Behavior Management Program.” Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 59.

NAMED PLAINTIFFS

Ethel Williams

60. Plaintiff Ethel Williams has been a resident of Monroe for approximately thirteen years, or since she was discharged from the John J. Madden Mental Health Center. Ms. Williams maintains close contact with her children and grandchildren. In addition, Ms. Williams spends her weekends with her brother and sister-in-law; she takes her medication independently while staying with her family. Ms. Williams is alert, active, and attends a day program five days a week. In the past, Ms. Williams has worked within the retail industry.

ANSWER: Defendants admit Ethel Williams has been a resident of Monroe Pavilion for a number of years and that, according to records, she has attended a day program and visits certain family members on weekends. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 60.

61. Ms. Williams wishes to leave Monroe and to live in a more integrated community setting, in order to accelerate her rehabilitation and to lead a more independent life. Professionals familiar with Ms. Williams's circumstances have indicated that she is ready to live in the community and that continued institutionalization is unnecessary.

ANSWER: Defendants admit that, according to records, Ms. Williams has in the past expressed a preference to return to the community. Defendants have insufficient knowledge or information to form as to the truth of the remaining allegations of paragraph 61.

62. Defendants, however, have failed to provide Ms. Williams with community services. Defendants have also failed to provide meaningful, adequate, and periodic assessments of Ms. Williams's potential for placement in the most integrated community setting available. Ms. Williams has repeatedly told the staff of Monroe that she wishes to leave, and facility records indicate her desire to live more independently. Her medical records and progress notes indicate that she is a good candidate for placement in an integrated community setting. However, Defendants fail to ensure that Ms. Williams receives adequate discharge planning and fail to provide opportunities for her to lead a more independent and more productive life.

ANSWER: Defendants deny the first and last sentences. Defendants admit Ms. Williams has, according to records, expressed a desire to return to the community. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 62.

63. Monroe has a Behavior Management Program that has four levels. Ms. Williams

entered Monroe at "Level One"; however, she has complied with institutional rules to the point where she has been "awarded" a "Level Four" status. As a "Level Four" resident, Ms. Williams is permitted to be outside Monroe for most of the day in order to, for example, visit family members.

ANSWER: Defendants admit Monroe Pavilion has a Behavior Management Program and that, according to records, Ms. Williams has at some point been at "Level Four". Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 63.

64. Ms. Williams has repeatedly expressed an interest in returning to the community. She does not require nursing care in an institutional setting. She could live in the community if she were provided with the types of home and community-based supports and services currently provided in Illinois. However, Defendants have failed to ensure adequate discharge planning for Ms. Williams, even though she has demonstrated skills (e.g., working in the retail industry) that would enable her to succeed in more independent living.

ANSWER: Defendants deny the allegations of the last sentence of paragraph 64. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 64.

65. Ms. Williams has no significant physical health needs being addressed by Monroe.

ANSWER: Defendants deny the allegations of paragraph 65.

Jan Wrghtsell

66. Plaintiff Jan Wrightsell, has been a resident of Monroe since early 2002, when she was discharged from the psychiatric unit of Chicago's St. Joseph's Hospital. Ms. Wrightsell attends a day program five days a week, and is responsible for cooking lunch for fellow residents and staff. She has been diagnosed with schizophrenia and has a history of major recurrent depression. Ms. Wrightsell maintains close contact with her family, and has substantial prior work experience as a sales clerk. She is college-educated, composes poetry and loves to care for animals.

ANSWER: Defendants admit plaintiff has been diagnosed with schizophrenia, has been a resident of Monroe since 2002, is ambulatory, and has attended a day program, according to records. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 66.

67. Ms. Wrightsell wishes to leave Monroe in order to live in a more integrated community setting, in order to accelerate her rehabilitation and to lead a more independent life. Professionals familiar with her circumstances, and with whom Ms. Wrightsell has interacted in her day programs, have indicated that she is ready to live in a less restrictive program in the community and that continued institutionalization is unnecessary.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 67.

68. Defendants, however, have failed to provide Ms. Wrightsell with community services. Defendants have provided only formulaic assessments of Ms. Wrightsell that lack any individual plan or review. Ms. Wrightsell has repeatedly told the staff of Monroe that she wishes to leave; however, facility records fail to reflect her desire to live more independently. Defendants fail to ensure that Ms. Wrightsell receives adequate discharge planning and fail to provide opportunities for her to lead a more independent and more productive life. Instead, Defendants have consigned her to an institution that refuses to help her progress toward social independence.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegation that Ms. Wrightsell repeatedly has told staff she wants to leave. Defendants deny the remaining allegations of paragraph 68.

69. Ms. Wrightsell entered Monroe at "Level One"; however, she has complied with institutional rules to the point where she has been "awarded" a "Level Three" status. As a "Level Three" resident, Ms. Wrightsell is only permitted to leave Monroe on her own for between two and six hours per day, depending on the length of the pass assigned to her at any given time. Although she has fulfilled "Level Four" requirements (e.g., successfully graduating from several day programs), Monroe refuses to grant her "Level Four" privileges.

ANSWER: Defendants admit that, according to records, Ms.Wrightsell has been at Levels One, Two and Three. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 69.

70. Ms. Wrightsell has repeatedly petitioned Monroe to move to "Level Four." However, her petitions have been regularly denied by Monroe staff with neither sound nor written reason. In fact, Ms. Wrightsell's privileges have often been suspended based on arbitrary reasons (e.g., bringing her winter coat to the cafeteria).

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 70.

71. Ms. Wrightsell has repeatedly expressed an interest in returning to the community. She does not require nursing care in an institutional setting. She could live in the community if she were provided with the types of home and community-based supports and services currently provided in Illinois. These supports and services provided in the community would cost the same or less than the amount currently spent on Ms. Wrightsell's care. However, Defendants fail to ensure adequate discharge planning for Ms. Wrightsell, even though she has demonstrated skills (e.g., working as a cook in the day program she now attends) that would enable her to succeed in more independent living. Ms. Wrightsell has no significant physical health needs being addressed by Monroe.

ANSWER: Defendants deny the allegations of the last two sentences of paragraph 71. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 71.

Donell Hall

72. Plaintiff Donell Hall is 43 years old and has been a resident of Greenwood Care for approximately twelve years. He was placed in Greenwood Care after he was discharged from Chicago-Read Hospital. Mr. Hall is very physically active; in fact, he formerly served in the United States Army, from which he received an honorable discharge. Mr. Hall has been diagnosed with bipolar disorder and schizophrenia.

ANSWER: Defendants admit that Donell Hall has been a resident of Greenwood Care for some period of times and has been diagnosed with schizophrenia. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 72.

73. Mr. Hall wishes to leave Greenwood Care and to live in a more integrated community setting, in order to accelerate his rehabilitation and to lead a more independent life. Professionals familiar with Mr. Hall's circumstances have indicated that he is ready to live in the community and that continued institutionalization is unnecessary. Prior to living at Greenwood Care, he owned his own apartment and car. He is able to manage his money and cook for himself, as he had done prior to his institutionalization at Greenwood Care.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 73.

74. Defendants, however, have failed to provide Mr. Hall with community services. Defendants have also failed to provide meaningful, adequate, and periodic assessments of Mr. Hall's potential for placement in the most integrated community setting available. Mr. Hall has repeatedly told the staff of Greenwood Care that he wishes to leave, and facility records indicate his desire to live more independently. His medical records and progress notes indicate that he is a good candidate for placement in an integrated community setting. However, Defendants fail to ensure that Mr. Hall receives adequate discharge planning and fail to provide opportunities for him to lead a more independent and more productive life.

ANSWER: Defendants deny the allegations of the first, second, and last sentences of paragraph 74. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 74.

75. Mr. Hall has expressed an interest in returning to the community. He does not require nursing care in an institutional setting. He could live in the community if he were provided with the types of home and community-based supports and services currently provided in Illinois. However, Defendants have failed to ensure adequate discharge planning for Mr. Hall, even though he has demonstrated skills that would enable him to succeed in more independent living. He currently works at the Anixter Center, his day program, five days a week.

ANSWER: Defendants deny the allegations of the third sentences of paragraph 75. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 75.

76. Mr. Hall has no significant physical health needs being addressed by Greenwood Care.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 76.

Edward Brandon

77. Plaintiff Edward Brandon is 25 years old and has been a resident of Wilson Care for approximately two years. Mr. Brandon has been diagnosed with schizophrenia. He has formerly held several jobs in retail stores; currently, Mr. Brandon works, Monday through Friday, at the Anixter Center where he buses tables. He maintains close contact with his grandmother and cousins.

ANSWER: Defendants admit Edward Brandon is a resident of Wilson Care and has been diagnosed with schizophrenia. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 77.

78. Mr. Brandon wishes to leave Wilson Care and to live in a more integrated community setting, in order to accelerate his rehabilitation and to lead a more independent life. Professionals familiar with Mr. Brandon's circumstances have indicated that with appropriate supports and services-he is ready to live in the community and that continued institutionalization is unnecessary. Every day he is subjected to second-hand smoke, as he has no control over whether his roommates can smoke in his room.

ANSWER: Defendants admit that according to records, Mr. Brandon has expressed a desire to return to the community. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 78.

79. Defendants, however, have failed to provide Mr. Brandon with community services. Defendants have also failed to provide meaningful, adequate, and periodic assessments of Mr. Brandon's potential for placement in the most integrated community setting available. Facility records indicate his desire to live more independently. His medical records and progress notes indicate that he is a good candidate for placement in an integrated community setting. However, Defendants fail to ensure that Mr. Brandon receives adequate discharge planning and fail to provide opportunities for him to lead a more independent and more productive life.

ANSWER: Defendants deny the allegations of the first, second, and last sentences of paragraph 79. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 79.

80. Mr. Brandon has expressed an interest in returning to the community. He does not require nursing care in an institutional setting. He could live in the community if he were provided with the types of home and community-based supports and services currently provided in Illinois. However, Defendants have failed to ensure adequate discharge planning for Mr. Brandon, even though he has demonstrated skills (e.g., working at Anixter Center) that would enable him to succeed in more independent living.

ANSWER: Defendants admit that, according to records, Mr. Brandon has expressed an interest in returning to the community. Defendants have insufficient knowledge or information to from a belief as to the truth of the allegations of the second and third sentences, and deny the allegations of the last sentence of paragraph 80.

81. Mr. Brandon has no significant physical health needs being addressed by Wilson Care.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 81.

The Roles of Defendants

82. Defendants are all charged with administering and/or overseeing long-term care services for individuals with mental illness in both institutional and community settings.

ANSWER: Defendants admit that various state agencies have varied and differing responsibilities for individuals with mental illness.

83. In the more than six years since Olmstead was decided, Defendants have failed to develop a comprehensive and effective working plan for identifying people with mental illness unnecessarily institutionalized in nursing homes and IMDs and moving them into more integrated settings. The Defendants are responsible for the operation and administration of their respective agencies and are ultimately responsible for ensuring that their agencies provide services in conformity with the ADA and the Rehabilitation Act. 20 ILL. COMP. STAT. 2407/20(c). However, no viable working plan has been produced nor have Defendants evidenced a commitment to action which would show "ongoing progress toward community placement." See Penn. P.P.A., Inc. v. Penn. Dept. of Public Welfare, 422 F.3d 151, 159 (3rd Cir. 2005).

ANSWER: Defendants admit to having those responsibilities as are imposed by law under the ADA and Rehabilitation Act. Defendants deny the remaining allegations of paragraph 83.

84. DHS' duties also include monitoring the care given by nursing homes, including IMDs, and providing input into the licensing process on such matters as staffing and program content.

ANSWER: Defendants deny the allegations of paragraph 84.

85. DHS is responsible for the screening of individuals such as Plaintiffs and those similarly situated, who are being considered for admission to nursing facilities and who are ages 18 through 59, and for individuals aged 60 and over who have a severe mental illness, in order to determine whether nursing facility care is appropriate. 77 Ill.. Adm. Code § 300.615.

ANSWER: Defendants admit the allegations of paragraph 85.

86. DPH, in conjunction with DHS, is required to develop minimum standards for licensing facilities for people with mental illness, including IMDs. 210 ILL. COMP. STAT.

45/3-203.

ANSWER: Defendants admit the allegations of paragraph 86.

87. DPH is also responsible for regulating and inspecting all nursing facilities, including IMDs, in Illinois. DPH is required to develop a curriculum for training nursing assistants and habilitation aides. 210 ILL. COMP. STAT. 45/3-206.

ANSWER: Defendants admit the allegations of paragraph 87.

88. DPH is responsible for promulgating rules governing the provision of services by nursing facilities to residents who have a serious mental illness, including assessment, care planning, treatment, and discharge planning. 210 ILL. COMP. STAT. 45/3-202.2.

ANSWER: Defendants admit the allegations of paragraph 88.

89. DHFS classifies nursing homes as IMDs and administers funding to IMDs as appropriate., 89 Ill. Adm. Code §§145.20, 145.40, 140.500. DHFS is required to verify the need for group care for individuals with severe mental illness in accordance with 89 Ill. Adm. Code § 140.642. DHFS is also required to approve the placement in the nursing facility based upon a determination that a need for a nursing level of care exists and that the nursing facility meets state law requirements. DHFS authorizes payment to the nursing facility. 89 Ill. Adm. Code § 140.510.

ANSWER: Defendants admit HFS, following federal practice, classifies nursing homes as IMDs, and verifies the need for services, but deny that HFS evaluates the patient in terms of "group care." Defendants admit the criteria for placement are partly stated in this paragraph. Defendants admit HFS authorizes payment to the nursing facility for certain residents and certain services.

90. Defendants do not consider the needs of Plaintiffs or other similarly situated IMD residents for more integrated housing when they plan for development of integrated supported housing programs.

ANSWER: Defendants deny the allegations of paragraph 90.

91. Despite the fact that they are responsible for ensuring appropriate placement of individuals with mental illness and for establishing appropriate discharge procedures, Defendants

have not provided Plaintiffs, and those similarly situated, with information that will enable them to seek services in a more integrated setting or to lead more independent and more productive lives in society.

ANSWER: Defendants deny the allegations of paragraph 91.

92. In violation of their statutory duties, Defendants are administering their programs and providing services in a manner that supports and encourages the segregation of individuals with mental illness, by inappropriately relying on IMDs.

ANSWER: Defendants deny the allegations of paragraph 92.

93. Defendants have developed and funded long-term residential programs that enable individuals to receive services in settings far more integrated than nursing homes.

ANSWER: Defendants admit that DHS has funded residential programs of the type described in this paragraph.

94. However, Defendants have failed to develop and fund sufficient capacity in these residential programs, forcing into nursing homes thousands of individuals with mental illness who could, and would, prefer to be served in more integrated settings.

ANSWER: Defendants deny the allegations of paragraph 94.

95. Defendants have policies, rules and practices that discourage the placement of individuals with mental illness in integrated residential settings and, instead, perpetuate the current system of IMDs. Changing these policies, rules, and practices would not be a fundamental alteration under Defendants' service system for people with psychiatric disabilities. Services can be provided in a more integrated setting at a cost equivalent to or less than the average cost of providing services to a nursing home or IMD resident. Moreover, Defendants already provide the services needed by Plaintiffs and those similarly situated to other people with mental illness in the community.

ANSWER: Defendants deny the allegations of the first three sentences of paragraph 82. Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of the last sentence of paragraph 95.

96. Defendants have not informed Plaintiffs and class members of their right to

community services. Nor have Defendants evaluated Plaintiffs and those similarly situated to find the most integrated setting appropriate to their needs. Defendants have arbitrarily denied community services to those Plaintiffs and class members capable of living more independently. Defendants have no plan for achieving the goal of having sufficient services in the community.

ANSWER: Defendants deny the allegations of paragraph 96.

Count I

Violation of the Americans With Disabilities Act Mandate To Administer Services And Programs In The Most Integrated Setting

97. Plaintiffs and class members repeat and reallege paragraphs 1-96 above.

ANSWER: Defendants restate the answers made to paragraphs 1-96.

98. Plaintiffs and those similarly situated are individuals with serious mental illnesses. Each Plaintiff and class member has a mental impairment that substantially limits one or more major life activity including, but not limited to, self care and interaction with others. Plaintiffs and those similarly situated also have a record of such mental illnesses, and are regarded by Defendants as having such mental illnesses.

ANSWER: Defendants admit that the named plaintiffs have a record and history of mental illness. As to each unspecified member of the purported class, defendants admit that they may have serious mental illness, but have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 98.

99. Plaintiffs and class members are residents of facilities classified as IMDs, and each is qualified to participate in a more integrated community residential program that would 24 meet their mental health needs. Plaintiffs and class members are, therefore, qualified individuals with disabilities within the meaning of 42 U.S.C. § 12131(2).

ANSWER: Defendants admit plaintiffs and other unspecified members of the purported class are residents of IMDs. Defendants have insufficient knowledge or information to form a belief as to whether they would be "qualified", i.e., able to live in a more integrated setting.

100. Defendants Blagojevich, Adams, Stone, Whitaker and Maram are responsible for the operation of public entities covered by Title II of the ADA. 42 U.S.C. §§ 12131(1)(A) and (B).

ANSWER: Defendants admit defendants Adams, Stone, Whitaker, and Maram are

responsible for the operation of public entities under the overall supervision of the Governor.

101. The United States Department of Justice has promulgated regulations under Title II of the ADA stating that "a public entity shall administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." See 28 C.F.R. § 35.130(d).

ANSWER: Defendants admit this paragraph contains an accurate partial quotation of the regulation.

102. Defendants are obligated under the ADA to administer Illinois programs in a manner that supports the availability of services and programs in the most integrated setting for individuals with disabilities.

ANSWER: Defendants admit that defendants have an obligation to provide services for individuals in a manner consistent with the ADA, but deny the allegations of paragraph 102 to the extent they may be inconsistent with the ADA.

103. Serving Plaintiffs and class members in a more integrated setting can be reasonably accomplished.

ANSWER: Defendants have insufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 103.

104. Defendants have failed to meet this obligation. Defendants instead require that Plaintiffs and class members, in order to receive mental health care, live segregated in IMDs, even though these facilities are not the most integrated settings appropriate to their needs.

ANSWER: Defendants deny the allegations of paragraph 104.

Count II

Violation Of The Americans With Disabilities Act's Prohibition On Using Methods Of Administration That Subject Plaintiffs To Discrimination

105. Plaintiffs and class members repeat and reallege paragraphs 1-96 above.

ANSWER: Defendants restate the answers made to paragraph 1-96.

106. Plaintiffs and class members are residents of IMDs and each is qualified to participate in a more integrated community residential program that meets their mental health

needs.

ANSWER: Defendants admit that the named plaintiffs and others in the purported class are residents of IMDs. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 106.

107. Title II of the ADA, 42 U.S.C. §§ 12131, 12132, prohibits Defendants from discriminating against individuals with disabilities.

ANSWER: Defendants admit the allegations of paragraph 107.

108. Regulations implementing Title II of the ADA, 28 C.F.R. § 35.130(b)(3), provide that "a public entity may not, directly or through contractual or other arrangements, utilize criteria or other methods of administration: (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or] (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities ...."

ANSWER: Defendants admit that paragraph 108 contains an accurate partial quotation of 28 C.F.R. 35.130(b)(3).

109. Defendants, however, utilize methods of administration that have the effect of subjecting Plaintiffs and those similarly situated to discrimination. Defendants continue to utilize methods of administration that perpetuate Plaintiffs' and class members' placement in IMDs, rather than facilitating their receipt of services in the most integrated setting appropriate to their needs.

ANSWER: Defendants deny the allegations of paragraph 109.

Count III

Failure to Administer Services in the Most Integrated Setting Appropriate in Violation of the Rehabilitation Act

110. Plaintiffs and class members repeat and reallege paragraphs 1-96 above.

ANSWER: Defendants restate the answers made to paragraphs 1-96.

111. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, provides:

> No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded

> from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

ANSWER: Defendants admit that paragraph 111 contains an accurate partial quotation of the Rehabilitation Act.

112. DPH, DHFS, DMH and DHS are recipients of Federal financial assistance.

ANSWER: Defendants admit the allegations of paragraph 112.

113. Defendants Blagojevich, Adams, Stone, Whitaker and Maram are responsible for the operation of DPH, DHFS, DMH and DHS.

ANSWER: Defendants admit the defendants named are responsible for their respective agencies or divisions.

114. Plaintiffs and class members reside in IMDs and are each qualified to participate in a more integrated community residential program that meets their mental health needs.

ANSWER: Defendants admit plaintiffs and others in the purported class reside in IMDs. Defendants have insufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 114.

115. Section 504 of the Rehabilitation Act requires Defendants to serve individuals with disabilities in the most integrated setting appropriate to their needs.

ANSWER: Defendants deny the allegations of paragraph 115.

116. Serving Plaintiffs and class members in more integrated settings can be reasonably accomplished.

ANSWER: Defendants deny the allegations of paragraph 116.

117. Defendants have violated Section 504 of the Rehabilitation Act by failing to administer services to Plaintiffs, and those similarly situated, in the most integrated setting appropriate to their needs.

ANSWER: Defendants deny the allegations of paragraph 117.

Count IV

Violation of the Rehabilitation Act's Prohibition on Using Methods of Administration That Subject Plaintiffs to Discrimination

118. Plaintiffs and class members repeat and reallege paragraphs 1-96 above.

ANSWER: Defendants restate the answers made to paragraphs 1-96.

119. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 prohibits Defendants from discriminating against individuals with disabilities.

ANSWER: Defendants admit the allegations of paragraph 119.

120. Regulations implementing Section 504 of the Rehabilitation Act provide that "a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of disability; (or] (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons ...." 45 C.F.R. § 84.4(b).

ANSWER: Defendants admit paragraph 120 contains a substantially accurate partial quotation of 45 C.F.R. 84.4(b).

121. DPH, DHFS, DMH and DHS are recipients of Federal, financial assistance.

ANSWER: Defendants admit the allegations of paragraph 121.

122. Defendants Blagojevich, Adams, Stone, Whitaker and Maram are responsible for the operation of DPH, DHFS, DMH and DHS.

ANSWER: Defendants admit the defendants named are responsible for their respective agencies or divisions.

123. Defendants utilize methods of administration that have had the effect of subjecting Plaintiffs and class members to discrimination. Defendants utilize methods of administration that perpetuate the current IMD system rather than facilitate the receipt of services in the most integrated setting appropriate to the needs of Plaintiffs and class members, which have resulted in Plaintiffs' placement in an IMD, a setting that is segregated and inappropriate.

ANSWER: Defendants deny the allegations of paragraph 123.

Prayer for Relief

WHEREFORE, the Plaintiffs, individually and on behalf of the class, respectfully request that the Court:

A. Enter an order certifying the named Plaintiffs as representatives for a class consisting of those persons in Illinois who:

(i) have mental illness and qualify for long-term care services;

(ii) with appropriate supports and services, could live in the community, and

(iii) who are (a) institutionalized in IMDs.

B. Declare that Defendant's failure to provide Plaintiffs with services in the most integrated setting appropriate to their needs violates the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

C. Issue a permanent injunction:

(i) requiring Defendants to inform individuals with mental illnesses in the State that they may be eligible for community services and that they have the choice of such services;

(ii) requiring Defendants promptly to determine Plaintiffs' and class members' eligibility for community services;

(iii) prohibiting Defendants from arbitrarily denying eligibility to individuals who are capable of living in a community setting with appropriate supports and services; and

(iv) requiring Defendants promptly to provide eligible Plaintiffs and class members with appropriate services sufficient to allow them to live in the most integrated setting appropriate to their needs.

D. Grant such other and further relief as this Court deems just and proper, including an award of reasonable attorneys' fees, litigation expenses and costs.

ANSWER: Defendants deny plaintiffs are entitled to the relief sought, and request that their complaint be dismissed with prejudice.

AFFIRMATIVE DEFENSES

1. The relief plaintiffs seek would be inequitable in that it would require Defendants to fundamentally alter the nature of the services and programs they are legally obligated to provide and do provide to persons with mental illness.

2. The relief plaintiffs seek would be inequitable given Illinois' available resources and given Defendants' responsibility for the care and treatment of a large and diverse population of persons with mental illness.

Respectfully submitted,

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