IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

NANCY MARTIN, et al.,

Plaintiffs,

vs.

Case No. C2-89-362 Judge Edmund A. Sargus, Jr. Magistrate Judge Norah McCann King

ROBERT TAFT, et al.,

Defendants.

ORDER

As has been set forth by the Court in previous Opinions and Orders, Plaintiffs in this case seek declaratory and injunctive relief seeks to establish and enforce the rights of Ohio residents with mental retardation or other developmental disabilities to obtain appropriate, meaningful and integrated services in the community. This matter is before the Court for consideration of the parties' Joint Motion for Preliminary Approval of Settlement of Class Action. (Doc. #781.) Plaintiffs and Defendants indicate that they have settled this case following extensive, armslength compromise negotiations and now request the Court's preliminary approval of the terms of their settlement as set forth in the form of a Consent Order.

Rule 23(e) provides in full:

(e) Settlement, Voluntary Dismissal, or Compromise.

The parties have concurrently filed a motion for approval of notice and to set a fairness hearing. That motion is addressed by separate Order.

- (1) (A) The court must approve any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class.
 - (B) The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.
 - (C) The court may approve a settlement, voluntary dismissal, or compromise that would bind class members only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.
- (2) The parties seeking approval of a settlement, voluntary dismissal, or compromise under Rule 23(e)(1) must file a statement identifying any agreement made in connection with the proposed settlement, voluntary dismissal, or compromise.
- (3) In an action previously certified as a class action under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.
- (4) (A) Any class member may object to a proposed settlement, voluntary dismissal, or compromise that requires court approval under Rule 23(e)(1)(A).
 - (B) An objection made under Rule 23(e)(4)(A) may be withdrawn only with the court's approval.

In this regard, three steps must be taken before a settlement may occur: (1) the Court must preliminarily approve the proposed settlement; (2) members of the class must then be given notice of the proposed settlement; and (3) a hearing must be held, after which the Court must decide whether the proposed settlement is fair, reasonable and adequate. *Tennessee Ass'n of Health Maintenance Organizations, Inc. v. Grier*, 262 F.3d 559 (6th Cir. 2001)(citing *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983)).

The Court has set forth the background of this case in detail in its previous Opinions and Orders. Briefly, Plaintiffs filed this action on April 27, 1989. On February 5, 1990, the Court certified the following class pursuant to Fed. R. Civ. P. 23(b)(2):

[A]ll mentally retarded or developmentally disabled Ohioans who are, or will be, in need of community housing and services which are normalized, home-like and

integrated, and a subclass who, in addition to being members of the class, are or will be, Medicaid recipients.

The term "in need of community housing and services" has been interpreted by the Court to be limited to those people with mental retardation/developmental disabilities ("MR/DD") who would choose to move to or accept an integrated setting. (Opinion and Order, Nov. 28, 2005.)

After reviewing the terms of the proposed Consent Order, the Court concludes that the proposed settlement agreement deserves consideration by the class and that the notice is appropriate. The Court, of course, reserves all final determinations of the fairness, reasonableness, and adequacy of the proposed Consent Order until the fairness hearing.

Upon inspection of the settlement documents before the Court, the agreement appears to be consistent with the public interest. Counsel represent, and the Court is keenly aware, that they arrived at the settlement following extensive discovery, full consultation with experts and armslength negotiations. The Court preliminarily regards the settlement as fair, adequate and reasonable under the circumstances of this case, giving due regard for the merits of the claims and defenses advanced by the parties, the uncertainty of litigation and the costs of proceeding to trial.

The proposed Consent Order emphasizes that the settlement does not require individuals with MR/DD to leave ICF/MR against their wishes. The Consent Order does not require the closure of any Developmental Center or ICF/MR.²

Based on the materials presented to the Court and counsel's representations, the Court

The full terms of the Agreement are set forth on pages 6 through 9 of the Proposed Consent Order. The proposed Consent Order is available as Exhibit A (Attachment 1) to the parties' Joint Motion to Approve Consent Judgment (Preliminary Approval) (Doc. #781).

concludes that the proposed settlement appears to be in the interests of the parties and the public. Bailey v. Great Lakes Canning, Inc., 908 F.2d 38, 42 (6th Cir. 1990); United States v. Jones & Laughlin Steel Corp., 804 F.2d 348, 351 (6th Cir. 1986). The Court concludes that the compromise embodied in the decree is neither illegal nor tainted with collusion. See Tennessee Ass'n of Health Maintenance Organizations, 262 F.3d at 565 (holding that court must preliminarily determine whether compromise is illegal or tainted with collusion).

Accordingly, the Joint Motion for Approval of Settlement of Class Action is

PRELIMINARILY APPROVED. The terms of the parties settlement, as set forth in the

Consent Order, are subject to final disposition following the fairness hearing. The FAIRNESS

HEARING is hereby scheduled for MARCH 5, 2007 at 10:00 A.M.

IT IS SO ORDERED.

17-2-7006

EDMUND A. SARGUS, JR.

UNITED STATES DISTRICT JUDGE