

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

JAMES STALEY, by and through his mother  
and next friend KAREN STALEY, et al.

Plaintiffs,

v.

TED KULONGOSKI, Governor of the State of  
Oregon, et al.

Defendants.

Case No. CV00-0078-ST

NOTICE OF MODIFICATION OF  
SETTLEMENT OF CLASS ACTION

**TO: ALL ADULTS WITH DEVELOPMENTAL DISABILITIES WHO ARE OR MAY BE  
ELIGIBLE TO RECEIVE SERVICES UNDER THE FEDERAL MEDICAID PROGRAM**

Under Federal Rule of Procedure 23 and an Order of the United States District Court for the District of Oregon (the "Court") dated November 7, 2003, a hearing will be held in the above case before the Honorable Janice M. Stewart, in Courtroom 10B of the United States District Court for the District of Oregon, 1000 SW Third Avenue, Portland, Oregon **at 9:30 a.m. on January 14, 2004**, to decide whether to approve a proposed Modification Agreement, which would modify the original Settlement Agreement, as fair reasonable, adequate, and made in good faith. This Modification Agreement would, due to an unanticipated State fiscal crisis, modify the original Settlement Agreement, to among other things, slow the pace at which additional eligible individuals

are enrolled under the Settlement Agreement while continuing to significantly expand the number of additional individuals enrolled for services each biennium. The State would be required to maintain the Support Service Brokerage contracts and to continue to provide services to individuals previously enrolled under the Settlement Agreement. Under the proposed Modification Agreement, all eligible class members will be receiving services by June 30, 2009, at the latest. The term of the Settlement Agreement will be extended until June 30, 2011.

THE PROPOSED MODIFICATION AGREEMENT WILL NOT CAUSE ANY INDIVIDUAL TO LOSE THE SERVICES HE OR SHE IS PRESENTLY RECEIVING. NEW ENROLLMENTS WILL CONTINUE, BUT AT A SLOWER PACE THAN PROVIDED FOR IN THE ORIGINAL STALEY SETTLEMENT AGREEMENT.

The Modification Agreement will modify only some provisions of the original Settlement Agreement. All provisions in the original Settlement Agreement not expressly modified will remain in effect.

#### **SUMMARY OF LITIGATION AND PROPOSED MODIFICATION AGREEMENT**

The original Settlement Agreement was approved by the Court on December 14, 2000. This Agreement made Medicaid developmental disability services much more available to adults. It provided that 50 new non-crisis comprehensive services (24-hour care outside of the family home or intensives services in the family home costing more than \$20,000 per year) would be created by the State each year for a total of 300 slots over six years. It also provided that Medicaid developmental disabilities support services costing less than \$20,000 per year would be made available to all eligible individuals. These services were to be phased in over an approximately four-year period.

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Since the original Settlement Agreement was approved by the Court, the State has received much less money than expected from taxes and other sources. As a result, the State has cut many social services. The State asked the plaintiffs, including the organizational plaintiff, the ARC of Oregon, to modify the Settlement Agreement, based on the state's very large budget problems. The plaintiffs agreed because they wanted to be certain that the services would continue and expand over the coming years, despite the State's fiscal crisis, without the risks involved in litigation. They were also concerned that the original Settlement Agreement was due to expire in June 30, 2007, less than four years from now. Under the Modification Agreement, the Settlement Agreement will remain in force until June 30, 2011. Under the Modification Agreement, the major goal of the Settlement Agreement—all eligible individuals with developmental disabilities receiving support services and 300 individuals receiving non-crisis comprehensive services—will still be reached but it will take longer to reach it. This goal will now be reached by June 30, 2009.

#### Comprehensive Services

Under the Modification Agreement, the required non-crisis comprehensive slots for 300 individuals will be filled by June 30, 2009. The schedule for filling these slots will be as follows:

By June 30, 2003— a total of 20 individuals served

By June 30, 2005— a total of 40 individuals served

By June 30, 2007— a total of 170 individuals served

By June 30, 2009— a total of 300 individuals served

#### Support Services

Under the Modification Agreement, support services will be phased in under the Oregon Administrative Rules as follows:

By June 30, 2003– not less than a total of 3122 individuals receiving services

By June 30, 2005– not less than a total of 4122 individuals receiving services

By June 30, 2007– not less than a total of 5122 individuals receiving services

By June 30, 2009– all eligible individuals enrolled to receive services

Term of the Agreement as Modified

Under the Modification Agreement, the Settlement Agreement will remain in force until June 30, 2011.

**CLASS MEMBERS' RIGHTS AND OBLIGATIONS**

A member of the class will be bound by the proposed Modification Agreement, in the event it is approved by the Court.

Any member of the class may object to the Modification Agreement if, on or before **January 7, 2004**, the class member files with the Court notice of intention to appear (stating each objection and the basis for such objection). This notice must be provided to:

Office of the Clerk of the United States District Court  
United States Courthouse  
1000 SW Third Ave.  
Portland, OR 97204

Copies of any papers in support of the objection(s) must be provided to the following parties:

James A. Wrigley  
Oregon Advocacy Center  
620 SW Fifth Ave., 5<sup>th</sup> Fl.  
Portland, OR 97204

Stephen K. Bushong  
Oregon Department of Justice  
1162 Court St. NE  
Salem, OR 97310

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Objections will be considered at the hearing on January 14, 2004 at which class members who file timely objections may be heard. Any member of the class who does not make his or her objections in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making objection to the fairness, adequacy, or reasonableness of the proposed Modification Agreement.

### **EXAMINATION OF PAPERS AND INQUIRIES**

For a more detailed statement of the matters involved in the action and the proposed Modified Agreement, you may refer to the pleadings, the original Settlement Agreement, the Modified Agreement, and other papers filed in the above action, which may be inspected in the office of the Clerk of the United States District Court, United States Courthouse, 1000 SW Third Ave., Portland, OR, during normal business hours of each business day. The original Settlement Agreement and Modification Agreement will also be available for review on the internet at **[www.oradvocacy.org](http://www.oradvocacy.org)**.

All inquiries by members of the class should be directed to:

James A. Wrigley  
Oregon Advocacy Center  
620 SW Fifth Ave., 5<sup>th</sup> Fl.  
Portland, OR 97204  
Telephone: (503)243-2081 or 1-(800) 452-1694.

Inquiries should not be directed to the clerk or the Judge.

DATED this 7<sup>th</sup> day of November, 2003.

BY ORDER OF

/s/ Janice M. Stewart

Janice M. Stewart  
United States Magistrate Judge