

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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FRANKLIN BENJAMIN, by and	:	
through his next friend, Andree	:	
Yock; RICHARD GROGG and	:	
FRANK EDGETT, by and through	:	
their next friend, Shirl Meyers;	:	
ANYTHONY BEARD, by and	:	
through his next friend, Nicole	:	
Turman, on behalf of themselves and	:	
all others similarly situated,	:	No. 09-cv-01182
	:	
Plaintiffs,	:	
	:	
v.	:	Class Action
	:	
DEPARTMENT OF PUBLIC	:	
WELFARE OF THE	:	
COMMONWEALTH OF	:	Judge Jones
PENNSYLVANIA and ESTELLE B.	:	
RICHMAN, in her official capacity	:	
as Secretary of Public Welfare for the	:	
Commonwealth of Pennsylvania	:	
	:	
Defendants.	:	

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**ORDER**

**September 2, 2009**

Upon consideration of Plaintiffs' Unopposed Motion for Class Certification,  
it is hereby ORDERED:

- I. Plaintiffs' Motion (Doc. 15) is GRANTED based upon the following findings:

- a. The requirements of Federal Rule of Civil Procedure 23(a) are satisfied.
  - i. The evidence indicates that there are more than 1,200 class members. These individuals have intellectual disabilities and have low incomes, making it unlikely that they would file individual lawsuits. In addition, the class members are dispersed throughout the Commonwealth, undermining the expediency of joinder. The class is thus too numerous to make joinder practicable.
  - ii. There are questions of law and fact common to the named individual Plaintiffs and members of the class: (a) whether Defendants have a viable integration plan for residents of state-operated ICFs/MR; (b) whether Defendants properly evaluate residents of state-operated ICFs/MR to assess their community service and support needs; (c) whether Defendants' policies and practices, including its administration of its waiting list process, effectively exclude class members from accessing the community mental retardation system; (d) whether Defendants' failure to offer and, if not opposed, provide services and supports in more integrated community settings to class

members violates the integration mandates of the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA); and (e) whether Defendants use methods of administration that have the effect of discriminating against individuals with disabilities in violation of the ADA and the RA.

- iii. The claims of the individual Plaintiffs are typical of those of the class members. The individual Plaintiffs' and class members' claims arise out of the same policies, practices, and procedures of Defendants and are based on the same legal theories under the ADA and the RA.
- iv. The individual Plaintiffs will fairly and adequately prosecute this lawsuit. They have no interests antagonistic to the class or subclass members and they have retained qualified counsel to represent them and the class.

- b. The requirements of Federal Rule of Civil Procedure 23(b)(2) are satisfied because final declaratory and injunctive relief would be appropriate for the class as a whole.

II. Plaintiffs Franklin Benjamin, by and through his next friend, Andree York, Richard Grogg and Frank Edgett, by and through their next friend, Joyce McCarthy, Sylvia Baldwin, by and through her next friend Shirl Meyers,

and Anthony Beard, by and through his next friend, Nicole Truman, are hereby certified as class representatives.

III. This case shall proceed on behalf of the following class:

All persons who: (1) currently or in the future will reside in on of Pennsylvania's state-operated intermediate care facilities for persons with mental retardation; (2) could reside in the community with appropriate services and supports; and (3) do not or would not oppose community placement.

IV. Attorney Robert W. Meek, Attorney Mark J. Murphy, Attorney Robin Resnick, all of the Disability Rights Network, and Attorney Stephen P. Gold are hereby appointed as class counsel based upon the following findings sufficient to satisfy Federal Rule of Civil Procedure 23(g):

- a. Counsels' experience in handling class actions and other complex litigation;
- b. Counsels' knowledge and experience with claims asserted and governing law, specifically the ADA and the RA;
- c. Counsels' experience in conducting the present litigation thus far and willingness to continue.

/s/ John E. Jones III  
The Honorable John E. Jones III  
United States District Judge