

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK - IAS PART 22

EL4

-----x  
ROBERT LOVE, individually and on x  
behalf of all persons similarly x  
situated, and THE COALITION FOR x  
THE HOMELESS, x

Plaintiffs, x

- against - x

INDEX NO.  
4514/88

EDWARD R. BOEH, as Mayor of the x  
City of New York, JO IVEY BOUFFORD, x  
as President of the New York City x  
Health and Hospitals Corporation, x  
THE NEW YORK CITY HEALTH AND x  
HOSPITALS CORPORATION, SARA L. x  
KELLERMANN, as Commissioner of the x  
New York City Department of Mental x  
Health, Mental Retardation and x  
Alcoholism Services, and RICHARD C. x  
SURLES, as Commissioner of the New x  
York State Office of Mental Health, x

Defendants. x

-----x  
EDWARD H. LEHNER, J.:

Before the court are motions by the defendants to dismiss pursuant to CPLR 3211(a) 2 and 7, and a cross-motion by plaintiffs for an order declaring that defendants have mandatory obligations "to provide appropriate care and treatment to the mentally ill and mentally disabled people of New York", and that once it is determined that "a homeless mentally-ill person is in need of treatment, such appropriate care and treatment must include in-patient hospitalization or residential care."

At oral argument it was agreed that although defendants had not as yet answered, the court could treat the motions as being for summary judgment without submission of further papers.

The action is brought by the Coalition for the Homeless and Robert Love, individually and "on behalf of all persons similarly situated." The complaint alleges that: 1) despite an affirmative obligation to provide adequate care and treatment, the City and State of New York refuse assistance to [the plaintiff class] by claiming a lack of facilities [and that the] overwhelming majority of persons who appear at acute care psychiatric hospital emergency rooms operated by defendants are refused any assistance even though they are in need of it." (paragraph 1); 2) psychiatric wards [of the New York City Health and Hospital Corporation ("HHC") facilities] operated in fiscal year 1986 at an average occupancy rate of 99.96 percent [and] over 62,000 persons presented themselves [to HHC hospitals] for psychiatric care and treatment...in 1986, and over 75 percent of them were denied admission." (paragraph 7); 3) because the State has delegated its responsibility to provide care and treatment to the plaintiff class to HHC, "the acts and omissions of HHC are imputed to the state." (paragraph 30); 4) the individual plaintiff Love "represents a class of seriously mentally ill or mentally disabled persons who, at the present time or in the future, are or will be in need of appropriate psychiatric care and treatment" who are not provided such care and treatment (paragraph 49); and 5) plaintiff Love arrived at a "psychiatric emergency room in need of immediate hospitalization" and HHC failed to provide "immediate hospitalization and adequate care and treatment" (paragraph 68 & 69).

The relief sought is i) class certification; ii) a declaration that defendants have violated various provisions of state and federal laws, as well as the equal protection clauses of the state and federal constitutions, and iii) an injunction directing compliance with such provisions.

Plaintiffs allege that patients have been denied admissions to psychiatric hospitals not because hospitalization would not be beneficial, but rather because hospitals have so reduced their capacity to receive mental patients that patients in need are not being admitted.

Plaintiffs have stated that they do "not seek to displace the discretion of defendants to deny treatment where such denial is based upon a bona fide medical determination", nor do they "seek to place the court inside the hospital emergency room", but rather seek to prevent defendants "from making determinations on admission to psychiatric hospitals on the basis of the availability of pathetically limited resources." (page 4, plaintiffs memorandum of law dated May 3, 1988)

Defendants argue that the claims asserted are non-justiciable as plaintiffs are seeking to have the court interfere in the medical judgments made by trained psychiatrists. Further, they maintain that there is no provision of law that "creates a right to hospitalization on demand", nor requires "defendants to furnish plaintiffs with a particular level of care and treatment, or creates any rights in the public at large." (page 25, memorandum of law of City defendants dated March 30, 1988)

In the 1970s the state implemented a policy of deinstitutionalization of patients of mental hospitals, while in the current decade there has been an enormous rise in the number of homeless in the City of New York, with strong evidence indicating a causal relationship between such policy and the subsequent development. Local officials, particularly in New York City, have complained of the "dumping" by state hospitals of mental patients onto the streets of their localities, and the consequent social problems that have ensued as a result.

In connection with the claims asserted herein, the following sections of the Mental Hygiene Law are pertinent:

§7.07(c)

"The office of mental health shall have the responsibility for seeing that mentally ill persons are provided with care and treatment, that such care, treatment and rehabilitation is of high quality and effectiveness, and that the personal and civil rights of persons receiving care, treatment and rehabilitation are adequately protected."

. . .

§9.47

"All directors of community services, health officers, and social services officials, as defined by the social services law, are charged with the duty of seeing that all mentally ill persons within their respective communities who are in need of care and treatment at a hospital are admitted to a hospital pursuant to the provisions of this article. Social services officials and health officers shall notify the director of community services of any such person coming to their attention. Pending the determination of the condition of an alleged mentally ill person, it shall be the duty of the director of community services and, if there be no such director, of the local health officer to provide for the proper care of such person in a suitable facility."

. . .

§1.03(20)

"'Mental illness' means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking, or judgment to such an extent that the person afflicted requires care, treatment and rehabilitation."

Thus, the general statutory scheme is that the state has the overall responsibility to see that the mentally ill receive care and treatment, with the city, of New York and other localities being required to see that all mentally ill persons "who are in need of care and treatment at a hospital" are in fact admitted to a hospital.

Although at this stage of the litigation there are no cross-claims that present to the court for adjudication the respective responsibilities of the state and city relating to the care and treatment of the mentally ill (though the papers do reveal a dispute), it is clear that government has a statutory obligation with respect to such care and treatment. The lack of resources would not be a defense for failure to comply with a statutory mandate. *Kesselbrenner v. Anonymous*, 33 NY2d 161, 168 (1973); *Matter of Lavette M.*, 35 NY2d 136, 143 (1974); *Klostermann v. Cuomo*, 61 NY2d 525, 537 (1984)

In the City of New York, city hospitals have traditionally admitted patients in need of acute care, while state facilities located here have received patients in need of long term treatment.

If in fact the decline in the available hospital beds for mental patients has resulted in physicians not admitting patients "who are in need of care and treatment at a hospital", then there

would be a violation of the provisions of the Mental Hygiene Law. From the papers which, among other matters, show an almost 100% use of available City hospital beds, it is clear that plaintiffs have raised a triable issue as to whether admission decisions are being made based on medical determinations of need, or on the availability of space. Plaintiffs should be entitled to attempt to establish that the requirement to admit patients in need of care and treatment at a hospital is not being complied with because of lack of space. If they establish such fact, they would be entitled to a declaration that government provide the services mandated by law, and that defendants make admission determinations based on medical need, rather than space requirements. See: *Klostermann v. Cuomo*, supra at p. 537. Accordingly, defendants' motions to dismiss are denied.

Although there is discussion in the papers of the right of homeless mentally ill persons to receive residential care (aside from hospitalization), the City is correct in asserting that residential placement on behalf of homeless mentally ill persons is not claimed in the complaint. In light of the need for a proper determination of the issue, and there being no allegations in the complaint on which the court may act with respect thereto, the court will not now address this question, but leave is granted to plaintiffs to serve an amended complaint, specifically setting forth the nature of the relief sought and the grounds therefor, within 30 days of service of a copy of this order.

The defense that the action should be dismissed because of a similar action pending in the United States District for the Southern District of New York (*Ruth v. HHC*, 85 Civ. 7548) is

rejected as said case involves claims of persons already admitted to institutions claiming inadequate treatment, whereas here the claims are those of persons denied hospitalization.

The request for class certification is denied as superfluous as if it is determined that defendants are violating the law, there is nothing to indicate that they will not comply with the court's ruling. See Matter of Jones et al., 52 AD2d 727 (1975); Williams v. Blum, 93 AD2d 755, (1st Dep't 1983).

In light of the foregoing, except to the extent that the court has determined that government has an obligation to provide hospitalization to mentally ill persons in need of in-patient care, and that determinations with respect to admissions must be based on medically determined needs of a patient and not on space availability, all motions before the court are denied.

This decision constitutes the order of the court.

Dated: October 13, 1988

  
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J.S.C.

EDWARD H. LEHNER

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

ROBERT LOVE, et al.,  
Plaintiffs,

-against-

EDWARD I. DCH, et al.,  
Defendants.

ORDER

PETER L. ZIMROTH,

*Corporation Counsel,*

*Attorney for ..City Defts.....*

*100 Church Street,*

*New York, NY 10007*

*Due and timely service of a copy of the  
within  
is hereby admitted.*

*New York, ..... 19 .....*

*Attorney for*

*To*

*....., Esq.  
Attorney for*

3-50M-M802168 (88)