

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
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MILLER FRANK JOHNSON, et al.,

Plaintiffs,

v.

Case No. 8:87-cv-369-T-24TBM

GERALD REGIER,

Defendant.

_____ /

ORDER

THIS CAUSE is before the court on the **Office of the Monitor’s Request for Ruling on Two Remaining Exit Criteria Issues** (Doc. 1539), Plaintiffs’ memorandum (Doc. 1544), and Defendant’s brief (Doc. 1545). A hearing on the matter was conducted March 18, 2004.¹

As more fully addressed in the pleadings and at the hearing, the parties and the Office of the Monitor request the court to resolve their dispute over the continued efficacy of criterion #1 to the Community Compliance Exit Criteria (hereinafter “Exit Criteria”) in effect in this case. Additionally, they ask the court to define the scope of footnote 1 to criterion #6 insofar as it defines the term “areas of need.”²

¹This court also heard argument on the matter at a hearing on June 10, 2003.

²In or about February 1993, the parties, with the approval of the Office of Monitor, entered a Stipulation Regarding Exit Criteria (hereinafter “Stipulation”) intended to provide the exclusive method of measuring the State’s performance under the consent decree. The Stipulation included agreed upon standards by which to measure the State’s compliance with its G. Pierce Wood Memorial Hospital (hereinafter “GPW”)-based obligations and its community-based obligations under the consent decree and for the termination of the decree. In essence, the State here challenges the manner in which the Office of the Monitor has measured its compliance under criterion #1 because it believes that the criterion is obsolete. It also disputes how the Office of the Monitor interprets a footnote to the Exit Criteria.

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Criterion #1 provides:

The class member was placed in the community in a less restrictive setting than GPW regardless of whether or not intermittent hospitalization is required.

Is the class member placed in a setting less restrictive than GPW whether or not intermittent hospitalization is required?

Are the services for this person among the less restrictive alternatives and practices which, based upon professional judgment, will assist the person living in the community? If not, did the person choose to refuse a reasonable offer of a less restrictive alternative?

Is the person's home safe and clean?

See (Doc. 1544, Exh.1 at 1). Exit criterion #6 states, "The class member receives the level and intensity of services, described in the SIP goals, to meet the class members' needs, whether or not intermittent hospitalization is required. . . ." The footnote to this criterion states in pertinent part:

In the context of the community compliance criteria, the "areas of need" are defined as case management, independent living skills, vocational/educational, social activities, mental health therapy and medication, physical health and nutrition.

The parties and the Office of the Monitor agree that regardless of the source of these needs (i.e., maintaining the person in the community and remedying lingering effects of inappropriate hospitalization), the exit criteria are based exclusively upon identifying and meeting current needs in the categories referred to above. . . .

Id. at 2, 4.

Regarding criterion #1, while it appears to speak both to the present and to the past, when the criterion is read in the context of the entire Stipulation it is apparent that it was

Resolution of the dispute appears necessary to guide the State in its testing protocol, which the court has allowed to be substituted in lieu of the compliance reviews formerly performed by the Office of the Monitor.

intended to inquire of the current circumstances of the members of the class in measuring the State's compliance with the consent decree. Thus, in negotiating the Exit Criteria under the Stipulation, the parties agreed to seven areas appropriate for measuring the State's compliance with its agreed upon community-based obligations. See Exh. C to the Stipulation. The first of these areas was whether "[t]he class member was placed in the community in a less restrictive setting than GPW regardless of whether or not intermittent hospitalization was required." The actual inquiry required for measuring the State's compliance in this area was set forth in the Exit Criteria found at Exhibit 1 to the exit criteria for the State's hospital-based obligations under the consent decree. See Exh. A to the Stipulation. Upon a plain reading of the agreed upon inquiries, each looked to the present circumstances of the class member.

From arguments, including the comments of the monitor, it is apparent that the question of whether a class member was or is placed in a setting less restrictive than GPW upon his/her discharge is a question no longer necessary to be asked in measuring the State's compliance given the current circumstances. The actual dispute is over whether the State, in its compliance testing, must include the last two inquiries set forth in this criterion (or their equivalent). I conclude that they must. As noted above, by their very terms these inquiries question the current circumstances of the class member. By the Stipulation, the Exit Criteria are the sole and exclusive method for measuring the State's performance and satisfaction of its community-based obligations under the consent decree. Although I have permitted the State to substitute its testing protocol for the monitor's compliance reviews, the Exit Criteria have not changed and the State's instrument must adequately address each of the inquiries

agreed to by the parties in the Stipulation. These inquiries, speaking as they do to the present circumstances of the class members, remain viable and must be measured for compliance whether by the State or the monitor.³

In regard to footnote 1 to criterion #6, the parties dispute whether the definition of “areas of need” set forth therein applies to all of the Exit Criteria or only to criterion #6. By my reading, the footnote has broad application. While it clearly is appended to criterion #6, a plain reading of the footnote indicates that it is intended to apply to the entirety of the Exit Criteria. Thus, to the extent that any of the Exit Criteria require measurement of compliance with the “needs” of the class members, it must measure the compliance in each of the areas set forth by the footnote.⁴

Done and Ordered in Tampa, Florida, this 19th day of March 2004.



THOMAS B. McCOUN III
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
The Honorable Susan C. Bucklew
Counsel of Record

³Interestingly, it appears from the hearing that the Monitor and the State’s own expert agree on this. The Office of the Monitor has always assumed that this criteria looked to the current circumstances of the class member as well as to whether the class member was discharged from GPW to a less restrictive setting, and the State’s new testing device continues to inquire of the current circumstances of the class members consistent with the inquiry of the last two interrogatories of this criterion. While the lawyers may disagree, the experts appear not to.

⁴From arguments, this will only impact the State’s testing protocol for criterion #5, which will have to be modified.