

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JOHN DOE, et al.,)	
Plaintiffs)	
)	
)	CIVIL ACTION
v.)	
)	NO. J75-36(C)
)	
)	
SETH HUDSPETH, et al.,)	
Defendants)	

MEMORANDUM OF UNDERSTANDING

Trial in this case having been set for February 22, 1977,
the parties hereto, by their undersigned counsel, do hereby state:

I. That, subject to paragraph III, *infra*, plaintiffs and defendants shall jointly request that the Court continue the trial of this action until defendants have completed the previously commenced repair and renovation of the 10 residential cottages and the activity building of the Central Mississippi Retardation Center (hereafter "Hudspeth Center"), or until July 1, 1978, whichever is earlier.

II. The plaintiffs have agreed to join the defendants in a request for a continuance of the trial in consideration of the defendants' representations that they have undertaken or plan to undertake the following actions relating to conditions at the Hudspeth Center:

A. FOOD AND NUTRITION SERVICES

(1) Defendants have employed two dietary consultants who have visited the Hudspeth Center and the Mississippi State Hospital for purposes of making recommendations as to the management, processing and delivery of food at the Hudspeth Center. The defendants expect to receive the written reports and recommendations of these consultants by March 15, 1977. Copies of these reports will be provided to counsel for plaintiffs, who shall submit their response to the recommendations within fifteen days of receipt of them. Defendants will take all reasonable and necessary steps to implement the recommendations of the consultants by September 30, 1977.

(2) Defendants have assessed their current budgetary situation and will make the necessary application to the Budget and Accounting Commission to enable them to employ a full-time dietitian at the Hudspeth Center during the current fiscal year.

(3) All residents are being fed in a sitting and upright position and will continue to be so fed.

(4) Defendants will continue to train residents to use knives and forks as fast as possible.

B. PHYSICAL THERAPY SERVICES

(1) Defendants have available a position for a full-time physical therapist in the current budget which they have been unable to fill. Defendants will continue their efforts to employ a physical therapist by contacting any sources suggested to them by the plaintiffs. In addition, defendants will petition the State Classification Commission to increase the salary schedule for physical therapists to make it competitive in the Jackson Metropolitan area. Until a full-time physical therapist is employed,

defendants will continue their efforts to employ consultants in this area.

(2) Defendants will utilize the consultant referred to in paragraph B(1) to conduct an inventory of the special and adaptive equipment which is necessary to serve the population at the Huds-peth Center. A copy of this inventory will be provided to counsel for plaintiffs. Defendants will take all reasonable steps to complete this inventory by July 1, 1977, and will take all reasonable steps to make the necessary adaptations and purchase the necessary equipment during fiscal year 1978.

(3) Individualized physical therapy services on a regular basis, including seven days a week where needed, will be provided to all residents who can benefit therefrom, including positioning, feeding, and self-ambulation programs.

(4) Records adequate to evaluate and monitor the progress of each individual receiving physical therapy services will be maintained.

C. MEDICATIONS

(1) Defendants have applied to the Budget and Accounting Commission for permission to establish a position for a full-time pharmacist during the current fiscal year and to reallocate funds for such a position. A full-time pharmacist will be employed if and when approval is received.

(2) Within ninety (90) days after employing the pharmacist as referred to in paragraph C(1), the individual prescription method for dispensing medications on all wards will be instituted. The term "individual prescription method" means that medications are bottled

individually for each resident with each bottle containing no more than a thirty (30) day supply of a single medication.

(3) Effective February 21, 1977, only licensed personnel, so long as available, will administer medication to residents in the following cottages:

Female 1 and 2;

Male 1, 4 and 5.

Defendants will continue to take all necessary and reasonable steps to employ additional licensed personnel for purposes of administering medication on all cottages. In any event, defendants will employ such additional licensed personnel at the time at which renovations and repairs are completed on the remaining five cottages, provided such personnel are available.

(4) Defendants have begun a training program for all cottage parents which includes at least four hours of instruction relating to the use, side effects and administration of the medications used at the Hudspeth Center. All currently employed cottage parents will have completed this course by October 1, 1977. Each newly hired cottage parent will complete this course within ninety (90) days of the commencement of his or her employment.

(5) The staff at the Hudspeth Center have approved and adopted the Michigan Department of Mental Health Rules and Regulations for Psychotropic Drug Use. Counsel for plaintiffs will submit to defendants written materials regarding the maximum dosage levels for certain of the drugs in use at the Hudspeth Center. Upon receipt of these materials defendants will promptly disseminate them to the medical staff of the Hudspeth Center.

D. DEVELOPMENTAL PROGRAMMING

(1) Defendants are currently providing six (6) hours of developmental programming per day (including special education, supervised recreation, self-help skills and vocational and pre-vocational training) to all residents under twenty-one years of age. All newly admitted residents under twenty-one will also be provided six (6) hours developmental programming daily.

(2) Defendants will provide full day (six hour) developmental programming to all adult residents by July 1, 1978. Prior to that date, developmental programming services for adults will be phased in in accordance with the completion of the repairs and renovation of the cottages.

(3) Defendants have begun and will continue to provide a toilet training program for all residents who are capable of becoming toilet trained.

(4) All residents are currently provided and will continue to be provided with habilitation plans which are reviewed by an inter-disciplinary habilitation team at a maximum of six month intervals. All newly admitted residents will be provided with habilitation plans which will be reviewed by an inter-disciplinary team at a maximum of six month intervals.

(5) Defendants have available a position for a full-time speech therapist in the current budget which they have been unable to fill. Defendants will continue their efforts to employ a speech therapist by contacting any sources suggested to them by the plaintiffs. Until a full-time speech therapist is employed, defendants will continue their efforts to employ consultants in this area.

E. DEINSTITUTIONALIZATION

(1) It is and will continue to be the policy of defendants to provide services to residents in the least restrictive environment possible and as close to their families or homes as possible.

(2) It is and will continue to be defendants' policy to release residents only to their families or legal guardians, State agencies within the Department of Mental Health, private facilities which are accredited under the Medicaid standards for intermediate care facilities, intermediate care facilities for the mentally retarded, or skilled nursing facilities, or supervised group homes approved by the Staff of the Hudspeth Center. When transferring residents to other institutions under the jurisdiction of the Department of Mental Health or other less restrictive environments, it is and will continue to be the policy of defendants to attempt to move residents closer to their homes or families.

(3) Prior to releasing or transferring a resident, defendants will continue to record a summary of findings, progress and plans for the resident. Planning for release will continue to include provision for appropriate services, including protective supervision and other follow-up services, in the resident's new environment. When a resident is transferred to another facility, defendants will continue to provide written evidence in the medical record of the need for transfer.

(4) Defendants will continue to make monthly visits to each private agency to which residents have been transferred. Defendants will permit, upon request, counsel for plaintiffs to inspect copies of all written reports, including contact recordings, made pursuant to such visits. Such requests will not be made more than quarterly.

F. INFORMATION EXCHANGE

(1) Defendants will provide counsel for plaintiffs with a monthly report of all new admissions, both respite and long-term, and releases and transfers, including the facility to which each resident was transferred, where applicable.

(2) Defendants will provide counsel for plaintiffs with defendants' most recent budget request for fiscal year 1978, and with the final budget for fiscal year 1978, upon approval by the State Legislature. In addition, defendants will provide counsel for plaintiffs with the budget request for fiscal year 1979, upon its submission to the Department of Mental Health, and all subsequent amendments thereto.

(3) Defendants will notify counsel for plaintiffs each time defendants request certification of a cottage at the Hudspeth Center and will provide counsel for plaintiffs with copies of the documents submitted by defendants to the State Medicaid Commission and the survey reports, reports of deficiencies and all other documents submitted by the State Medicaid Commission to defendants, and all reports, if any, submitted by the Department of Health, Education and Welfare.

(4) Defendants will provide to counsel for plaintiffs copies of all computer printouts or other reports containing information regarding services provided to residents at Hudspeth Center.

(5) Upon request, defendants shall promptly provide counsel for plaintiffs with the current numbers of persons employed at the Hudspeth Center according to job category as well as a list of all vacant professional positions.

(6) Plaintiffs shall have the right to take depositions upon reasonable notice subsequent to September 1, 1977. Prior to initiating any formal discovery, plaintiffs shall make reasonable efforts to obtain information desired through informal means.

(7) Defendants will meet with a qualified professional consultant or consultants on three occasions for the purpose of assessing and discussing the programs and conditions at the Hudspeth Center. The consultant or consultants shall be mutually agreed upon by the defendants and plaintiffs. One such visit shall take place prior to July 1, 1977; one between July 1, 1977 and January 1, 1978; and one between January 1, 1978 and July 1, 1978. Defendants and plaintiffs will bear the cost of these visits jointly and equally.

III. In the event that defendants are unable to complete the foregoing actions, plaintiffs shall be free to move the Court for an immediate trial on all or part of the issues remaining between the parties.

IV. Nothing in this memorandum shall constitute an admission by the plaintiffs that defendants have in fact carried out any of the actions described herein or that the actions and plans previously undertaken or proposed to be undertaken are sufficient to remedy constitutional violations alleged by plaintiffs. Nothing in this memorandum shall constitute an admission by defendants that they have violated the constitutional rights of plaintiffs or the members of the purported class.

V. Plaintiffs may not require defendants to provide them with any information beyond that provided in this memorandum.

THIS the 17th day of February, 1977.

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