

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Robert Simpson Ricci, et al.,)
Plaintiffs,)
)
v.)
)
Robert L. Okin, et al.,)
Defendants)

CA Nos. 72-0469-T (Belchertown)
74-2768-T (Fernald)
75-3910-T (Monson)
75-5023-T (Wrentham)
75-5210-T (Dever)

**MOTION TO REOPEN AND RESTORE CASE TO ACTIVE DOCKET
AND ENFORCE THE FINAL ORDER OF MAY 12, 1993**

NOW COME the Plaintiffs in the above-entitled matter in accordance with Paragraphs 7a and 7c of the Order of the United States District Court (Tauro, J.) of May 25, 1993, and move to reopen and restore this case to the active docket and to enforce the Order for reasons that the Defendants have substantially failed to provide a state ISP process in compliance with the Order; there is a systemic failure to provide services to class members as described in the Order; and the Defendants are not in substantial compliance with the Order with regard to systemic issues.

In accordance with Paragraph 7c of the Order of the Court, the Belchertown, Monson, and Fernald Plaintiffs, on April 6, 2004, gave written notice to the Defendants of the alleged non-compliance, including the facts alleged and the provisions of the Order involved (a copy of which notice is attached hereto as Exhibit 1); the Defendants, on May 11, 2004, responded to the Plaintiffs' notice (a copy of

which is attached hereto as Exhibit 2); In addition, counsel for the Wrentham and Dever class action Plaintiffs, on April 12, 2004, gave written notice to the Defendants of the alleged non-compliance, including the facts alleged and the provisions of the Order involved (a copy of which notice is attached hereto as Exhibit 3); the Defendants, on May 17, 2004, responded to the Wrentham-Dever Plaintiffs' notice (a copy of which is attached hereto as Exhibit 4). In accordance with the Final Order, Plaintiffs and Defendants have met personally on May 28, June 7, and June 8, 2004 to discuss and seek to resolve any remaining dispute under the notice.

Having complied with the procedures required by the Court in the Final Order of May 25, 1993, the following disputes as set forth in the notice by Plaintiffs have not been resolved:

The Defendants have not complied with the following requirements of the Order:

"Defendants shall not approve a transfer of any class member of a state school into the community, or from one community residence to another such residence, until and unless the Superintendent of the transferring school (or the Regional Director of the pertinent community region) certifies that the individual to be transferred will receive equal or better services to meet their needs in the new location and that all ISP-recommended services for the individual's current needs as identified in the ISP are available at the new location." (Reference Order paragraph 4)

This directive mandated by the Final Order of the Court on May 25, 1993 was intended to ensure and safeguard the continued existence, quality and parity of the services provided to Ricci class members, regardless of their changing residential settings.

It is this requirement that singularly keeps hope alive for thousands of Ricci class members and their families who are uniquely affected by the Final Order of the Court, which guarantees them a lifetime of quality of service to meet their individual needs.

Despite the fact that hundreds of former residents at Belchertown, Dever, Monson, Fernald, and Wrentham as class members have been transferred out of these facilities since the Final Order of the Court on May 25, 1993, the Defendants have disregarded and totally failed to comply with the Court Order requiring them to certify that the individuals who were transferred would receive "equal or better services to meet their needs in the new location and that all ISP-recommended services for the individual's current needs as identified in the ISP are available at the new location." (See sample copies of Ricci Class Member Change of Home Address Form attached hereto as Exhibit 5.)

The Defendants have not substantially complied with the following requirements of the Order:

"Defendants shall substantially provide services to each class member on a lifetime basis. The specific services to be provided to each class member to meet this obligation, and defining this obligation, shall be set forth in an Individual Service Plan ("ISP") that details each class member's capabilities and needs for services, pursuant to the regulations governing the preparation of ISP's, as currently set forth in 103 CMR 20, et seq. (the "ISP Regulations").² Such services shall include, as appropriate for the person, residential programs; day programs; recreational and leisure time activities; medical psychological, dental and health-related professional services; respite care and crisis intervention services; support and generic services, such as

² These regulations shall guarantee that each class member be provided with the least restrictive, most normal, appropriate residential environment, together with the most appropriate treatment, training, and support services suited to the person's individual needs.

guardianship and adaptive equipment services; and transportation services.”
(Reference Order paragraph 2a)

“Defendants shall not seek to amend, revise, or otherwise modify the ISP Regulations as they affect class members except upon 60 days written notice to the plaintiffs’ counsel, with an opportunity for plaintiffs to comment upon the proposed changes. Any amendments must leave in place a process that is at least the substantial equivalent of the regulations currently set forth in 104 CMR 20 et seq., with regard to the definition of the ISP, the individualized nature of the ISP, the existence of an appeal process, and the principles contained in footnotes 2 and 3 herein.” (Reference Order paragraph 2b)

“Defendants shall continue to seek to improve, and shall not undermine, the progress achieved during the period of this litigation by:

a. Maintaining and implementing the basic principles of the ISP.³
(Reference Order paragraph 6a)

115 CMR 6.20 through 6.63 sets forth the standards and procedures for the development, modification, and review of Individual Support Plans, which are required to be reviewed and updated on an annual basis with the fullest possible participation by the individual, the members of the individual’s family, the guardians, if any, service coordinators, representatives or providers of supports to the individual, and the individual’s designated representatives and others who provide friendship and support to the individual. (See Department of Mental Retardation ISP Regulations 115 CMR 6.20 - 6.63 attached hereto as Exhibit 6.)

Notwithstanding the mandated strict requirements of both the ISP Regulations and the Final Order of the Court, the Defendants have, in the absence of specific

³ These principles, currently in Department of Mental Retardation regulations, are “(1) human dignity, (2) humane and adequate care and treatment, (3) self-determination and freedom of choice to the person’s fullest capacity, (4) the opportunity to live and receive services in the least restrictive and most normal setting possible, (5) the opportunity to undergo normal developmental experiences, even though such experiences may entail an element of risk, provided however that the person’s safety and well-being shall not be unreasonably jeopardized, and (6) the opportunity to engage in activities and styles of living which encourage and maintain the integration of the client in the community through individualized social and physical environment.”

regulatory authority, created a Placement Planning Process for the displacement of all current residents at the Developmental Centers at Fernald, Glavin, Hogan, Monson, Templeton, and Wrentham, which process includes a Placement Profile, in which the entire ISP "team" authorized by Regulation (115 CMR 6.21 et seq.) does not fully participate, but instead the program, support needs, and alternative future residential site of the individual are determined by an Individual Transition Planning Team comprised of Fernald administrators only.

The placement process now being used by the Defendants, which is not authorized by statute or regulation, allows the Defendants to avoid family/guardian choice to remain at Fernald where residents in many instances have lived for their entire lives in familiar settings and with familiar staff that can provide active treatment as determined by ISP team members.

The entire Placement Profile form is not filled out with families and guardians at a pre-Individual Support Plan meeting authorized in accordance with 115 CMR 6.21 (5) and, therefore, denies families and guardians to exercise critical input in the Profile. There is no indication in the Profile regarding the planned future of closings of Monson, Wrentham, Hogan, Templeton or Glavin, making it impossible for families and guardians to make informed choices which could result in a future series of harmful relocations. The Placement Profile contains no information as to the Home and Community Based Waiver Program so as to inform families of the significant consequences of accepting a transfer into the community and waiving their right to

traditional services at an intermediate care facility. The Placement Profile provides only a minimum opportunity to describe residents' needs for a workshop or day program. The Profile does not require a guardian's approval or signature. The Placement Profile form does not clearly assess the resident's readiness for discharge. It does not raise issues likely to occur for severely and profoundly retarded individuals with multiple physical and behavioral difficulties as a result of relocation, nor does it outline how such issues might need to be addressed before, during or after relocation. (See Placement Profiles attached hereto as Exhibit 7.)

Since Governor Romney unilaterally made, within 30 days of his assuming office, the decision to close Fernald and all other Developmental Centers during his administration, the Defendants have never suggested that the individual resident's program and treatment needs will be better served by a transfer to another facility, which itself will then be closed.

Clearly, the Placement Profile process established by the Defendants effectively undermines, circumvents and denies to family members and guardians the timely opportunity to invoke an Appeal Process, an Informal Conference, a Fair Hearing, and Judicial Review as guaranteed by the ISP Regulations (115 CMR 6.32 et seq.). (See Exhibit 6 supra.)

Further, the development of the Placement Profile by the Defendants over the strong objection of family members and guardians contravenes the established

purpose of the ISP, the individualized nature of the ISP, the participation by family members in ISP planning^a, the existence of an appeal process, and the principles contained in footnotes 2 and 3 infra of the Order.

Since the announcement on February 26, 2003 by Governor Romney of his intention to close Fernald and all other ICF-MRs at Glavin, Hogan, Monson, Templeton, and Wrentham during his administration, the Defendants, without specific regulatory authority and in the absence of a reconvened ISP team, have conducted reviews of ISPs previously completed by family, guardians, and team members and have edited and otherwise re-written ISPs, in the absence of family members, guardians, and team member professionals, with the purpose of intentionally reducing costs, services and supports to residents, which clearly constitutes a systemic violation of the specific mandates of the Order.

Among the programs and services which have been administratively deleted from the previously team-approved ISPs by the Fernald administration are speech therapy, psychological services, therapeutic swimming pool, medication, habilitation programs, cane training for totally blind resident, music therapy, specific nursing

^a (4) The individual's family is encouraged to participate in all aspects of the ISP process, provided that the individual does not knowingly object and that the individual's guardian, if any, does not object.

The responsibilities of the family and guardian in the ISP process are:

- (a) To participate in the ISP process as fully as possible;
- (b) To work collaboratively with the individual and other team members to identify the individual's goals, and to develop an ISP which is likely to be effective in assisting the individual to achieve those goals;
- (c) To approve or appeal the ISP if authorized to do so pursuant to 115 CMR 6.32; and
- (d) To provide ongoing feedback to the service coordinator and providers regarding their satisfaction with the ISP and the implementation thereof, and regarding the need for modification of the ISP.

(Reference 115 CMR 6.21(4))

hours, attendance at church services, and need for 24-hour awake staff. (See Affidavits of Edwin Harrow, Diane Booher, Marie Drugan, Maureen Kacinski, Judi M. Leonard, Carmella Harris, M. Jean Sullivan, Albert Pizella, Thomas Sobutka, and Lucia Conti attached hereto as Exhibit 8.)

The Defendants have restricted and otherwise limited the information describing service needs including clinical information and social work assessments that are included in Individual Support Plans. The obvious consequence of this administrative editing and re-working the team-approved ISP constitutes a reduction in the Court-Ordered standard of equal or better services at the time of a modification or transfer to another facility.

Staff at Fernald have been directed by the administration that any supports mandated by DMR policy should not be included in the ISP, for reason that if everyone receives particular supports, they are no longer to be considered specific to the individual. Further, the administration has invoked a definition of the term Current Support that is contradictory to the ISP regulations and has decreed that if a resident has not recently accessed a particular support, it shall not be included in the current ISP. Since DMR policies vary with respect to where the client lives, and clients living in intermediate care facilities for the mentally retarded such as Fernald have more departmentally mandated clinical services than clients living in community residences, excluding clinical services unique to ICF-MRs from individual ISPs eliminates those clinical services from the standard of what is considered equal or

better service at the time of a modification or transfer to another facility. The net result of these policies imposed by the Defendants is that demonstrated needs of residents, many of whom are medically fragile, are not being accurately documented.

Although the other Developmental Centers, Glavin, Hogan, Monson, Templeton, and Wrentham, beginning in 1997, adopted, consistent with Department-wide practice, a "new" ISP form, with particular instructions for their implementation, the Fernald administration continued to use the "old" ISP form until 2003 so that critical information regarding the residents was omitted for a six-year period. Although Fernald staff was specifically trained in the use of the new ISP format, the Defendants denied a request from the Plaintiffs that a similar training opportunity be granted to parents and legal guardians participating in the new format in order to effectively and independently represent the interests of their resident family member.

Notwithstanding the announced intention by Governor Romney in February 2003 to close Fernald and all existing ICF-MRs at Glavin, Hogan, Monson, Templeton, Wrentham, and to transfer, beginning in 2004, all current residents at Fernald to other facilities, not one modification or transfer ISP required by Regulation (115 CMR 6.25 and 6.63) has been scheduled or held, which effectively denies families and guardians the opportunity to timely participate in an administrative and judicial appeal of the relocation of the affected resident.

The Defendants have not substantially complied with the following requirements of the Order:

“Defendants shall continue to seek to improve, and shall not undermine, the progress achieved during the period of this litigation by:

b. Exerting their best efforts to maintain and secure sufficient funds to meet the needs of class members under this Order.” (Reference Order paragraph 6b)

Although Governor Romney originally publicly announced his estimate that the closing of Fernald would result in annual savings of \$4.5 million, testimony before the Legislative Committees on Ways and Means has confirmed that there will be no savings with the planned closing of Fernald or of any other ICFMR.

The impact of the FY2005 budget, which reduces the DMR facility account by \$5 million, together with recent prior budget reductions, will create a situation which places class members at risk and severely affects the Defendants’ ability to meet its Court-mandated obligations to provide active treatment for Ricci class members.

The budget recommendations of Governor Romney for FY2005 are disingenuous in that they do not include any increase in funds to accommodate additional facilities, staff, or programs for the 267 Fernald residents intended to be transferred to other DMR-operated facilities. (See Affidavit of William Gauthier attached hereto as Exhibit 9.)

The magnitude and impact of currently proposed budget reductions can only be considered in the context of 543 personnel reductions made at ICF-MRs in recent

prior years, which together with the proposed budget for FY2005 clearly establish a systemic violation of the Order. It is both irrelevant and misleading to compare the FY1993 level of Legislative appropriation to DMR with the necessary appropriation to that agency to meet the current needs of class members under the Order.

Due to the reductions in the DMR budget for FY2002, there was a loss of approximately 162 staff positions (47 at Fernald; 23 at Monson; 23 at Wrentham; 31 at Hogan; 13 at Templeton), including Psychologists, Registered Nurses I, II, III, IV and V, Ward Aides, Habilitative Coordinators, Speech Language Pathologists, Audiologists, Occupational Therapist Assistants and Aides, Mental Retardation Workers III and IV, Physical Therapy Assistants, and other required personnel, which have, notwithstanding federal or state surveys, already created a situation which compromises the Defendants' ability to comply with the Order and places class members at risk. (See List of FY2002 Staff Reductions attached hereto as Exhibit 10.)

In addition to the staff losses caused by budget reductions in FY2002 above described, the Department facilities lost an additional 225 staff members (28 at Fernald; 24 at Monson; 48 at Wrentham; 21 at Hogan; 13 at Templeton), who were offered and accepted early retirement from positions they previously held, including but not limited to, MRW III and IV, Launderer, Power Plant Engineer, Groundskeeper, RN IV and V, Machinist, Painter, Carpenters, Cook, Human Services Coordinators, Psychologists, Canteen Workers, Motor Truck Driver, and Tradesworker, all of whom

had provided significant services to the residents. (See List of Job Titles and Location attached hereto as Exhibit 11.)

The unprecedented loss of staff, including professionals, supervisory, direct care, and support staff since the entry of the Final Order on May 25, 1993 was further exacerbated in November 2003 by the additional loss of 156 staff members, who were offered and accepted early retirement from positions they previously held, all of whom had provided significant services to the residents at the Developmental Centers at Glavin, Hogan, Monson, Templeton, Wrentham and Fernald (See List of Job Titles and Location attached hereto as Exhibit 12.)

The implementation of the FY2005 budget reductions in the Facilities Account, together with the increasing number of unfilled vacant staff positions, will necessarily result in an additional loss of personnel to an unacceptable degree and add to the already heavy caseloads of those clinicians, direct care workers, and support staff, who provide necessary services to class members. (See Affidavits of Peter Brand and Kay Schodek attached hereto as Exhibit 13.)

The \$5 million reduction for FY2005 in the DMR Facilities Account proposed by the Governor and approved by the Legislature will necessarily require additional significant reductions in professional, clinical and support staff, which will make it impossible for the Defendants to meet the ISP-documented needs of class members in accordance with the provisions of the Court's Order of May 25, 1993.

The Defendants have not substantially complied with the following requirements of the Order:

“Sufficient adequately trained and experienced personnel, as reasonably determined by the Department of Mental Retardation based on professional judgment, shall be available to substantially meet the needs set forth in each class member’s ISP.” (Reference Order paragraph 2c)

Of the nearly 1,200 individuals currently resident at the Developmental Centers at Fernald, Glavin, Hogan, Monson, Templeton, and Wrentham, nearly 75% of those individuals have been diagnosed with either profound or severe mental retardation. At Fernald alone, approximately 90% of the residents are identified as profoundly or severely retarded. At all the current Developmental Centers, nearly 40% of the residents are non-ambulatory, who require ground floor living and work space. At Fernald alone, nearly 65% of the residents are not independently ambulatory. In addition, approximately 10% of the total population of Fernald is tube fed and an additional 79% are required to follow a texturized diet.

Indicative of the effect that professional staff reduction has had upon the resident population at Fernald is the fact that the psychology staff to resident ratio is now 1: 54; social worker staff 1: 64; habilitation coordinator staff 1:30; recreation therapy staff 1:24. Further, there are now only three occupational therapists, 2.5 physical therapists, 2 physical therapy assistants, 2.75 physicians, 12 nurse practitioners, and 1.25 speech therapists to serve all of the current residents at Fernald.

At Fernald, during the past six months, there have remained unfilled over 20 MRW vacancies, 14 LPN vacancies, and 12 RN vacancies, requiring inappropriate short-term use of floating personnel, unnecessary overtime, increased caseloads for remaining staff, and an attendant lack of supervision. Only minimal efforts have been exerted to recruit and replace vacant positions. In many instances, vacant staff positions have not even been posted.

At all the DMR facilities, there has been a significant reduction in both clinical and support staff during the past several years due to lay-offs, retirements, and the failure to fill vacant positions. At Fernald Development Center, in particular, in the past two years, there has been a reduction of MRW4 staff positions from 42 to 22; MRW3 staff positions from 36 to 20; psychologists from 13 to 7; motor truck driver from 7 to 4; tradesworker from 4 to 2; groundskeepers from 6 to 3; electrician from 6 to 3; plumber from 3 to 1; recreational therapist from 4 to 2; fabric worker from 2 to 0; roofer from 1 to 0; mason 1 to 0.

Although the client census at Fernald during the past two years has been reduced by approximately 10%, there has been a staff reduction during the same period of approximately 50%, which has directly affected resident participation in active treatment programs and recreational activities, reduced access to the activity center, closure of the café two years ago, together with a reduced availability of therapeutic programs conducted at the swimming pool.

In furtherance of the announced policy to close all of the Developmental Centers in the next several years, the Defendants have failed to provide appropriations to meet the large scale present need for capital improvements and repairs. As reported as recently as May 2002 by the Department's Facility Planning Working Group, the Defendants have since 1998 conducted self-surveys of capital needs assessments including projections, adjusted to include feasibility study costs, design fees, and construction costs, for each of the ICF-MRs. In addition, the Division of Capital Asset Management in contract with the firm of Parsons-Binkerhoff conducted a recent survey of repair and equipment replacement in a building by building survey at Fernald, which survey has never been publicly disseminated.

Neither the self-survey by Fernald staff nor the review by Parsons-Binkerhoff of capital needs at Fernald or other facilities at Glavin, Hogan, Monson, Templeton, and Wrentham have been significantly funded, which has resulted in a continuous state of disrepair at these facilities.

The policy decision announced by Governor Romney to close or consolidate existing DMR facilities which are subject to the Final Order together with the unprecedented reduction in personnel and available budget in the past several years totally undermines and erodes the progress achieved by the Federal Court during the period of litigation 1972 - 1993 and accordingly, represents a systemic violation.

Further, since it has been announced that all of the existing Developmental Centers will be closed during Governor Romney's term in office, there is no approved plan to accommodate the social and psychological impact of necessary multiple moves and disruption, which will occur in the lives of the residents and their families.

A careful reading of the facts alleged in the original Class Action Complaints filed in 1972 and 1974 now presents, to an alarming degree, a repetition, 30 years later, of the same conditions, including but not limited to, insufficient staffing, lack of equipment, delayed maintenance, repeated problems with infestation of vermin, transportation issues, an inadequate food delivery system, and an increasing number of unexplained resident injuries. (See Affidavits of Philip Corrigan, Albert Pizella, and Joseph A. Hughes attached hereto as Exhibit 14.)

During the most recent fiscal year, the Defendants received over four hundred million dollars in Federal reimbursement (Federal Financial Participation) for programs and services provided to retarded residents of the Commonwealth in accordance with the Medicaid program. A careful reading of the Federal Regulations that govern participation for intermediate care facilities indicates that the Defendants may jeopardize continued federal reimbursement for failing to substantially comply with the following regulations established in accordance with 42 CFR Ch. IV (10-1-02 Edition) Subpart I §483.20 Client protections, §483.430 Facility staffing, §483.440 Active treatment services, §483.450 Client behavior and facility practices, §483.460

Health care services, and §483.470 Physical environment. (See Code of Federal Regulations attached hereto as Exhibit 15.)

Reminiscent of the conditions that existed thirty years ago, in which parents and family members of residents privately donated funds to support activities, furnishings, and the physical environment at Fernald, many family members today are in the same situation due to the lack of adequate funds and repairs so that they privately pay for programs and services which are otherwise unavailable at Fernald. (See Affidavits of Diane Booher and Albert Pizella attached hereto as Exhibit 16.)

In addition, due to staff shortages, lack of supervision, and lack of preventative maintenance programs, there has been a progressive and alarming physical deterioration and loss of timely maintenance at Fernald, which has resulted in an increase in safety issues, lack of medical attention, inconsistent transportation services, elimination of recreation programs, unattended health issues, and a visible increase in vermin and insects in residential areas. (See Affidavit of Dorothy O'Rourke attached hereto as Exhibit 17.)

Many of the buildings at Fernald, which were partially or completely renovated in accordance with specific Orders of the Court, have unnecessarily and prematurely been closed, abandoned or leased to other government agencies, causing a decrease in available bed capacity for Fernald residents.

Governor Romney's announced plan to close, during his administration, all of the Developmental Centers which now provide housing for over a thousand retarded class members is in sharp contrast to and directly contradicts the report by the Department of Mental Retardation's Facility Planning Working Group published in 2002, which concluded that the future facility bed capacity needed in FY2011 will require a low bed capacity of 671 beds and, for the same period, estimated a high facility bed capacity of 912 beds. (See Report of the DMR Facility Planning Working Group (May 2002), Table II Summary of Projected Future Facility Bed Capacity Needed attached hereto as Exhibit 18.)

In the spring of 2003, following the announcement by Governor Romney of his decision to close the Fernald Developmental Center, DMR Commissioner Gerald J. Morrissey, Jr. established an eight-person Fernald Developmental Center Family Advisory Committee of family members and guardians with the stated purpose to "foster communication between DMR and the families regarding the closing of the facility." In a written policy statement, Morrissey declared that "Specifically, the Department will share information and solicit feedback with family members concerning the current and proposed plans and activities related to the closing. Committee members both individually and collectively will have the opportunity to make suggestions and recommendations, seek clarification and request information through this structure."

Thereafter, for a period of twelve months, despite its stated goals for cooperation with the Plaintiffs' representatives, the Defendants repeatedly ignored requests for information, limited the opportunity for and refused to consider issues for discussion, redlined Plaintiff's proposed agendas, and generally demeaned the opportunity for meaningful discussion and communication. (See Plaintiff's proposed agendas for Family Advisory Committee as redacted by the Defendants attached hereto as Exhibit 19.)

On June 8, 2004, Commissioner Morrissey disbanded the Family Advisory Committee.

Although the Defendants frequently cite the closing of Belchertown State School in 1992 as an example and model for future closings of ICF-MRs, the procedures that are presently being used to evict the residents at Fernald are totally opposite the procedures that were agreeably followed by previous administrations with the support of parents and guardians of residents at Belchertown. (See Affidavit of Benjamin Ricci attached hereto as Exhibit 20.)

The Defendants have not substantially complied with the following requirements of the Order:

"Except as set forth in other paragraphs of this Order, nothing in this Order is intended to detract from or limit the discretion of the defendants in developing and improving programs, managing and determining the personnel and budget of the Department of Mental Retardation and other state agencies, implementing innovative services, improving quality enhancement and dispute-resolution mechanisms, or allocating its resources to ensure equitable treatment of its citizens." (Reference Order paragraph 5)

Since the Final Order was entered by the Court on May 25, 1993, the Defendants have systematically abused the discretion authorized by the Court by publicly alleging that there would be budget savings accomplished by closing of Fernald Developmental Center and all other ICF-MRs; ignoring the concerns of the family advocacy organization at Fernald; limiting the subject matter proposed for discussion by the Family Advisory Committee; inappropriately establishing a process for the sale to private developers of the 163 acre site at Fernald prior to the development of a humane plan to provide alternative housing for the current residents; fully funding the Boulet and Rolland federally-mandated lawsuits while substantially reducing the available budget for the Ricci class action; politicizing the admission policy at the Developmental Centers to accommodate the factors of influence and favoritism; the development of a Placement Profile process, which circumvents and denigrates the established ISP process; and publicly criticizing the Court's role in the Consent-Decree process. (See Affidavit of Cathy Gover attached hereto as Exhibit 21.)

The unexpected announcement by Governor Romney to close all the existing ICF-MRs beginning with Fernald, together with the attendant lack of long-term planning, budget and staff reductions, failure since 1973 to certify in accordance with the Court Order that "the individual to be transferred will receive equal or better services to meet their needs in the new location and that all ISP-recommended services for the individual's current needs as identified in the ISP are available at the new location," unfilled long-term vacant staff positions, deferred ISP transfer

hearings, introduction of a Placement Profile process that is not authorized by statute or regulation, administrative editing of residents' ISPs without prior notice to family members to guardians, loss of regular contact with family members due to increased and lengthy transportation issues, lack of capital improvements, delayed maintenance and repair, and no effort to increase staff at alternative sites to which Fernald residents are to be transferred, has resulted in systemic violations of the Order that require equal or better lifetime services for those residents facing transfer to new locations. (See Affidavits of H. Cody Meissner, M.D. and Mark Booher, Ph.D. attached hereto as Exhibit 22.)

Respectfully submitted,
Belchertown, Monson and Fernald Plaintiffs
By Their Attorney

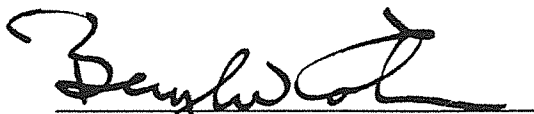


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DATED: July 13, 2004

CERTIFICATE OF SERVICE

I, Beryl W. Cohen, hereby certify that a true copy of the within Motion to Reopen and Restore Case to Active Docket and Enforce the Final Order of May 12, 1993 has been served this day, July 13, 2004, by hand upon the Defendants' attorney, Robert L. Quinan, Jr., Assistant Attorney General, Government Bureau, Office of the Attorney General, Commonwealth of Massachusetts, at his office at One Ashburton Place, Room 2019, Boston, MA 02108-1698.



Beryl W. Cohen