

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

DISABILITY RIGHTS CONNECTICUT, INC., SHANNON	:	
HEMMINGSSEN, SAMUEL RIVERA, GALE YENCHANG,	:	
NORMA JEAN DIAZ, and AGATHA JOHNSON, individually	:	
and on behalf of similarly situated individuals,	:	
	:	
	:	
Plaintiffs,	:	Civil Case No.
	:	
v.	:	3:06 Civ. 00179 (AWT)
	:	
THE STATE OF CONNECTICUT, MICHAEL P.	:	
STARKOWSKI, in his official capacity as Commissioner of the	:	
Connecticut Department of Social Services, PATRICIA	:	
REHMER, MSN, in her official capacity as Commissioner of the	:	
Connecticut Department of Mental Health and Addiction	:	
Services, J. ROBERT GALVIN, M.D., M.P.H., in his official	:	
capacity as Commissioner of the Connecticut Department of	:	
Public Health,	:	
Defendants.	:	

**CONSENT ORDER MODIFYING
SETTLEMENT AGREEMENT**

WHEREAS, the Parties¹ entered into a Settlement Agreement [ECF 303-11], which was approved by order of this Court on July 2, 2014 [ECF 310]; and

WHEREAS, the Settlement Agreement provides, *inter alia*, that the terms of the Settlement Agreement and Defendants’ obligations thereunder will remain in effect during the Settlement Period, *i.e.*, the date that is four years from the date on which the Court so orders a final Order approving the Settlement Agreement (July 2, 2018); and

¹ Capitalized terms not defined herein have the meanings set forth in the Settlement Agreement.

WHEREAS, pursuant to the Settlement Agreement, Defendants agreed, *inter alia*, to “ensure that (i) all Class Members who are determined by Defendants as both eligible for Community-Based Services, and to live in Community-Based Settings have been afforded such services in such settings, subject to their informed choice to remain in the Nursing Home or receive Community Based Services in another setting...”; and

WHEREAS, in or about January 2017, Defendants became aware of certain individuals who may have been Class Members of whom Defendants were previously unaware (the “New Class Members”) who, accordingly, did not directly receive the specific protections afforded by the Settlement Agreement until such time as they were identified as potential Class Members; and

WHEREAS, there are a certain number of New Class Members to whom the terms of the Settlement Agreement would apply; and

WHEREAS, Defendants do not believe and dispute whether the delayed identification of the New Class Members constitutes a failure to comply with the provisions of the Settlement Agreement; and

WHEREAS, a dispute therefore exists between the Parties regarding the Defendants’ obligations under the Settlement Agreement to the New Class Members; and

WHEREAS, the Parties desire to resolve all disputes concerning the New Class Members in order to avoid the expense, risks and uncertainty of pursuing remedies under the Settlement Agreement and of potential litigation.

NOW, THEREFORE, it is hereby stipulated and agreed by and among the Parties, and ordered by the Court, as follows:

1. The Settlement Agreement is expressly modified, pursuant to Section IV(2), solely as set forth in this Consent Order.

2. The Remedial Expert, in consultation with the Parties, has determined the identity of the New Class Members, whom the Parties agree shall be sole subjects of the provisions of this Consent Order and whose names and locations are set forth in a side letter signed by the Parties and the Remedial Expert (hereinafter the "New Class Members Letter"), which is not being filed with the Court in order to preserve confidentiality of the New Class Members' personal and medical information.

3. The New Class Members Letter also sets forth the Parties' and Remedial Expert's agreement as to the period of time for each New Class Member that the Settlement Agreement shall be extended in accord with this Consent Order, said periods ranging from six months to eighteen months from the end of the Settlement Period as set forth in the Settlement Agreement (hereinafter the "Extended Settlement Period").

4. For the sake of clarity, any extension of the Settlement Period provided under this Consent Order does not apply to any Class Member or any other person not listed in the New Class Members Letter and, except as set forth herein, the Settlement Agreement will terminate pursuant to its terms on July 2, 2018 as to such Class Members and persons.

5. Defendants agree to satisfy their obligations set forth in the Settlement Agreement to the benefit of the New Class Members listed in the New Class Members Letter during each New Class Member's Extended Settlement Period.

6. In regards to solely the New Class Members listed in the New Class Members Letter, the provisions set forth in Section 6 of the Settlement Agreement (concerning the Remedial Expert and Dispute Resolution) shall continue in effect during the Extended Settlement Period.

7. Notwithstanding anything to the contrary in set forth in Section III, A.,1.(i) and (iii) of the Settlement Agreement, the Defendants shall ensure that any New Class Member listed

in the New Class Members Letter whom DMHAS and DSS have determined is eligible to receive Community Based Services in a Community-Based Setting and who has exercised informed choice to receive such services shall have been afforded such services in a Community Based setting within six (6) months of the determination of such eligibility or exercise of such informed consent whichever is later in time (hereinafter the "Placement Deadline"). In the event said New Class Member retracts his or her informed choice to receive Community-Based Services in a Community-Based Setting less than 90 days before the Placement Deadline, said deadline shall cease to apply. The Extended Settlement Period shall not be further extended because a New Class Member's Placement Deadline occurs after the end of the New Class Member's Extended Settlement Period.

8. The Parties agree with the Remedial Expert's certification (attached hereto as Exhibit A), submitted in accord with Section IV, 1, B. of the Settlement Agreement that, except as to the New Class Members listed in the New Class Members Letter, the Defendants have fully implemented and accomplished each and every benchmark within the timelines specified and are in compliance with the Settlement Agreement as to all other Class Members.

9. Plaintiffs specifically acknowledge in accord with Section IV, 6 of the Settlement Agreement that no claim for attorney's fees and/or costs can be asserted arising from any efforts related to or arising from the entry of this Consent Order.

10. The Settlement Agreement remains in effect subject to its express terms only to the extent as expressly set forth in this Consent Order and subject to the modifications set forth herein.

It is so ordered.

Signed this 25th day of June, 2018 at Hartford, Connecticut.

/s/AWT

Alvin W. Thompson
United States District Judge