

**UNITED STATES DISTRICT COURT  
for the  
DISTRICT OF MAINE**

Jacob Van Meter, Adam Fletcher, by his guardian Gail Fletcher, and Eric Reeves,	)
	)
	)
Plaintiffs,	)
	)
v.	)
	)
Brenda Harvey, Commissioner, Maine Department Of Health and Human Services,	)
	)
Defendant.	)
	)

Civil Action No. \_\_\_\_\_

**COMPLAINT**

I. Introduction

1. This action is brought by and on behalf of three young men who have been unlawfully confined to nursing facilities for years in violation of their rights under federal law. The Plaintiffs, despite their disabilities, are capable of attending school, working and participating in various community activities, and being contributing members of society. Maine state officials have failed to accommodate Plaintiffs’ disabilities and ensure that they receive appropriate treatment in the most integrated setting possible. The Plaintiffs are currently segregated in nursing facilities, where they do not receive even minimally adequate training, habilitation, or support services, as required by law. The Plaintiffs, therefore, bring this action against Maine’s Commissioner of the Department of Health and Human Services (hereafter the “Defendant”) seeking declaratory and injunctive relief.

2. The Plaintiffs should not be in nursing facilities because they do not require significant nursing care but instead need only supervision or assistance with activities of daily living such as bathing, dressing and eating. The medically necessary services to which Plaintiffs are entitled can and must be provided, under applicable federal law, in integrated community settings.

3. Maine, like most other states, voluntarily participates in the federal Medicaid program. 42 U.S.C. § 1396 – 1396v. As a condition of participation, Maine must ensure that services that are medically necessary for its citizens with disabilities are provided in a reasonably prompt manner and in sufficient amount, duration, and scope to meet the medical and clinical needs of all eligible Medicaid recipients like the Plaintiffs. 42 U.S.C. § 1396a(a)(8), 42 C.F.R. § 440.230(b). This failure to provide Plaintiffs with the programs and supports to which they are entitled has resulted in their deterioration, regression, segregation and unnecessary institutionalization.

4. Alternatively, if the Plaintiffs needed nursing home care, because Plaintiffs have developmental disabilities, they require and are entitled to receive specialized services appropriate to their individual needs, which promote independence and growth, while they remain confined in nursing facilities. The Nursing Home Reform Amendments to the federal Medicaid Act (hereafter “NHRA”) require that individuals with developmental disabilities must be screened to determine that they actually need nursing services prior to their admission to nursing facilities. 42 U.S.C. § 1396r(e). These amendments also require that the state “provide or arrange for the provision of” specialized services in nursing facilities or in the community to individuals with developmental disabilities, including the Plaintiffs who have cerebral palsy. 42

C.F.R. § 483.120. The Plaintiffs have received no specialized services and continue to live in nursing facilities segregated from their communities.

5. In segregating Plaintiffs in nursing facilities and failing to afford them equal access to community services and supports, the Defendant contravenes the integration and non-discrimination mandates of Title II of the Americans with Disabilities Act (hereafter “ADA”), 42 U.S.C. § 12131-12134, and the Rehabilitation Act of 1973 (hereafter “Rehab Act”), 29 U.S.C. § 794. Likewise, the Defendant violates the relevant provisions of the Social Security Act and its implementing regulations in unnecessarily confining Plaintiffs to nursing facilities and failing to provide them with specialized services appropriate to their disabilities.

6. This case is brought to remedy these violations of federal law and to ensure that Jacob Van Meter, Adam Fletcher, and Eric Reeves receive appropriate services to which they are entitled under the Social Security Act, 42 U.S.C. § 1396a - 1396v and that these services are provided in an integrated community setting, as required by the ADA, 42 U.S.C. § 12133, and the Rehab Act, 28 C.F.R. § 41.51(d).

## II. Jurisdiction and Venue

7. This action is brought pursuant to Title II of the ADA, 42 U.S.C. § 12133, and Section 504 of the Rehab Act, 29 U.S.C. § 794. The Defendant is a public entity subject to Title II of the ADA and a recipient of federal financial assistance under Section 504 of the Rehab Act.

8. This action is also brought pursuant to 42 U.S.C. § 1983 to redress the deprivation of rights, privileges, and immunities guaranteed by federal law and the United States Constitution. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

9. This Court has jurisdiction over this action for declaratory relief pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by 28 U.S.C. § 2202, and Rule 65 of the Federal Rules of Civil Procedure.

10. Venue is proper in the District of Maine pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events or omissions giving rise to these claims occurred within the State of Maine.

### **III. Parties**

11. Plaintiff Jacob Van Meter is twenty-six (26) years old and resides in a nursing facility located in the Town of Ellsworth, County of Hancock, in the State of Maine.

12. Jacob was born with cerebral palsy, a neurological disorder that has profoundly and permanently affected his body movement and muscle coordination. As a result of this disability, Jacob requires assistance with his activities of daily living, including dressing, feeding, and mobility, among other activities. Despite Jacob's disability, his cognitive functions are not limited. He completed high school and is now taking college courses.

13. While in high school, Jacob, a MaineCare recipient, needed assistance with his activities of daily living. However, due to limitations in Maine's MaineCare program, he was not able to receive the level of services he needed while remaining at home. Jake was left with little choice but to enter into a nursing home where he has lived for the past eight (8) years. During those eight years he has never been screened for, found eligible for, or received specialized services in accordance with the NHRA, 42 U.S.C. § 1396r.

14. With appropriate supports, Jacob could safely live in a non-institutional, residential community setting.

15. Plaintiff Adam Fletcher is age twenty-eight (28) and for the past three (3) years he has been placed in a facility located in Braintree, Massachusetts. He is a Maine resident who receives his health care services through the MaineCare program. He has cerebral palsy, which significantly limits his physical abilities, and as such he requires assistance with his activities of daily living.

16. Prior to going to the present facility, Adam graduated from high school, was a member of the National Honor Society, and planned to attend college. The Defendant has never assessed Adam as needing specialized services under the NHRA, although Adam meets the criteria to receive such services. Adam would like to return to Maine to live relatively independently in the community where he could resume his studies and get a job.

17. With appropriate supports, Adam could safely live in a non-institutional, residential community setting.

18. Plaintiff Fletcher's claim is brought on his behalf through his legal guardian, Gail Fletcher. Both Adam Fletcher and Gail Fletcher's legal residence is in the Town of Ellsworth, County of Hancock, in the State of Maine.

19. Plaintiff Eric Reeves is age thirty-three (33) and resides at a nursing home in the Town of Penobscot, Hancock County, in the State of Maine. He is enrolled in the MaineCare program, which provides for his health care services. He has cerebral palsy, which substantially limits his ability to care for himself; he needs assistance with activities of daily living.

20. Prior to going to the present facility, Eric lived in various nursing homes and in his community. While living in the community, Eric held a job for approximately five years. The Defendant has never assessed Eric as needing specialized services under the NHRA, although Eric meets the criteria to receive such services. Like Jacob and Adam, Eric would like

to live relatively independently in the community where he could resume his studies and get a job.

21. With appropriate supports, Eric could safely live in a non-institutional, residential community setting.

22. For the past several years, the Plaintiffs in this case have repeatedly sought to move out of the nursing facilities and into a home in the community that could meet their physical needs and allow them to live more independently. The Plaintiffs have attempted to engage in an interactive process to seek and to have the Defendant provide them with services in a community-based, integrated setting. The Plaintiffs also have formed an organization, JacobBrewerHome.Org and are actively seeking ways to leave the nursing facility. *See* [http://jacobbrewerhome.org/index.php?p=1\\_3\\_About](http://jacobbrewerhome.org/index.php?p=1_3_About).

23. Defendant Brenda Harvey is the Commissioner of the Department of Health and Human Services for the State of Maine. Her principal place of business is in the City of Augusta, County of Kennebec, in the State of Maine. She has overall responsibility for administrating Maine's Medicaid Program, MaineCare, and ensuring compliance with the Medicaid Act and the NHRA. It is the policies, practices and procedures of the Department that violate the rights of the Plaintiffs to receive certain specialized services and to receive such services in the least restrictive setting. She is responsible for ensuring that the rules, policies and practices of the Maine Department of Health and Human Services are conducted in compliance with the ADA. Her actions, relevant hereto, have been taken under the color of state law. She is sued in her official capacity only.

#### **IV. Factual Allegations**

##### *The State-Federal Medicaid Program*

24. Medicaid is a jointly funded state and federal program that provides medical services to low-income persons pursuant to Title XIX of the Social Security Act. 42 U.S.C. § 1396-1396v.

25. State participation in the Medicaid program is optional. States choosing to receive federal matching funds for their Medicaid program must comply with the requirements of the federal Medicaid Act and with the federal regulations governing state Medicaid programs promulgated by the U.S. Department of Health and Human Services (hereafter “HHS”). 42 U.S.C. § 1396, 42 C.F.R. §§ 430-484. The Centers for Medicare and Medicaid Services (CMS) is responsible for the administration of the Medicaid program.

26. The state Medicaid agency may place appropriate limits on services based on such criteria as medical necessity or on utilization control procedures.

27. Maine has chosen to participate in the Medicaid program. It has prepared a state plan, which CMS has reviewed and approved. That plan, along with relevant federal law and regulations, forms the foundation for the Maine’s Medicaid program and establishes the State’s obligations and responsibilities to Medicaid recipients. DHHS and its Commissioner, Brenda Harvey, administer the Medicaid program.

28. States must cover nursing facility services as a part of their Medicaid programs. 42 U.S.C. §§ 1396a(a)(10)(A), 1396d(a)(4)(A).

29. DHHS has failed to coordinate the activities, programs, and resources of the agencies under its control in order to ensure that the Plaintiffs receive medically necessary services, particularly specialized services in nursing facilities. In addition, DHHS has failed to

take reasonable actions to prevent the Plaintiffs from being inappropriately admitted to and retained in nursing facilities, through the actions and inactions of its agencies.

*Nursing Facilities and the Nursing Home Reform Amendments to the Social Security Act*

30. A nursing facility is an institution which primarily provides: (1) nursing care; (2) rehabilitation services for those who are sick, injured or disabled; and (3) health related care and services to individuals who, because of their mental or physical condition, require care and services which can only be provided in an institutional setting. 42 U.S.C. § 1396r(a)(1)(A-C).

31. Nursing facilities' services are defined as "services which are ... required to be given an individual who needs ... on a daily basis nursing care (provided by or requiring the supervision of nursing personnel) or other rehabilitation services which as a practical matter *can only be provided in a nursing facility* on an inpatient basis." 42 U.S.C. § 1396d(f) (emphasis added).

32. In 1987, Congress passed the Nursing Home Reform Amendments (NHRA) to the Medicaid Act to address the widespread problem of warehousing people with psychiatric and developmental disabilities in the Nation's nursing facilities. 42 U.S.C. § 1396r. Congress enacted the Pre-Admission Screening and Annual Resident Review ("PASARR") provisions of the NHRA to prevent and remedy the unnecessary admission and confinement of people with psychiatric and developmental disabilities in nursing facilities.

33. The PASARR review is designed to determine whether an individual is appropriate for admission because he or she needs the level of nursing services that can only be provided in a nursing facility. 42 U.S.C. § 1396r(e)(7)(B)(ii); 42 C.F.R. § 483.126. The PASARR review must also identify whether a person is suspected of having a mental illness, mental retardation, or a related condition. 42 U.S.C. § 1396r(e)(7)(B)(i); 42 C.F.R. § 483.128.



34. “Related conditions” are severe, chronic disabilities attributable to cerebral palsy or epilepsy or any other condition (other than mental illness) found to be closely related to mental retardation. 42 C.F.R. § 435.1010.

35. Following admission, annual reviews are to be conducted to determine whether the individual continues to need a nursing level of care and to require confinement in a nursing facility. The initial and annual PASARR evaluations must also determine whether specialized services are necessary. 42 U.S.C. §§ 1396r(b)(3)(F)(i), 1396r(e)(7)(A)&(B); 42 C.F.R. §§ 483.128, 483.132, 483.134, 483.136. Specialized services consist of an active and continuous treatment program that includes aggressive, consistent implementation of specialized and generic training, treatment, and health services that are aimed at allowing the individual to function as independently and with as much self-determination as possible, and services designed to prevent or decelerate regression and loss of abilities. 42 U.S.C. § 1396r(e)(7)(G)(iii); 42 C.F.R. §§ 483.120, 483.440(a)(1). The state is required to “provide for (or arrange for the provision of)” needed specialized services. 42 U.S.C. § 1396r(e)(7)(C)(i)(IV); 42 C.F.R. § 483.120.

36. The PASARR review must assess whether the individual’s needs could be met in the community or whether she/he requires institutionalization. 42 U.S.C. § 1396r(e)(7)(B); 42 C.F.R. § 483.132. The review must document the individual’s need for assistance with activities of daily living; level of sensor motor development; social development; academic and educational development; ability to live independently, and vocational development. *See* 42 U.S.C. § 1396r(e)(7)(B); 42 C.F.R. § 483.136. The assessment must determine whether it would be possible to meet the individual’s needs through the provision of specialized services in the community as an alternative to nursing facility placement. 42 U.S.C. § 1396r(e)(7)(C)(i)(IV); 42 C.F.R. § 483.132.

37. If the PASARR review determines that a resident does not require nursing facility services, but instead requires services in a non-institutional setting, states have a mandatory duty to provide or arrange for the provision of these specialized services. 42 U.S.C. §§ 1396r(e)(7)(C)(i); 1396r(e)(7)(C)(ii); 42 C.F.R. §§ 483.118(c); 483.120(b).

38. Long-term residents who have continuously resided in a nursing facility for at least thirty (30) months must be given the choice of receiving these specialized services while remaining in the facility or receiving the services in an alternative community setting. 42 U.S.C. § 1396r(e)(7)(C)(i)(II); 42 C.F.R. § 483.118(c)(1)(i).

39. DHHS licenses nursing facilities in Maine. DHHS is solely responsible for administering the PASSAR program and providing individuals with specialized services. 42 U.S.C. § 1396r(e)(7); 42 C.F.R. §§ 483.100-.138. Because these nursing facilities participate in the federal Medicaid program, DHHS reviews and certifies these facilities pursuant to the federal requirements for nursing facilities under 42 C.F.R. §§ 483.1-483.75. DHHS, as part of its responsibility for surveying, inspecting, and certifying nursing facilities, has failed to identify the lack of compliance with the PASARR provisions of the NHRA and its implementing regulations. 42 U.S.C. § 1396r(e)(7); 42 C.F.R. §§ 483.100-.138. Specifically, DHHS has not documented the failure to prevent Plaintiffs from unnecessary admission to nursing facilities, identify Plaintiffs as eligible for specialized services, and to provide them such specialized services.

40. The Plaintiffs do not need intensive nursing services that can only be provided in a nursing facility, nor do they require an institutional setting. 42 C.F.R. § 483.132. Moreover, they do not receive those specialized services or supports in the community as required by the Medicaid Act and regulations. 42 C.F.R. §§ 483.120, 483.132, 483.136.

41. Furthermore, even if the Plaintiffs needed intensive nursing services, they are not receiving specialized services or supports in the nursing facility as required by the Medicaid Act and regulations. 42 C.F.R. §§ 483.120, 483.132, 483.136.

42. The Plaintiffs could live and function in an alternative community setting if they were provided with specialized support services appropriate to meet their needs.

43. Defendant has failed to ensure that the Plaintiffs receive rehabilitative community developmental disability support services; unnecessarily institutionalized them; and, instead, provided them with severely limited and inappropriately restrictive nursing services where they are segregated from the community, their family, and their friends. If Defendant offered Plaintiffs appropriate community developmental disability support services outside of the nursing facility, the Plaintiffs could live in alternative, integrated community settings. Nonetheless, Defendant has not provided Plaintiffs with adequate and appropriate, medically necessary services in a community setting.

44. None of the Plaintiffs are currently receiving specialized services through the PASARR program or through any other program.

45. None of the Plaintiffs have been offered specialized services, as defined in 42 C.F.R. §§ 483.120, 483.440, while living in the nursing facility. Likewise, none of the Plaintiffs have been offered the choice of receiving specialized services and the other services that they need, in a community setting suitable to meet their needs.

46. The Defendant's current rules, policies and procedures result in the Plaintiffs unlawfully being found not eligible for specialized services through the PASARR program.

*The Americans with Disabilities Act And Its Integration Mandate*

47. On July 12, 1990, Congress enacted the ADA, 42 U.S.C. § 12101-12213 (ADA), establishing the most important civil rights laws for persons with disabilities in our nation's history.

48. Congress stated in its findings that “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.” 42 U.S.C. § 12101(a)(2).

49. Congress found that “discrimination against individuals with disabilities persists in ... institutionalization ... and access to public services.” 42 U.S.C. § 12101(a)(3). It also found that “individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion . . . , segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.” 42 U.S.C. § 12101(a)(5).

50. Congress further concluded that “[i]ndividuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.” 42 U.S.C. § 12101(a)(7).

51. A major purpose of the ADA is to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities, and to provide clear, strong, consistent and enforceable standards addressing discrimination against individuals with disabilities. 42 U.S.C. § 12101(b)(1)&(2).

52. Title II of the ADA provides that “no qualified individual with a disability shall, reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.” 42 U.S.C. § 12132.

53. “Discrimination” under the ADA includes the segregation of persons with disabilities from society as a result of unnecessary institutionalization. As the Senate Labor and Human Relations Committee observed: “One of the most debilitating forms of discrimination is segregation imposed by others ... Discrimination *also* includes exclusion, or denial of benefits, services, or other opportunities that are as effective and meaningful as those provided to others.” S. Rep. No. 116, 101st Cong., 1st Sess. 6 (1989) (emphasis added). Thus, Congress recognized that “discrimination” against persons with disabilities entails more than just disparate treatment, and that simply requiring evenhanded treatment would not remedy all discrimination.

54. The regulations implementing the ADA require that: “a public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). The affirmative duty embodied in 28 C.F.R. § 35.130(d) stems from the recognition that the failure to integrate individuals with disabilities in society (for example, through unnecessary institutionalization) constitutes unlawful discrimination under the ADA.

55. Each of the Plaintiffs would benefit from access to community-based services, but is forced to remain in an overly restrictive nursing facility due to the Defendant’s denial of community-based services.

56. Each of the Plaintiffs strongly desires to leave the nursing facility and live in a setting that is more integrated in the community, where they can have greater interaction with

their peer community, people of their age, and where they can live independent and fulfilling lives.

57. Defendant has not taken reasonable actions to determine and ensure that the MaineCare program and other disability support services are administered in the most integrated setting appropriate for Plaintiffs.

58. Defendant's actions, taken under the color of state law, have deprived and will continue to deprive the Plaintiffs of their federally protected rights.

59. The Plaintiffs have no adequate remedy at law.

Section 504 of The Rehabilitation Act

60. Section 504 of the Rehabilitation Act of 1973 provides, "No otherwise qualified individual with a disability in the United States . . . , shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794.

61. Regulations implementing Section 504 require a recipient of federal financial assistance to administer its services, programs, and activities in "the most integrated setting appropriate" to the needs of qualified individuals with disabilities. 28 C.F.R. § 41.51(d).

62. Regulations implementing Section 504 prohibit recipients of federal financial assistance from "[u]tiliz[ing] criteria or methods of administration . . . (i) [t]hat have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap [or] (ii) [t]hat have the . . . effect of substantially impairing accomplishment of the recipients' program with respect to handicapped persons." 45 C.F.R. § 84.4(b)(4); 28 C.F.R. § 41.51(b)(3)(i).

**V. Legal Claims**

63. In her capacity as the Commissioner of the Maine Department of Health and Human Services, and under color of law, the Defendant has subjected the Plaintiffs to prolonged and unnecessary institutionalization, without providing needed and required services, resulting in violations of the ADA, the Rehabilitation Act, the Medicaid Act and the Nursing Home Reform Act.

**Count I  
Americans With Disabilities Act: Integration Mandate**

64. The Plaintiffs re-allege paragraphs 1 through 63 as though fully set forth herein.

65. Each of the Plaintiffs is “a qualified individual with a disability” within the meaning of 42 U.S.C. § 12131(2). Each of the Plaintiffs has a disability, cerebral palsy, which significantly limits his life activities in profound ways, including mobility, the ability to provide self-care, and the ability to communicate, among other major life activities.

66. Defendant’s denial of Medicaid coverage for the community based or specialized services that Plaintiffs require to avoid segregation in an institution and remain in the integrated home settings that are appropriate to their needs constitutes unlawful discrimination in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 130.51(d).

**Count II  
Americans With Disabilities Act: Methods of Administration**

67. The Plaintiffs re-allege paragraphs 1 through 66 as though fully set forth herein. Regulations implementing Title II of the ADA provide that “a public entity may not, directly or through contractual or other arrangements, utilize criteria or other methods of administration: (i) that have the effect of subjecting qualified individuals with disabilities to discrimination on the

basis of disability; [or] (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the entity's program with respect to individuals with disabilities ....” 28 C.F.R. § 35.130(b)(3).

68. The Defendant has utilized criteria and methods of administering Maine’s long-term care system, including the nursing home program, that have subjected the Plaintiffs to unnecessary and unjustified segregation in violation of the ADA integration mandate, including (1) failing to assess properly the services and supports that would enable Plaintiffs to remain in the community, and (2) failing to ensure that Plaintiffs have access to Medicaid-covered services and other specialized services that will meet their needs in the community.

**Count III**  
**Americans With Disabilities Act:**  
**Discrimination Based on Nature and Severity of Disability**

69. The Plaintiffs re-allege paragraphs 1 through 68 as though fully set forth herein.

70. The federal regulations implementing Title II of the ADA provide that public entities such as the Defendant may not “deny a qualified individual with a disability the opportunity to participate or benefit” from the service and cannot “provide a ... service which is not as effective in affording equal opportunity ... gain the same benefit ... as that provided to others.” 28 C.F.R. § 35.130(b)(i, iii, iv).

71. The Defendant’s PASARR program totally excludes Plaintiffs from receiving specialized services by virtue of their developmental disabilities. This failure relegates Plaintiffs to segregated facilities in violation of Title II of the ADA and its implementing regulations.

**Count IV**  
**Section 504 of the Rehabilitation Act**

72. The Plaintiffs re-allege paragraphs 1 through 71 as though fully set forth herein.



73. The Plaintiffs are qualified individuals with disabilities under Section 504 of the Rehabilitation Act. 29 U.S.C. § 794(a).

74. The Maine Department of Health and Human Services receives federal financial assistance.

75. The regulations accompanying Section 504 provide that: “[r]ecipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.” 28 C.F.R. § 41.51(d).

76. These regulations further prohibit recipients of federal financial assistance from “utiliz[ing] criteria or methods of administration ... (i) [t]hat have the effect of subjecting handicapped persons to discrimination on the basis of handicap; [or] (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient’s program with respect to handicapped persons.” 28 C.F.R. § 41.51(b)(3); 45 C.F.R. § 84.4(b).

77. The Plaintiffs qualify for the Defendant’s program of long-term rehabilitative services, and would benefit from specialized services provided in a community based setting. Although the community is the most integrated setting appropriate to meet their needs, the Plaintiffs remain institutionalized in nursing facilities. By denying them access to existing community programs and by requiring that Plaintiffs be confined in the segregated nursing facilities in order to receive needed rehabilitative services, the Defendant violates Section 504.

78. The Defendant’s criteria and methods of administering the system of long-term services for people with cerebral palsy subjects Plaintiffs to illegal discrimination and unnecessary segregation.

**Count V**  
**Nursing Home Reform Act Amendments**

79. The Plaintiffs re-allege paragraphs 1 through 78 as though fully set forth herein.

80. The NHRA requires that states develop and implement a PASARR program for all applicants to, and residents of, Medicaid certified nursing facilities. 42 U.S.C. § 1396r(e)(7)

81. The nursing homes in which Plaintiffs have been placed are Medicaid-certified facilities.

82. Defendant has failed to develop and implement a PASARR program sufficient to prevent the admission of Plaintiffs to nursing homes.

83. Defendant likewise has failed to assure that Plaintiffs, who are in nursing homes, receive specialized services for their condition to permit Plaintiffs to progress towards a more integrated setting.

84. Defendant's policies and practices as described herein, and which have been repeated and knowing, conflict with Plaintiffs' federal rights, as set forth above, and this violation entitles Plaintiffs to relief under 42 U.S.C. §1983.

Request For Relief

WHEREFORE, the Plaintiffs respectfully request that this Court:

1. Grant preliminary and permanent injunctive relief requiring the Defendant to:
  - (a) promptly provide the Plaintiffs with integrated treatment and specialized services and supports in a community setting;
  - (b) promptly provide specialized services to Plaintiffs, in order to promote their independence and provide opportunities for community living and/or prevent the deterioration of their basic functioning; and

(c) amend its policies, practices and procedures to ensure that Plaintiffs are promptly screened for and provided with on-going treatment services and specialized services with reasonable promptness;

2. Issue a declaratory judgment stating that the Defendant has violated the Americans with Disabilities Act, the Rehabilitation Act, the Medicaid Act and the Nursing Home Reform Act in her failure to: provide specialized services to Plaintiffs; prevent the unnecessary segregation and institutionalization of Plaintiffs; and provide community-based services to Plaintiffs;

3. Award the Plaintiffs costs of this litigation and their reasonable attorneys' fees; and
4. Grant such further and other relief as may be just and proper.

Dated:

Respectfully submitted,

/s/ Staci Converse

/s/ Sean Ociepka

/s/ Peter Rice

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