

UNITED STATES DISTRICT COURT
FOR THE STATE OF NEW HAMPSHIRE

U.S. DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

AUG - 2 2005

FILED

.....
BONNIE BRYSON and
CLAIRE SHEPARDSON, on behalf of
themselves and all others similarly situated,
Plaintiffs

v.

JOHN STEPHEN, in his
capacity as Commissioner of the
State of New Hampshire Department of
Health and Human Services, *et al.*,

Defendant
.....

CIVIL ACTION NO. 99-558-M

**SETTLEMENT AGREEMENT REGARDING
DECISION NOTICES TO ABD WAIVER APPLICANTS,
COUNT VI, VII OF PLAINTIFFS' AMENDED COMPLAINT**

A. GENERAL PROVISIONS:

1. The terms of this Settlement Agreement ("Agreement") are effective from the date of signing ("Effective Date").

2. The purpose of the Agreement is to resolve Plaintiffs' claims regarding the Department of Health and Human Services' notice procedures with respect to individuals applying for Acquired Brain Disorder (hereinafter "ABD") Services including He-M 522 ABD eligibility and ABD Waiver eligibility including all claims in Counts VI and VII.

3. The Agreement is binding upon all parties, their agents, employees, and representatives, and upon successors in office. It is understood that the obligations

created by this Agreement shall remain in effect and continue to bind the parties in perpetuity beyond the date when the Court's jurisdiction terminates.

4. No Party may bring an action to enforce the Agreement unless and until the Party has engaged in good faith negotiation with the other Party in an effort to resolve the dispute, except that if irreparable harm to any Party will result during the time necessary to engage in negotiation described above, the Party may bring an action to enforce the Agreement without completing the steps described.

5. Nothing in this Agreement is intended to, nor should it be construed as, an admission by any Party as to any issue of fact or law regarding the claims raised in the lawsuit.

6. Nothing in this Agreement prevents the Parties from modifying the Agreement. Any modification in the Agreement shall be in writing and signed by the Parties. Nothing in the Agreement prevents the Court from making further orders regarding the Agreement, including extending obligations, if the Plaintiffs bring an action alleging breach of the Agreement and the Court finds that the Department of Health and Human Services has breached the Agreement.

7. The Parties have agreed to settle all claims for attorneys' fees and costs associated with the notice issue in this lawsuit, as set forth in the separately filed Agreement on Fees.

8. The Parties agree that if any portion of this Agreement becomes invalid, the remaining provisions shall remain in effect.

B. NOTICES FOR INDIVIDUALS DENIED He-M 522 ABD ELIGIBILITY AND/OR ABD WAIVER ELIGIBILITY

9. Individuals denied He-M 522 ABD eligibility and/or denied ABD Waiver eligibility shall receive notice that includes (a) a statement of the determination regarding eligibility and the specific program or service that is being denied; (b) the specific legal and factual basis for the denial including specific citation to applicable Department and Federal Regulations; (c) the individual's right to appeal and the process for filing an appeal, including the contact information for those individuals within the State Agency who will effectuate the appeal; (d) the right to be represented by counsel of their choosing at their own expense, and a list of organizations that may be available to provide legal assistance.

C. NOTICES FOR INDIVIDUALS DEEMED ELIGIBLE FOR ABD WAIVER SERVICES BUT FOR WHICH FUNDS ARE CURRENTLY UNAVAILABLE

10. If an individual is deemed eligible for ABD Waiver services for which funds and a waiver slot are unavailable, they must be apprised of their priority status pursuant to He-M 522.11. An individual placed in a Priority category other than Priority 1, shall be notified of (a) status and placement on the Priority list; (b) the factual and legal basis for the determination of Priority 2 status and a copy of He-M 522.11 which explains the priority categories; (c) the individual's right to appeal and the process for filing an appeal, including the contact information for those individuals within the State Agency who will effectuate the appeal; (d) the right to be represented by counsel of their choosing and at their own expense, and a list of organizations that may be available to provide legal assistance.

D. OBLIGATIONS AND RESPONSIBILITY FOR ISSUING NOTICES

11. The Area Agency (hereinafter "AA") shall be responsible for the issuance of notices. The AA shall send the applicant notice within three (3) business days of receiving notice from the Bureau of Developmental Services of the action to be taken on an individual's application. The AA agency shall include the required information stated in Sections B & C above, and send the original notice to the applicant, with a copy to the Bureau of Developmental Services. If the individual is deemed eligible for services for which funds are not available and the person is to be added to the wait list, the Bureau of Developmental Services shall immediately, upon receipt of the determination letter, place the individual's name on the wait list.

E. ENFORCEMENT AND JURISDICTION PROVISIONS

12. The Defendants shall send to Counsel for the Plaintiffs, on a quarterly basis, and for a period of two (2) years from March 31, 2005, copies of all notices of decision regarding eligibility for the ABD Waiver.

13. The U.S. District Court for the District of New Hampshire shall retain jurisdiction over this Agreement for a period of two years from the effective date of the Agreement.

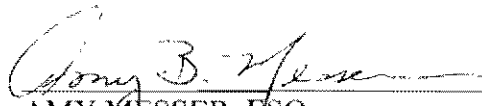
14. The Parties agree that the United States District Court for the District of New Hampshire shall incorporate the terms of the Agreement into the order of dismissal and the Court shall retain jurisdiction over any action brought to enforce the Agreement during the term of the Agreement. Kokkonen v. Guardian Life Insurance Co., 511 U.S. 375 (1994).

Bryson v. Stephen, Case No. 99-558-M
Settlement Agreement

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15. A change in relevant statutes, constitutional provisions or controlling interpretation of the same, which might remove or modify such obligations may form the basis of modification of this Agreement.


Date: 7/1/05


AMY MESSER, ESQ.
RONALD K. LOSPENNATO, ESQ.
Disabilities Rights Center, Inc.

Date:

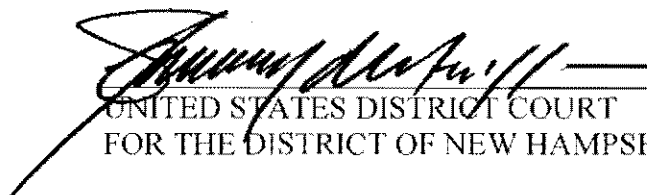

JOHN A. STEPHEN, Commissioner
State of New Hampshire Department of
Health and Human Services

Date: 6/29/05


SUZANNE M. GORMAN, ESQ.
DANIEL J. MULLEN, ESQ.
New Hampshire Department of Justice
Office of the Attorney General

Approved,

8/1/05

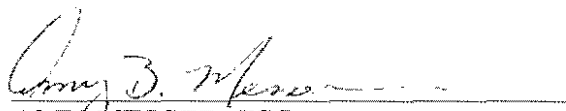

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FOR THE DISTRICT OF NEW HAMPSHIRE

created by this Addendum shall have the same force and effect as the settlement agreement.

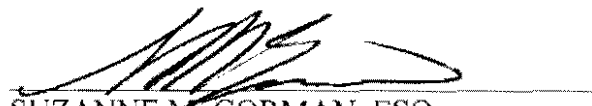
4. The Parties agree that the Defendants shall pay to the Plaintiffs' counsel, the Disabilities Rights Center, Inc., the sum of \$39,900, which shall include all costs and attorneys' fees with respect to Counts VI and VII. This shall be paid within 20 days of the final approval of the settlement agreement by the Court.

5. Nothing in this Agreement is intended to, nor should it be construed as, an admission by any Party as to any issue of fact or law regarding the claims raised in the lawsuit.


Date: 7/1/05


AMY MESSER, ESQ.
RONALD K. LOSPENNATO, ESQ.
Disabilities Rights Center, Inc.

Date: 6/29/05


SUZANNE M. GORMAN, ESQ.
DANIEL J. MULLEN, ESQ.
New Hampshire Department of Justice
Office of the Attorney General

Approved,


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