



MR-IA-001-001

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

DEC -8 PM 4:40

ST. LOUIS, MO. 63101

EVERT CONNER, on behalf of)
himself and all other persons)
similarly situated; and)

IOWA PROTECTION AND ADVOCACY)
SERVICES, INC., an Iowa nonprofit)
corporation,)

Plaintiffs,)

vs.)

TERRY BRANSTAD, in his official)
capacity as Governor, State of)
Iowa;)

MICHAEL V. REAGEN, individually)
and in his official capacity as)
Commissioner, Iowa Department of)
Human Services;)

CHARLES M. PALMER, individually)
and in his official capacity as)
Deputy Commissioner and Director,)
Division of Mental Health,)
Mental Retardation, and)
Developmental Disabilities, Iowa)
Department of Human Services;)

LARRY JACKSON, individually and)
in his official capacity as)
Deputy Commissioner and Director,)
Division of Community Services,)
Iowa Department of Human Services;)

SANDRA SCOTT, individually and in)
her official capacity as Deputy)
Commissioner and Director,)
Division of Social Services, Iowa)
Department of Human Services;)

MICHAEL DAVIS, individually)
and in his official capacity as)
Superintendent, Woodward State)
Hospital-School; and)

CIVIL ACTION NO. 86-871-B

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
COMPENSATORY DAMAGES

WILLIAM E. CAMPBELL, individually)
and in his official capacity as)
Superintendent, Glenwood State)
Hospital-School,)
)
Defendants.)
)

I. INTRODUCTION

1.

This action is brought to challenge Plaintiff Evert Conner's continuing institutionalization at the Glenwood State Hospital-School. Plaintiff Conner is a fifty-one-year-old man who has been a resident of Glenwood State Hospital-School for eighteen years. For the past eleven of those years, Plaintiff Conner and the professionals who work with him have believed that Mr. Conner should be relocated in a community-based living environment. Plaintiff contends that he and the class he represents have constitutionally protected liberty interests in residing in the least restrictive living environment, consistent with professional judgment. Plaintiff Conner seeks declaratory and injunctive relief on behalf of himself and a class which consists of all persons who are or who may become residents of Glenwood or Woodward State Hospital-Schools and who could be appropriately placed in community-based living environments but who remain institutionalized because Defendants have refused, neglected, or otherwise failed to make less restrictive arrangements available. Iowa Protection and Advocacy Services, Inc. joins Plaintiff Conner in asserting the rights of the class.

II. JURISDICTION

2.

Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331, 1334(3) and (4) (1982). The action arises under and is authorized by 42 U.S.C. § 1983 (1982).

III. NAMED PLAINTIFFS

3.

Plaintiff Evert Conner is a citizen of the United States and a resident of the State of Iowa. Mr. Conner has been a resident of the Glenwood State Hospital-School for eighteen years. Mr. Conner is diagnosed as having mild mental retardation, cerebral palsy with spastic triplegia, and a hearing impairment. Plaintiff Conner is confined to a positioning wheelchair.

4.

Plaintiff Iowa Protection and Advocacy Services, Inc. (hereinafter P & A) is a federally funded Iowa nonprofit corporation. P & A is an organization formed to advocate on behalf of developmentally disabled and mentally ill persons in the State of Iowa. Under the federal Developmental Disabilities Act, 42 U.S.C. §§ 6000-6083 (1982 & Supp. III 1985), P & A has the responsibility and authority, inter alia, to pursue legal, administrative, and other appropriate remedies to protect the rights of developmentally disabled persons who are receiving treatment, services, or habilitation within the State of Iowa.

IV. PLAINTIFF CLASS

5.

Plaintiffs bring this action on their own behalf and, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) (1986), on behalf of a class composed of all persons who are or who may become residents of Glenwood or Woodward State Hospital-Schools and who could be appropriately placed in community-based living environments but who remain institutionalized because Defendants and/or their employees or agents have refused, neglected, or otherwise failed: 1) to place them in available community settings; or 2) to establish alternative community-based living arrangements.

6.

The members of the class are so numerous that joinder is impracticable; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the class; and the parties opposing the class have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief.

V. DEFENDANTS

7.

Defendant Terry Branstad is Governor of the State of Iowa. As governor, Defendant Branstad has the constitutional responsibility for ensuring that laws are faithfully executed in

the State of Iowa. Defendant Branstad is sued in his official capacity only.

8.

Defendant Michael V. Reagen is Commissioner of the Iowa Department of Human Services (hereinafter Department). In his official capacity, Defendant Reagen is responsible for all operations of the Department, including, inter alia, the formulation of policy and establishment of performance standards for all offices and divisions of the Department. Defendant Reagen's responsibilities include operation and management of Glenwood and Woodward State Hospital-Schools and the treatment of residents living therein. Defendant Reagen is sued individually and in his official capacity.

9.

Defendant Charles M. Palmer is Deputy Commissioner of the Department and Director of the Division of Mental Health, Mental Retardation, and Developmental Disabilities. In his official capacity, Defendant Palmer directs the administration of Glenwood and Woodward State Hospital-Schools. Defendant Palmer is sued individually and in his official capacity.

10.

Defendant Larry Jackson is Deputy Commissioner of the Department and Director of the Division of Community Services. In his official capacity, Defendant Jackson directs the delivery of departmental community-based programs and services. Included among the programs and services for which Defendant Jackson is responsible are residential programs and support services for

persons who are mentally retarded and/or developmentally disabled. Defendant Jackson is sued individually and in his official capacity.

11.

Defendant Sandra Scott is Deputy Commissioner of the Department and Director of the Division of Social Services. In her official capacity, Defendant Scott is responsible, inter alia, for the operation of the Title XIX program, 42 U.S.C. § 1396d (1982 & Supp. III 1985), in the State of Iowa. Defendant Scott is sued individually and in her official capacity.

12.

Defendant William E. Campbell is the Superintendent of Glenwood State Hospital-School (hereinafter Glenwood). Superintendent Campbell is directly responsible for ensuring that the legal rights of each Glenwood resident are fully protected. Defendant Campbell is sued individually and in his official capacity.

13.

Defendant Michael Davis is the Superintendent of Woodward State Hospital-School (hereinafter Woodward). Superintendent Campbell is directly responsible for ensuring that the legal rights of each Woodward resident are fully protected. Defendant Davis is sued individually and in his official capacity.

VI. FACTUAL ALLEGATIONS

14.

Evert Conner is a fifty-one-year-old man who, for the past eighteen years, has resided in Glenwood. Mr. Conner is diagnosed

as having mild mental retardation, cerebral palsy with spastic triplegia, and a hearing impairment. Due to his severe physical handicaps, Mr. Conner is confined to a positioning wheelchair and it is anticipated that he will require lifelong total physical care. A portion of Mr. Conner's care is paid for by funds made available through Title XIX of the Social Security Act, 42 U.S.C. § 1396d (1982 & Supp. III 1985).

15.

Mr. Conner receives vocational training at the Production Activity Center on the Glenwood campus. Mr. Conner's objectives include typing and computer programming. Glenwood professional staff members have indicated that Mr. Conner has advanced vocationally as far as is possible under the limitations of the Glenwood programs.

16.

Mr. Conner resides in a residential dwelling on the Glenwood campus with several other adult male residents. Mr. Conner is able to constructively structure his leisure time and participates in social/recreational activities with both staff and other residents. He enjoys group functions on and off the Glenwood campus. However, Mr. Conner is frequently unable to participate in community activities in which he expresses interest because of a shortage of vehicles equipped to transport persons confined to wheelchairs.

17.

Since 1975, Mr. Conner has expressed a strong desire to be relocated to a group home in the community. Additionally,

members of the Glenwood professional staff who work with Mr. Conner have consistently recommended such placement. Mr. Conner expresses an interest in moving to Des Moines or to Davenport, Iowa, communities with which he is familiar and in which he has friends. However, despite his continuing request, Mr. Conner remains institutionalized at Glenwood.

18.

At no time during his eighteen-year residency at Glenwood has Mr. Conner received an impartial hearing by a hearing officer or tribunal with the authority to determine whether there is a basis for his continued confinement at Glenwood. Thus, Mr. Conner remains in an institution which cannot meet his needs. Additionally, such placement restrains Mr. Conner physically, socially, vocationally, and emotionally more than is necessary in the opinion of the professional Glenwood staff familiar with Mr. Conner's case.

19.

Since at least August, 1983, the rights asserted herein by the named plaintiffs and the class have been clear and established and Defendants knew, or should have known, of those rights.

VII. CLAIMS FOR RELIEF

COUNT I

20.

The allegations contained in paragraphs one (1) through nineteen (19) above are incorporated herein by this reference as if fully set forth.

21.

Plaintiff Conner and the class have constitutionally protected liberty interests in being placed in the least restrictive living environment, consistent with professional judgment.

22.

By refusing, neglecting, or otherwise failing to make appropriate placements or to develop appropriate living environments, Defendants have violated fundamental rights of Plaintiff Conner and the class secured by the Fourteenth Amendment to the United States Constitution.

COUNT II

23.

The allegations contained in paragraphs one (1) through nineteen (19) above are incorporated herein by this reference as if fully set forth.

24.

Plaintiff Conner and the class have a constitutionally protected right to freely associate and communicate with persons of their choice.

25.

By refusing, neglecting, or otherwise failing to make appropriate placements or to develop appropriate living environments, Defendants have violated rights of Plaintiff Conner and the class guaranteed by the First Amendment to the United States Constitution.

COUNT III

26.

The allegations contained in paragraphs one (1) through nineteen (19) above are incorporated herein by this reference as if fully set forth.

27.

Defendants' actions and omissions complained of herein have deprived Plaintiff Conner of his fundamental constitutional rights of freedom from undue restraint and freedom of association.

28.

As a direct and proximate result of Defendants' actions and omissions, Plaintiff Conner has suffered damages for which he is entitled to compensation.

COUNT IV

29.

The allegations contained in paragraphs one (1) through nineteen (19) are incorporated herein by this reference as if fully set forth.

30.

Plaintiff Conner and the class are entitled by the Due Process Clause of the Fourteenth Amendment to the U. S. Constitution to periodic hearings to determine whether the bases for their confinements continue to exist. Any such hearing must be conducted by a hearing officer or tribunal with the authority to afford relief if it is found that continued confinement is unnecessary.

31.

By refusing, neglecting, or otherwise failing to provide Plaintiff Conner and the class with periodic hearings to determine whether there is a continuing need for confinement, Defendants have acted in violation of Plaintiff Conner's and the class' rights secured by the Fourteenth Amendment to the United States Constitution.

COUNT V

32.

The allegations of paragraphs one (1) through nineteen (19) above are incorporated by this reference as if fully set forth.

33.

42 U.S.C. § 1396d(d) (1982 & Supp. III 1985) and the implementing regulations, 42 C.F.R. §§ 442.400 et seq. (1986), afford Plaintiff Conner and the class the right to habilitative services provided in an active treatment setting. Specifically, Plaintiff Conner and the class have a right to training designed to meet their needs and a right to social services directed

toward maximizing their social functioning and fostering their human dignity and personal worth.

34.

Because of the limitations inherent in an institutional setting, the vocational, social, and personal needs of Plaintiff Conner and the class members cannot be met. Defendants, by requiring continued placement in Glenwood and Woodward, without the necessary social and habilitative services, have deprived Plaintiff Conner and the class of rights granted them by federal law.

VIII. REQUESTS FOR RELIEF

35.

WHEREFORE, Plaintiffs request that the court:

a. Determine, pursuant to Federal Rule of Civil Procedure 23(c) (1986), that this case proceed as a class action, said class consisting of all persons who are or who may become residents of Glenwood or Woodward State Hospital-Schools and who could be appropriately placed in community-based living environments but who remain institutionalized because Defendants and/or their employees or agents have refused, neglected, or otherwise failed: 1) to place them in available community settings; or 2) to establish alternative community-based living arrangements.

b. Appoint, pursuant to Federal Rule of Civil Procedure 53(a) (1986), a special master to assist the court and the parties in both pre- and post-judgment matters,

including but not limited to the identification of class members and the implementation of relief.

c. Enter a declaratory judgment, on behalf of Plaintiff Conner and the class, pursuant to 28 U.S.C. § 2202 (1982), declaring that Defendants' actions and omissions are in violation of:

- 1) the liberty interests of Plaintiff Conner and the class secured by the Fourteenth Amendment to the United States Constitution;
- 2) the right of Plaintiff Conner and the class to freedom of association guaranteed by the First Amendment to the United States Constitution; and
- 3) the right of Plaintiff Conner and the class to procedural due process rights conferred by the Fourteenth Amendment to the United States Constitution.

d. Issue a preliminary and permanent mandatory injunction requiring Defendants to:

- 1) identify all persons who are presently members of the plaintiff class;
- 2) locate or establish appropriate community-based living environments for all members of the plaintiff class; and
- 3) develop and implement policies and procedures to ensure that all future members of the plaintiff class are accurately identified, that their needs for institutionalization are periodically reviewed

by an impartial hearing officer or tribunal, and that they are placed in the least restrictive environments appropriate, in accordance with professional judgment.


e. Award Plaintiff Conner compensatory damages in an amount to be determined by the court.

f. Award Plaintiffs all costs expended herein and assess all costs against Defendants.

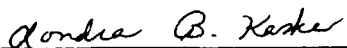
g. Award Plaintiffs reasonable attorneys' fees in accordance with 42 U.S.C. § 1988 (1982).

h. Grant Plaintiffs and the class such other and further relief as may be deemed appropriate.

Respectfully submitted,


Carroll L. Lucht

Clinical Law Programs
College of Law
University of Iowa
Iowa City, Iowa 52242
(319) 353-9023


Sondra B. Kaska

Iowa Protection & Advocacy
Services, Inc.
3015 Merle Hay Road, Suite 6
Des Moines, Iowa 50310
(515) 278-2502

COUNSEL FOR PLAINTIFFS