

Gary W. v. Louisiana

United States District Court for the Eastern District of Louisiana

June 9, 1987, Decided; June 10 1987, Filed

Civil Action No. 74-2412

Reporter: 1987 U.S. Dist. LEXIS 4862
Gary W. Et. Al. v. State of Louisiana Et Al

Opinion by: [*1] COLLINS

Opinion

ORDER

ROBERT F. COLLINS, JUDGE

On November 5, 1986, this Court terminated the Office of the Special Master effective July 30, 1987. The November Minute Entry requested that all the parties assure a smooth transition of functions and responsibilities from the Office of the Special Master to the Department of Health and Human Resources. Indeed, the entire reason for delaying the termination of the Office of the Special Master was to ensure that a measured and planned transfer occur. During the past few months, the Department of Health and Human Resources has initiated planning efforts toward assuming the responsibilities of the Office of the Special Master. The Court has received and reviewed these planning materials including the State's most recent submission under cover of a letter dated May 1, 1987. Further refinements and practical implementation of these plans are necessary before the Court, with confidence, can turn over basic functions and responsibilities to the Department of Health and Human Resources.

The Court is concerned with certain operational problems with the State's plans. The Court has seen no provision for the Department of Health and Human Resources' assumption [*2] of responsibility for a number of functions set out in the *Supplemental Order* that are currently being carried out by the Special Master. Included among these functions are: (1) the identification of individual and systemic barriers to the implementation of the *Principal Order*, and (2) independent oversight of the State's self-monitoring efforts and abuse and neglect reporting procedures. Postponement and declination of services procedural requirements are not addressed. Procedures regarding dismissal requests for uncooperative, out of state, and deceased classmembers are absent. Additionally, dismissal procedures for classmembers who obtain 18 months of substantial compliance are not included in the Department of Health and Human Resources' drafts.

To meet the need for the aforementioned functions of the Office of the Special Master an entity independent of the

developers and providers of services must conduct the functions as well as an objective assessment of service quality. Independent monitoring, significantly reduced in size, scope, authority, and budget in comparison to the Special Master's Office, is needed to provide an objective assessment to the Court.

On April [*3] 30, 1987, the Court ordered a Joint Audit to determine the level of substantial compliance that exists in this action. Due to delays in completing plans for auditing, Joint Audits have not proceeded. The April *Order* was written to assure that State personnel would have the advantage of the experience and technical expertise of the Office of the Special Master in learning to conduct audits. As Joint Audits have not begun, the Court recognizes that additional time is needed for the State to build the needed capacity to facilitate a smooth transition.

The foregoing factors having been considered, the Court hereby ORDERS that:

(1) The termination date of the Office of the Special Master contained in the November 5, 1986 Minute Entry is AMENDED from July 30, 1987 to August 31, 1987. The change in this date is required in order to begin the process of a smooth transition to self-monitoring by the State. The function to be completed in this period are as follows:

a) By July 1, 1987, Magistrate Ivan Lemelle shall be appointed to work with the Special Master in order to become familiar with the requirements of the Court's Orders and procedures regarding dismissal of classmembers. Magistrate [*4] Lemelle will assume the responsibility to determine dismissal eligibility as of September 1, 1987.

b) By July 30, 1987, final Joint Audits for the classmembers who have yet to be monitored shall be completed and results issued by the Special Master.

c) By August 31, 1987 Office of the Special Master files on classmembers shall be archived in a manner useful to the Magistrate, the parties to this action, and independent monitoring unit.

d) By August 31, 1987 dates will be assigned for the 20 classmembers who have yet to receive CRT plans for services.

(2) At the time of termination of the Office of the Special Master, an independent monitoring unit shall be implemented to assist the State to develop the Special Management Unit for *Gary W.* classmembers which will function as the corollary to the Office of the Special Master within the Department of Health and Human Resources. The Court will appoint the independent monitoring unit by July 15, 1987 for a term of one year.

a) By October 1, 1987, a detailed description of the functions of a special management unit for *Gary W.* and the independent monitoring unit including assignment of specific personnel, timelines for [*5] training, and the role of independent monitoring unit and special management unit in implementing requirements of the Court's Orders in this action, will be completed and submitted to the Court.

b) The independent monitoring unit will participate in joint monitoring of compliance with the Orders of the *Gary W.* action along with State personnel. The independent monitoring unit along with State personnel will determine whether substantially all conditions, as defined in the Principal and Supplemental Orders, required by the Court are properly implemented.

c) The independent monitoring unit shall participate in joint monitoring (audits) with Department of Health and Human Resources personnel in the first year. During this phase, independent State monitors will be jointly trained to conduct audits, jointly implement the audits, and report audit findings. In the second phase, the State's monitors will implement audits. The independent monitoring unit will conduct a sample of joint audits in order to identify and correct problems with the State monitoring system. The third phase involves exclusive self-monitoring by the State with observation by the independent monitoring unit to [*6] assure that the problems identified have been corrected and that the State has developed full capacity to self-monitor.

d) The independent monitoring unit shall investigate individual and systemic complaints, raised by the parties

or other persons, which allege non-compliance with the Court's *Orders* and shall provide written reports to the Court.

e) The independent monitoring unit shall receive telephone and written notification of all instances of abuse or neglect involving *Gary W.* classmembers and shall periodically review the system and recommend appropriate preventive-corrective actions.

f) The independent monitoring unit shall develop recommendations to the Court and parties to include specific steps that should be taken to remedy barriers to substantial compliance.

g) The independent monitoring unit shall be involved in preparation of narrative and statistical reports for the Court and the parties which concern classmembers' progress toward substantial compliance and the State's progress toward developing the capacity to self-monitor. The reports will be presented on a semi-annual basis. Additionally, findings of individual audits shall be reported and recommendations [*7] set forth for compliance credit. These reports shall be transmitted to the Magistrate responsible for determining months of compliance and eligibility for dismissal. As the responsibilities of independent monitoring are gradually phased out, the State will prepare the reports with the assistance of the monitors. Upon termination of the responsibilities of the independent monitoring unit, the State will have full responsibility for the reports.

Nine months after the independent monitoring unit is begun, the Court will determine, based upon information provided through the independent monitoring unit and reports submitted by the State to the magistrate, whether or not to reinstate the 1978 *Supplemental Order* establishing the Office of the Special Master.

NEW ORLEANS, LOUISIANA

SO ORDERED

THIS THE 9TH DAY OF JUNE, 1987.