

Gary W. v. Louisiana

United States District Court for the Eastern District of Louisiana
February 16, 1990, Decided; February 20, 1990, Filed and Entered
Civil Action No. 74-2412

Reporter: 1990 U.S. Dist. LEXIS 1728
GARY W., ET AL. v. STATE OF LOUISIANA, ET AL.

Opinion by: [*1] COLLINS

Opinion

ORDER FOR SUPPLEMENTAL RELIEF

ROBERT F. COLLINS, UNITED STATES DISTRICT JUDGE

The Court held a hearing on October 19, 20, 22, and 23, 1989, on plaintiffs' Motion for Supplemental Relief and defendants' Motion to Terminate the Appointment of Dr. Brenda Lyles and the Quality Assurance Monitoring Group, Inc. as the permanent independent monitoring unit. Based on the testimony taken at that time, the exhibits and the Court's extensive familiarity with the present litigation, the following Order is issued. This Order is based on the Findings of Fact and Conclusions of Law that are hereto attached.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

(1) Defendants' Motion to Terminate the Appointment of Dr. Brenda Lyles and the Quality Assurance Monitoring Group is as moot. The Court's Order of September 15, 1989, extending the Quality Assurance Monitoring Group until October 31, 1989, will be allowed to expire as of that date, and the services of the Quality Assurance Monitoring Group and Dr. Brenda Lyles will not be renewed.

(2) Plaintiffs' Motion for Supplemental Relief is GRANTED.

(3) The Court hereby creates the position of a Special Administrator with the authority to take all [*2] steps necessary ensure that the Department of Health and Hospitals (DHH) and the Department of Social Services (DSS) achieve compliance with the Principal Order and all subsequent Orders entered in this matter.

(4) The Court appointed Administrator is specifically authorized to develop and ensure implementation of remedial actions to eliminate the systemic barriers previously identified in this case and reiterated again throughout the testimony at the October 1989 hearing.

These areas of deficiency include, among others, the following: (a) the provision of case management services; (b) the training of DHH and DSS staff and their contracted providers of services; (c) the operation of the system designed to protect classmembers from abuse and neglect; (d) the provision of services to Division of Mental Retardation (DMR) classmembers residing in Region 1; (e) the protection of "at risk" and reinstitutionalized classmembers; (f) the external monitoring of DHH and DSS' compliance activities; and (g) the compilation and analysis of all data necessary to assist in ensuring compliance with the Orders issued by this Court.

(5) The Special Administrator to be appointed by the Court will be [*3] either a current or former employee of DHH or DSS or their predecessor agency, who is familiar with the requirements of the Court's Orders in this case, and the policies, procedures and agreements developed pursuant to those orders. The Administrator shall also possess demonstrated background, training, and expertise in the following areas: (a) the administration of human service programs; or (b) the design and implementation of programs for individuals with physical and mental disabilities.

(6) Immediately upon the issuance of this Order, the parties shall meet in a good faith effort to agree jointly upon a candidate or candidates for the position of Special Administrator. The names of mutually agreed upon candidates shall be forwarded to the Court for its review and approval within fourteen days of the entry of this Order.

(7) If the parties are unable to agree upon the selection of the Administrator, they shall so notify the Court and submit the names and qualifications of proposed candidates within thirty days of the entry of this Order. The Court then shall appoint the Administrator from the list of proposed candidates.

(8) As a priority item, the Administrator shall ensure that [*4] DHH and DSS take all steps necessary to identify and protect "at risk" and reinstitutionalized classmembers, to provide the with programs and placements consistent with the decisions of the Special Review Committees (SRC) or the Community Review Team (CRT), and to prevent their reinstitutionalization. The Administrator shall develop and implement specific remedial actions to

attain these goals. Components of such a remedial approach shall include the following: (a) the creation of an interdisciplinary team with specialized skills with respect to the behavioral, medical, and related service needs of "at risk" classmembers, with the capacity to offer service providers all necessary support and technical assistance in order to maintain such classmembers in their SRT/CRT placements and programs; (b) the provision of all necessary non-institutional respite services for this segment of the class; (c) the development and implementation of all necessary training programs for DHH/DSS personnel, case managers, and all others serving classmembers; and (d) the development of a unified data collection system sufficient to achieve these goals. For purposes of this Order, the term "at risk" classmembers [*5] refers to any member of the class who does not reside in his or her SRC/CRT placement or is at risk of not residing in such a placement or has a history of abuse/neglect which places him or her in jeopardy of continued harm.

(9) As a second priority item, the Administrator shall assess the current data collection and analysis capacities of DHH and DSS. The Administrator shall take all steps necessary to ensure that those agencies develop and maintain a unified system that provides the parties, the Court, and the Administrator with useful and relevant information as to the status of classmembers, services provided, areas in need of remediation, and the general status of compliance efforts.

(10) Within sixty days of the entry of this Order, the Court shall select an entity not affiliated in any way with DHH or DSS to conduct periodic external monitoring regarding the defendants' overall compliance efforts, including the reporting of such information to the parties, the Court and the Special Administrators. The Court will make its selection of such an entity from nominations submitted by the plaintiff and by the defendants. The Court will then order the defendants to contract with the [*6] entity selected at a reasonable fee to be negotiated between the entity and the defendants. The selected entity shall then conduct periodic monitoring, no more than once every six months thereafter and at least once every year thereafter, regarding the defendants' overall compliance efforts. The monitoring to be conducted by the selected entity shall be based on the requirements of the Orders of this Court and the standards now in effect and those which may be mutually agreed upon in the future by the parties. This overall monitoring shall not take the place of auditing of individual classmembers, which auditing will be conducted by the defendants under the supervision of the Special Administrator. Individual classmembers' audit results will continue to be reviewed by a Second Level Review Team composed of a representative of the plaintiffs and a representative of the defendants. The Second Level Review Team will then issue recommendations to the

Magistrate as to the amount of compliance credit to be awarded for individual classmembers. The Magistrate shall continue to issue compliance and dismissal recommendations on individual classmembers to the Court.

(11) The contract with the [*7] Monitor shall ensure that the Monitor shall: (a) conduct audits to gather information as to the status of compliance with respect to individual classmembers (the defendants may elect to accompany the Monitor on such audits if they wish to do so, but the Monitor's findings shall be binding); (b) gather and analyze data as to the defendants' overall compliance efforts, including the reporting of such information to the parties, the Court, and the Administrator; and (c) be entitled to have a representative, along with the plaintiffs and defendants, to serve on the Second Level Review Team in order to determine amounts of compliance credits with respect to individual classmembers.

(12) Within sixty days of the date of this Order, the defendants, with the advice and consent of the plaintiffs, shall contract with an external entity for the provision of oversight of the abuse/neglect reporting and investigation system. The Administrator shall have the final authority to approve or disapprove any aspect of this proposed contract, including the entity with which the defendants contract and the terms and duration of the contract.

(13) The Administrator shall have the complete authority necessary [*8] to carry out the terms of this Order and to direct the efforts, employees, and resources of the defendants. With respect to those areas identified in Paragraph 4 above, the authority of the Administrator shall be plenary. In this respect, the Administrator shall: (a) direct the defendants, their officers, employees, and agents to undertake all actions consistent with the terms of this Order, including the expenditure of all necessary funds, considering but not necessarily bound by State law and regulations and Civil Service requirements; (b) oversee and direct the operations of OMR Region 1 and the system of case management services; and (c) retain and transfer staff, enter into all necessary contracts, and take all other actions in furtherance of its activities.

(14) The Administrator shall have the authority to identify and bring to the Court's attention any areas, in addition to those identified in Paragraph 4 above, in need of further remedial action and any related recommendations in order to ensure compliance.

(15) The defendants promptly shall provide the Administrator with all data, information, documents, and similar materials in their possession, which the Administrator [*9] may from time to time request.

(16) The following provisions are applicable to the relationship between the Administrator and the defendants:

(a) For purposes of indemnification, the Administrator shall be considered an employee of the defendants and therefore shall be entitled to all rights and privileges accorded to other state employees.

(b) The Administrator shall be paid a salary and receive fringe benefits equal to the salary and benefits of the Assistant Secretary of DHH as of the date of this Order. The defendants are responsible for all such costs and shall disburse such salary payments and establish such fringe benefits promptly and efficiently.

(c) The defendants are responsible for providing the Administrator with necessary and appropriate secretarial and clerical staff, office space, office equipment and office supplies, as well as such transportation and security services as the Administrator may request.

(17) The Court hereby enjoins the defendants, their agents, and employees, and those acting in concert with them from interfering with the Administrator, as the Administrator performs the duties set forth in this Order. The Administrator shall report to the Court any [*10] such interference or any other matter deemed to be of importance in achieving compliance with the remedial Orders of this Court.

(18) The Administrator shall meet with the Court on a monthly basis or more frequently, if needed. The purpose of the meetings shall be to apprise the Court as to the general status of classmembers, services provided, areas in need of remediation, and the general status of compliance efforts. The Court, in its discretion, may invite the parties to participate in such meetings. Every three months from the date of entry of this Order, the Administrator shall

submit to the Court, with a copy to the parties, a formal status report indicating the amount of compliance time earned during the preceding quarter for each classmember. This report shall also address each of the areas identified above and shall provide an overall assessment of the defendants' compliance efforts and the status of the class. The Court in its discretion, may schedule status conferences in conjunction with the issuance of any such report.

(19) The defendants shall ensure that the Administrator is provided with sufficient resources to carry out the functions previously conducted by the independent [*11] monitoring group. Included among these functions are participation in: (a) the 2.4 process; (b) second level reviews; (c) the waiver and postponement of services process; (d) the provision of technical assistance in classmember specific situations; and (e) the overall assessment of classmembers' situations.

(20) To ensure an orderly transmission from the Quality Assurance Monitoring Group to the Administrator, the parties or their representatives shall meet at their earliest opportunity to negotiate in good faith for an inventory of all equipment and files of QAMG, including where such files shall be maintained. Any disagreements between the parties on this issue shall promptly be brought to the attention of the Court.

(21) The position of the Court appointed Administrator shall continue in existence, with all the authority noted above, until the areas of deficiency cited in Paragraph 4 above are remedied to the satisfaction of this Court. The defendants may move for the termination of this position upon a showing of the attainment of these remedial goals.

SO ORDERED at New Orleans, Louisiana, this the 16th day of February, 1990.