



MR-PA-005-001

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA



RUTH L., EUGENE M., JOHN H.,
and all others similarly
situated, by their next
friend, KEVIN CASEY, in
his official capacity as
Executive Director of
Pennsylvania Protection
& Advocacy,

PLAINTIFFS,

v.

JOHN F. WHITE, JR., individually
and in his official capacity
as Secretary, Pennsylvania
Department of Welfare,

ALBERT DIDARIO, individually and
in his official capacity as
Superintendent, Norristown
State Hospital,

DEFENDANTS.

Civil Action

No. 90- 5562

FILED

AUG 1990

MICHAEL E. KUNZ, Clerk
By _____

FILED

AUG 27 1990

MICHAEL E. KUNZ, Clerk

By _____ Dep. Clerk

Class Action

COMPLAINT

I. Preliminary Statement

1. This action is brought by Ruth L., Eugene M., and John H., persons with mental retardation who are and have been wrongfully institutionalized in state hospitals for persons who are mentally ill.

2. Ruth L. has been institutionalized for 49 years, the last 32 of which have been at Norristown State Hospital. Eugene M. has been institutionalized at Norristown State Hospital for the past 55 years; John H. for the past 28 years.

3. This lawsuit seeks to enjoin defendants from denying persons with mental retardation appropriate treatment and habilitation in community-based programs as is professionally recommended and mandated. Defendants' own professional treatment teams have determined that community living arrangements ("CLA") are the appropriate settings for the named and class plaintiffs. Defendants have failed to develop and place plaintiffs in appropriate programs despite these professional recommendations.

4. Defendants' prolonged and unnecessary detention of plaintiffs in state hospitals for persons with mental illness violates the substantive and procedural due process rights guaranteed by the Fourteenth Amendment to the United States Constitution. Defendants' actions and inactions also violate Title XIX of the Social Security Act, 42 U.S.C. §§ 1396a et. seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

II. Jurisdiction

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

6. Plaintiffs' claims are authorized by 28 U.S.C. §§ 1331, 1343, 2201, and 2202, and arise under 42 U.S.C. § 1983 and Title XIX of the Social Security Act, 42 U.S.C. §§ 1396a et. seq.

III. Plaintiffs

7. Ruth L. is a 60 year old resident of Philadelphia, Pennsylvania who has been institutionalized for 32 years at Norristown State Hospital ("Norristown"). Despite the fact that her primary diagnosis is mental retardation and despite the fact that her treating professionals have repeatedly requested that she be placed in the community, Ruth L.

remains inappropriately placed in a state hospital for persons with mental illness.

8. Eugene M. is a 73 year old resident of Philadelphia, Pennsylvania who has been institutionalized at Norristown State Hospital for 55 years, since August 29, 1935. His primary diagnosis is mental retardation, and his Norristown team has recommended placement in a mental retardation setting in the community.

9. John H. is a 67 year old resident of Philadelphia, Pennsylvania who is currently in his 28th consecutive year of institutionalization at Norristown State Hospital. His primary diagnosis is moderate mental retardation and his only psychiatric diagnosis, a secondary one, is a "passive dependent personality," a personality disorder which almost never requires any form of institutionalization.

10. Kevin Casey is the Executive Director of Pennsylvania Protection & Advocacy, Inc. (the "PP&A"), a non-profit Pennsylvania corporation designated by the Governor of Pennsylvania, pursuant to the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. §§ 6000 et. seq., to act as the protection and advocacy agency for persons with developmental disabilities in the Commonwealth of Pennsylvania. Kevin Casey, in his official capacity as Executive Director of PP&A, brings this action as the next of friend for the named and class plaintiffs.

IV. Defendants

11. Defendant John F. White, Jr., Secretary of the Pennsylvania Department of Public Welfare ("DPW"), is responsible for the operation of state hospitals and for the admission, discharge, protection, care and treatment of residents, as well as for their placement into appropriate community programs. His responsibilities include the implementation and enforcement of all Pennsylvania laws concerning citizens with mental retardation, including those

who are institutionalized in state hospitals for persons with mental illness.

12. Defendant Albert DiDario is the Superintendent of Norristown State Hospital and is responsible for the policies and practices of Norristown, a state hospital under the jurisdiction of DPW designed to provide services to persons with mental illness.

V. Class Action Allegations

13. Plaintiffs bring this class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The Class consists of all persons with a primary or exclusive diagnosis of mental retardation who are institutionalized in state hospitals for persons with mental illness contrary to professional judgment.

14. The exact size of the class is unknown to the plaintiffs but it is believed that there are more than 70 class plaintiffs presently institutionalized at state mental hospitals. Joinder of all class members is impracticable.

15. There are questions of law and fact common to class plaintiffs, including, inter alia; whether defendants violated named and class plaintiffs' constitutional and statutory rights to appropriate treatment and services, procedural and substantive due process, protection from harm, freedom from unnecessary restraint, and freedom from discrimination on the basis of disability.

16. The claims of the named plaintiffs are typical of those of the class plaintiffs. Defendants have violated the same constitutional and statutory rights of class members as they have of the named plaintiffs.

17. The named plaintiffs will fairly and adequately protect the interests of the class plaintiffs. They are represented by counsel competent and experienced in class action, constitutional, disabilities and mental health litigation.

18. Defendants have acted and failed to act on grounds generally applicable to the class by denying plaintiffs, inter alia, their due process rights, thereby making declaratory and injunctive relief appropriate.

VI. Factual Background

19. Ruth L. is 60 years old and has spent the last 49 years in institutions.

20. She was transferred to Norristown State Hospital in 1958 and has remained insitutionalized there for the past 32 years. Prior to 1958, she had been institutionalized at Elwyn Institute since 1941.

21. Ruth L. has a primary diagnosis of moderate mental retardation.

22. Her treating professionals have identified her secondary diagnoses as organic brain syndrome and schizophrenia.

23. Since at least April 1987, Norristown's treating professionals have recommended that Ruth L. be placed in a community placement for persons with mental retardation.

24. Her treating professionals have also noted that there has been no activity toward discharge.

25. Defendants have failed to implement the recommendations of Ruth L.'s treating professionals.

26. Eugene M. was born in 1917.

27. Eugene has been unnecessarily institutionalized at Norristown for the past 55 years, where, due to lack of appropriate programming, he has spent much of his time staring at the all too familiar ceilings, walls, and floors.

28. Eugene M.'s primary diagnosis is mental retardation.

29. His secondary diagnosis is schizophrenia.

30. His treating professionals recommended that Eugene M. be placed in a mental retardation setting.

31. Eugene has a friend who takes him to her home on the weekends; he enjoys these outings immensely.

32. John H. is 66 year old man who is presently in his 28th consecutive year of unnecessary institutionalization at Norristown.

33. His primary diagnosis is moderate mental retardation.

34. His secondary diagnosis is a "passive dependent personality."

35. When asked what he thought about the possibility of community placement John H. smiled, clapped repeatedly and said "living in the community, oh boy!" He then animatedly recounted the enjoyable trips he had made to the New Jersey shore.

36. John H.'s treating professionals have indicated that his medical problems and secondary mental health diagnosis have minimized his community placement possibilities even though a CLA would be the appropriate placement for him.

37. Next friend and Executive Director of PP&A, Kevin Casey, has received letters from various advocates informing him of the prolonged institutionalization of and inadequacy of retardation services received by named and class plaintiffs.

38. The named and class plaintiffs have been evaluated by defendants' interdisciplinary teams of professionals, and determined to require appropriate community-based services.

39. Norristown, like other state mental hospitals, is a mental institution, operated by DPW, which provides services to persons with mental illness. It is presently providing services to over 1,000 individuals.

40. On information and belief some of the class plaintiffs reside in long-term care units in state operated hospitals for persons with mental illness which are funded under Title XIX of the Social Security Act.

41. DPW, and the state mental hospitals at which class plaintiffs are institutionalized, receive federal financial assistance.

Inappropriate Placement of and Treatment
Provided to Members of the Class

42. Defendants are aware of the existence of persons with a primary or exclusive diagnosis of mental retardation who are institutionalized in state mental hospitals, including Norristown.

43. Defendants have failed in their duty to provide named and class plaintiffs with adequate retardation services and appropriate habilitation.

44. Defendants' interdisciplinatory teams of professionals, at Norristown and other state mental hospitals, have repeatedly recommended that the class plaintiffs receive community placements, but defendants have failed to implement these recommendations.

45. Defendants are aware that the named and class plaintiffs desire to lead normal lives, consistent with DPW's own stated policy of "normalization."

46. Normalization is designed to ensure for every person with mental retardation the right to a lifestyle resembling, as closely as possible, the typical life-patterns of the general population; for example, to live in the community where they learn how to cook, shop, go to places of worship, work in specialized settings, and live next to persons who do not have mental retardation or mental illness.

47. Defendants have failed to fulfill their obligations concerning the actualization of such normalization through provision of appropriate community-based services and habilitation.

48. Defendants are aware that placement of persons with primary or exclusive diagnoses of mental retardation in state mental hospitals contravenes psychiatric professional opinion. Additionally, it contravenes DPW policy, which, for at least the past nine (9) years, has acknowledged that persons with exclusive mental retardation diagnoses should not be placed in state mental hospitals. DPW premises this policy on the fact that these individuals require settings which can develop and provide mental retardation services.

49. Defendants have failed to provide appropriate community placements to named and class plaintiffs.

50. The named and class plaintiffs have experienced prolonged and unnecessary institutionalization.

51. This prolonged institutionalization is due to defendants' failure to provide adequate and appropriate community-based services and/or treatment to class plaintiffs.

52. Defendants' prolonged institutionalization of named and class plaintiffs in state mental hospitals has caused their segregation from their families and friends and from society.

53. Through this detention, defendants have rendered habilitation and normalization impossible for named and class plaintiffs.

54. Through this detention and failure to provide adequate services, defendants are responsible for regressions suffered by named and class plaintiffs, including, inter alia:

a) Persons with mental retardation in state mental hospitals have received either inadequate behavior training programs or none at all. If implemented at all, these behavior programs would be administered by state mental hospital staff who are not trained to work programmatically with persons with mental retardation.

b) Programs in state mental hospitals fail to accommodate individualized needs of particular residents with mental retardation.

c) State mental hospitals do not assess behavioral problems of persons with mental retardation, develop appropriate training programs, ensure consistent implementation of these programs, or properly monitor and revise these training programs as necessary.

55. Defendants' actions, inactions, and policies permit those class plaintiffs with physical disabilities in addition to mental retardation to receive lower priority than those without such disabilities when making community placement considerations.

56. Defendants' actions, inactions, and policies allow class plaintiffs who have mental health diagnoses in addition to primary mental retardation diagnoses to receive lower priority for community placement than persons with exclusive mental retardation diagnoses.

57. Defendants' failures to protect, provide appropriate, adequate and necessary community-based services and habilitation, and the failures to follow the recommendations of treating professionals constitute such an egregious and substantial departure from accepted professional judgment, practice or standards, as to demonstrate that defendants, in fact, did not exercise professional judgment and/or acted with intentional disregard for the rights of the named and class plaintiffs.

58. Defendants, by their actions and failures to act, have caused, and continue to cause, the named and class plaintiffs to suffer irreparable harm. There is no adequate remedy at law.

VII. CAUSES OF ACTION

COUNT I -- DUE PROCESS

59. Defendants' actions and failures to act have ensured the prolonged and unnecessary institutionalization of each and every member of the plaintiff class in state mental hospitals. This denial of adequate habilitation and community retardation services violates plaintiffs' substantive due process rights guaranteed by the Fourteenth Amendment to the United States Constitution.

60. Defendants' additional failure to afford any of these named and class plaintiffs a meaningful administrative hearing with a possible remedy of placement in a community program violates plaintiffs' guaranteed right to procedural due process under the Fourteenth Amendment to the United States Constitution.

COUNT II -- SOCIAL SECURITY ACT

61. Defendants have federal statutory and regulatory duties to provide persons with mental retardation with active and appropriate training, treatment and habilitative services, including community placement pursuant to Title XIX of the Social Security Act, 42 U.S.C. §§ 1396a et. seq., and the regulations promulgated thereunder. Defendants have violated and continue to violate their obligations under federal law through their failure to provide named and class plaintiffs with such appropriate community-based services and programs.

COUNT III -- THE REHABILITATION ACT

62. Defendants have violated Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, by discriminating against those members of the plaintiff class whose primary diagnosis is mental retardation and who have a history of having a mental health secondary diagnosis. As a result of their secondary mental health diagnoses, plaintiffs have been and continue to be denied access to the full range of appropriate retardation services. Defendants' failure to reasonably accommodate class plaintiffs on the basis of their dual diagnoses constitutes a violation of Section 504.

63. Defendants have violated Section 504 by discriminating against those members of the plaintiff class who have physical disabilities as well as mental retardation. Defendants' failure to place these persons in the community because of their physical disabilities violates Section 504.

VIII. Prayer for Relief

WHEREFORE, plaintiffs pray that this Court:

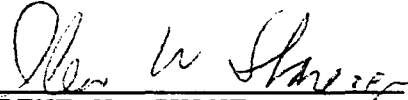
1. Exercise jurisdiction over their claims.
2. Certify the plaintiff Class pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure.
3. Declare that the above actions and failures to act of defendants violate the rights of the named and class plaintiffs pursuant to the Fourteenth Amendment to the United States Constitution, Title XIX of the Social Security Act and Section 504 of the Rehabilitation Act of 1973.

4. Enjoin defendants' actions and failures to act as violative of the Fourteenth Amendment to the United States Constitution and federal statutes and regulations.

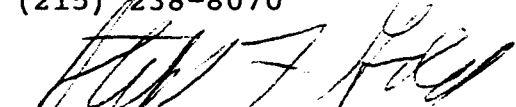
5. Award plaintiffs compensatory and punitive damages for defendants' constitutional and statutory violations.

6. Award plaintiffs their attorneys' fees and costs, as well as other relief deemed just and proper by the Court.

Respectfully submitted,



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