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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE COMMONWEALTH OF PUERTO RICO; )  
 PEDRO J. ROSSELLO, GOVERNOR OF THE )  
 COMMONWEALTH OF PUERTO RICO; )  
 DR. CARMEN FELICIANO VDA. DE )  
 MELECIO, SECRETARY, DEPARTMENT OF )  
 HEALTH; JOSE DE LEON, DIRECTOR, )  
 MENTAL RETARDATION PROGRAM, )  
 )  
 Defendants. )

Civ. No. 99 - 1435 RB

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 U.S. DISTRICT COURT  
 SAN JUAN, P.R.

COMPLAINT

1. The Attorney General of the United States brings this action on behalf of the United States of America, pursuant to the Civil Rights of Institutionalized Persons Act of 1980 ("CRIPA"), 42 U.S.C. § 1997, to enjoin the named Defendants from depriving persons with mental retardation and other developmental disabilities who live in residential facilities owned and/or operated by the Commonwealth, or in residential facilities providing care, services and treatment to such persons on behalf of the Commonwealth, of rights, privileges or immunities secured or protected by the Constitution of the United States and federal statutes.

RECD	TO JUDGE
APR 27 1999	1999
BY	#
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JURISDICTION, STANDING AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.

3. The United States is authorized to maintain this action pursuant to 42 U.S.C. § 1997a.

4. The Attorney General has certified that all pre-filing requirements specified in 42 U.S.C. § 1997b have been met. The Certificate of the Attorney General is appended to this Complaint and is incorporated herein.

5. Venue is proper in the United States District Court for the District of Puerto Rico pursuant to 28 U.S.C. §§ 1391(b) and (c). All claims set forth in the Complaint arose in said District.

PARTIES

6. Plaintiff is the UNITED STATES OF AMERICA.

7. Defendant COMMONWEALTH OF PUERTO RICO ("Commonwealth") currently owns and operates four residential facilities for persons with mental retardation and other developmental disabilities: Centro Reeducacion Adultos Minusvalidos in Bayamon, Puerto Rico ("Bayamon"), Facilidad de Cuidado Intermedio in Cayey, Puerto Rico ("Cayey"), Centro Rosario Bellber in Aibonito, Puerto Rico ("Aibonito"), and Centro Servicios Multiples Camaseyes in Aguadilla, Puerto Rico ("Aguadilla"). The Commonwealth also operates Centro de Servicios Integrales para Adultos con Retardacion Mental ("CSIARM") located at the MEPSI

Medical Center in Bayamon, Puerto Rico. The Commonwealth had transferred all residents and staff to CSIARM from Centro Servicios Integrales in Rio Piedras, Puerto Rico ("Rio Piedras"), a mental retardation facility that is now closed but that had been owned and operated by the Commonwealth. The Commonwealth also provides care, services and treatment, through a contractual arrangement, to individuals now residing in the Mayaguez Regional Hospital Health Care Center in Mayaguez, Puerto Rico ("Mayaguez Hospital"), who formerly resided at Centro Cuidado Gentil Las Mesas in Mayaguez ("Mayaguez"), a mental retardation facility that is now closed but that had been owned and operated by the Commonwealth. The facilities in Bayamon, Cayey, Aibonito, Aguadilla, CSIARM and Mayaguez Hospital house individuals (hereinafter "residents") with developmental disabilities and other special needs including mental illness.

8. Defendant PEDRO J. ROSSELLO is the Governor of the Commonwealth of Puerto Rico, and in this capacity heads the Executive Branch of the Commonwealth's government and, among other duties, reviews and approves budget requests submitted by Executive Branch agencies. He selects and appoints the Secretary of the Commonwealth's Department of Health, and the Director of the Commonwealth's Mental Retardation Program.

9. Defendant DR. CARMEN FELICIANO VDA. DE MELECIO is the Secretary of the Commonwealth's Department of Health and, in this capacity, exercises administrative control of, and responsibility

for residential facilities for persons with mental retardation and other developmental disabilities which are owned and/or operated by the Commonwealth, and has responsibility for the care, services and treatment provided to such persons in other residential facilities operated on behalf of the Commonwealth.

10. Defendant JOSE DE LEON is the Director of the Commonwealth's Mental Retardation Program which is the part of the Department of Health that provides care, services and treatment to individuals with developmental disabilities in the above-referenced facilities.

11. The individual Defendants named in ¶¶ 8, 9 and 10 above are officers of the Executive Branch of the Commonwealth of Puerto Rico and are sued only in their official capacities.

12. The residential facilities for persons with mental retardation and other developmental disabilities owned and/or operated by the Commonwealth or operated on behalf of the Commonwealth are institutions as that term is defined in 42 U.S.C. §§ 1997(1)(A), (1)(B)(i) and (1)(B)(v).

13. Defendants are legally responsible, in whole or in part, for the operation of and conditions at residential facilities for persons with mental retardation and other developmental disabilities owned and/or operated by the Commonwealth or in residential facilities providing care, services and treatment to such persons on behalf of the Commonwealth.

14. At all relevant times, Defendants have acted or failed to act, as alleged herein, under color of state law.

FACTUAL ALLEGATIONS

15. Defendants have failed to provide adequate housing and shelter with adequate roofing, plumbing, bathroom facilities, and lighting to meet the needs of residents.

16. Defendants have failed to ensure the reasonable safety of residents. Defendants have failed to supervise, monitor and protect residents from harm and risk of harm in an adequate manner.

17. Defendants have failed to safeguard residents' personal possessions, including residents' clothing, from damage, loss or theft.

18. Defendants have failed to provide adequate basic care and related hygiene services to residents. Defendants have failed to provide residents with sufficient quantities of needed food, medications, medical supplies, and other supplies to meet their needs.

19. Defendants have failed to provide residents with adequate, appropriate and meaningful activities.

20. Defendants have failed to provide residents with adequate psychology and related services, including behavioral and training programs.

21. Defendants have failed to provide residents with that level of training necessary to protect residents' liberty

interests, including their right to training sufficient to ensure their safety and freedom from undue restraint.

22. Defendants have failed to ensure that residents are free from undue or unreasonable restraint and that restraints are administered by appropriately qualified professionals in keeping with accepted professional standards, and are not used as punishment, in lieu of treatment, or for the convenience of staff. Defendants have failed to supervise adequately residents in restraints to protect them from harm.

23. Defendants have failed to provide adequate mental health care and psychiatric services to residents.

24. Defendants have failed to provide adequate medical and health care and related services, including neurological care, to residents and to ensure that medications are prescribed and administered to residents by appropriately qualified professionals in keeping with accepted professional standards, and are not used as punishment, in lieu of treatment, or for the convenience of staff.

25. Defendants have failed to provide adequate nursing care and services to residents.

26. Defendants have failed to provide adequate physical management and related services and therapy services, including physical therapy, occupational therapy, speech therapy, and other forms of therapy to residents.

27. Defendants have failed to provide residents with adequate and sufficient adaptive and habilitative equipment, including wheelchairs, that meet the needs of residents.

28. Defendants have failed to provide a sufficient number of adequately trained professional and direct care staff to render the essential care and treatment outlined above in paragraphs 15 through 27.

29. Defendants have failed to maintain professionally based recordkeeping and record review systems to ensure that resident records contain accurate, up-to-date and relevant information necessary to enable staff to provide adequate care, treatment, and training to residents.

30. Defendants have failed to ensure that residents are evaluated by appropriate professionals for placement in the most integrated setting and appropriately placed into the most integrated setting according to their individualized needs.

31. Defendants have failed to meet the requirements of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et seq., and the regulations promulgated pursuant thereto, by excluding residents, by reason of their disability, from participation in or by denying them the benefits of the services, programs, or activities of the Commonwealth, or by subjecting them to discrimination, and by failing to administer services, programs, and activities in the most integrated setting appropriate to their needs. For purposes of Title II of the ADA, the Commonwealth of Puerto Rico and the Puerto Rico Department of

Health are "public entities," and the residents of the facilities are "qualified individual[s] with a disability" pursuant to 42 U.S.C. §§ 12101, 12131.

32. Defendants have failed to meet the requirements of Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794, and the regulations promulgated pursuant thereto, by, solely on the basis or severity of their disability, segregating residents, excluding them from participating in, denying them the benefits of, or subjecting them to discrimination in programs or activities which receive federal financial assistance. For purposes of Section 504, the Defendants receive "Federal financial assistance," the residents are "qualified individual[s] with a disability," and are the intended beneficiaries of the assistance.

VIOLATIONS ALLEGED

33. The acts and omissions alleged in paragraphs 15 through 32 infringe upon residents' legal rights and substantive liberty interests and constitute resistance to the full enjoyment of their rights, privileges or immunities secured or protected by the Constitution or laws of the United States, and deprive residents of such rights, privileges or immunities.

34. Unless restrained by this Court, Defendants will continue to engage in the conduct and practices set forth in paragraphs 15 through 32 that deprive residents of the facilities of their legal rights under law and the rights, privileges, or



immunities secured or protected by the Constitution of the United States, and cause irreparable harm to residents.

PRAYER FOR RELIEF

35. The Attorney General is authorized under 42 U.S.C. § 1997a to seek only equitable relief.

WHEREFORE, Plaintiff, the United States of America, prays that this Court enter an order permanently enjoining Defendants, their agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, practices and omissions at the facilities set forth in paragraphs 15 through 32 above, and to require Defendants to take such action as will bring Defendants into compliance with federal law and provide legal and constitutional conditions of care to persons who reside at the facilities. The United States further prays that this Court grant such other and further equitable relief as it may deem just and proper.

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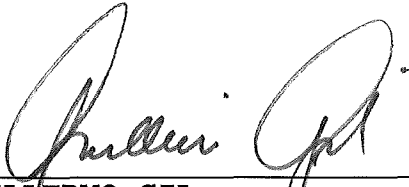
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Respectfully submitted,



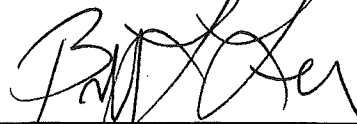
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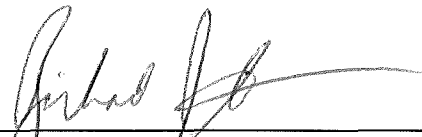
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