



MH-MA-001-003

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKETED

DAVID BREWSTER, et al.,)	
Plaintiffs)	
)	
v.)	CIVIL ACTION NO. 76-4423-F
)	
MICHAEL S. DUKAKIS, et al.,)	
Defendants)	

FINDINGS AND ORDER

March 19, 1981

FREEDMAN, D.J.

Based on the hearing held on March 16, 1981, this Court makes the following findings:

1. The defendants have failed to comply with Paragraphs 24 and 47 of the Consent Decree entered in this matter, due to their failure to take effective measures to secure timely release of funds for programs required by the Decree. The absence of effective coordination among the defendants in assembling documentation required by the legislature has resulted in substantial delays in release of funds held in certain legislative supplementary accounts and targeted for Consent Decree programs.

2. The efforts made by the defendants to access these funds were drastically complicated by vague and unnecessarily restrictive language imposed by legislative committees limiting access to Consent Decree supplementary accounts.

3. Although staff members connected with the House Ways and Means Committee were requested, by Order of this Court, to attend the hearing to provide the Court with necessary information regarding the processes of the House Ways and Means Committee, no representative staff members for that Committee appeared. Staff members and counsel from the Senate Ways and Means Committee did appear.

4. The delays in coordinating submission of documentation to the legislature by the defendants resulted in late release of funds contained in the 5011-9006 account, earmarked for improvement in the existing community mental health system and specifically required by Paragraph 19 of the Decree. As a result of delays in release of funds from this account, members of the plaintiff class were unnecessarily hospitalized and denied their right to placement in less restrictive community settings, as required by the Decree.

5. As a result of the lack of coordination by the defendants, and the unnecessarily restrictive language imposed by the legislature limiting access, approximately \$2.6 million contained in the 5100-0101 supplementary account is currently being withheld from the community mental health system.

6. Without these funds, the local Department of Mental Health administrators will be unable to pay community mental health providers through the end of this fiscal year. In addition, a number of providers with short funded contracts, or with personnel transferred from state slots to contract positions, will begin running out of money as early as April 30, 1981.

7. The plan proposed by the defendant Executive Office of Human Services to avoid the destructive ramifications of the failure to obtain release of the 5100-0101 funds is wholly inadequate to prevent harm to the plaintiff class. The use of so-called reversions from one account to absorb shortages in another account requires a protracted process of contract amendment, negotiation with and active cooperation from private mental health agencies and processing of dozens of such amendments through the elaborate state bureaucracy. Representatives of several agencies whose cooperation would be critical to the amendment process necessary to generate reversions indicated an unwillingness to be involved in this process. Dependency

on reversions for program funding has, in addition, caused considerable delay and harm to members of the plaintiff class when used in the past. Finally, the use of the reversion process will not generate sufficient funds to offset existing shortages.

8. The defendants have violated Paragraph 20 of the Consent Decree, and the subsequent agreed upon recommendations of the Monitor to implement this Paragraph, by failing to approve in a timely manner contracts for several mentally retarded persons currently at Northampton State Hospital and to be served by the Franklin/Hampshire Area Office of Region One of the Department of Mental Health.

9. The delays in accessing funds from the 5011-9006 account intended to upgrade existing community programs and create necessary new programmatic services may without prompt action result in an inability by the Department of Mental Health to spend these monies in an effective, timely and positive manner.

10. The additional requirements for numerous administrative reports both to the legislature and to the Central Office of the Department of Mental Health has placed demands on the Office of Region One of the Department of Mental Health that cannot be met by current personnel resources without harm to members of the plaintiff class. Reporting requirements are forcing regional administrative personnel to abbreviate their programmatic efforts.

Based on the preceding findings of fact, the Court hereby ORDERS:

1. That the defendants submit no later than April 17, 1981 a plan for productive and effective expenditure of all funds contained in the 5011-9006 account, assuring that no portion of these funds is reverted to the general funds but is invested effectively in improving existing community mental

health services as required by Paragraph 19 of the Decree.

2. That the defendants submit to this Court no later than July 31, 1981 an accounting specifying details regarding all expenditures out of the 5011-9006 account.

3. That the defendants take all action legally permitted to insure retroactive payment to private contract agencies who have incurred expenses for members of the plaintiff class subject to reimbursement from the 5011-9006 account.

4. That the defendants, no later than April 3, 1981, approve all contracts submitted prior to the date of this Order for programs to serve members of the plaintiff class in Region One of the Department of Mental Health, or report to the Court in writing as to each contract not approved the legal or administrative reasons which require denial of approval.

5. That the defendants submit to the Court in writing no later than April 10, 1981 a plan for increasing the administrative staff of Region One of the Department of Mental Health to carry out the reporting and statistical demands of the legislature and the Central Office of the Department of Mental Health, to insure that no member of the plaintiff class is harmed by draining of resources away from program development.

6. That the defendants are hereby enjoined forthwith from employing contract reversions to make up for funding shortages caused by their failure to obtain timely release of funds in the 5100-0101 supplementary budget account.

7. That the defendants, no later than April 10, 1981, resubmit a request to the appropriate legislative committees for release of the necessary funds from the 5100-0101 account. The defendants will, prior to that date, meet with the legislative committees and ascertain precisely what documentation is required by the committees to obtain release of these funds. The defendants will further communicate to the legislature the

findings of this Court related to the effect of the vague and restrictive language attached to this account and the Order of this Court preventing use by the defendants of any reversions to make up for funding shortages caused by the failure to release funds from the 5100-0101 account. The defendants will further communicate to the legislative committees the willingness of this Court, and of this Court's appointed Monitor, to assure the legislative committees of oversight and accounting requirements to prevent any waste of released funds.

8. That the defendants, no later than fourteen (14) days after release of funds from the 5100-0101 account, submit to this Court a written plan specifying all expected expenditures to be made from this account. The defendants will also provide this Court, no later than July 31, 1981, with an accounting of all expenditures made from this account.

All until further Order of this Court.


United States District Judge