

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

ORDER

December 23, 1981

FREEDMAN, D.J.

This matter came before me upon Motion for Temporary Restraining Order and Preliminary Injunction by the defendants related to implementation of the Consent Decree previously entered in this case. After considering all the evidence presented by the parties, and for the reasons set forth in the Memorandum of even date, I hereby Order the defendants to do as follows:

1. Take no action--other than actions that defendants would take in the normal course unrelated to insufficient funds in the FY '82 budget--to freeze, terminate, or otherwise not fully fund for the remainder of this fiscal year all programs serving plaintiff class members. Such programs include all services to class members for which FY '82 contracts currently are signed and dated by the Comptroller as well as services staffed by state employees and funded through the Department's 01/02 subsidiaries in Region I.

2. Notify in writing all providers serving class members who currently have an FY '82 contract with the Department of Mental Health or who have state positions in their programs of this Order. The defendants shall instruct and assist programs to perform all activities and provide all services required by such contracts or affiliation agreements, including the spending of funds necessary to develop promptly and maintain specified services

to class members. The Court Monitor will be supplied with a copy of said written notification along with a list of all providers notified with the date of notification by January 15, 1982.

3. Promptly develop, submit for bids, contract, and fund all new community programs which were planned to begin during this fiscal year under the defendants' original budget request (House I) and its pending supplemental budget. Supply the Court Monitor, no later than February 1, 1982, with a plan for development and implementation of these programs.

4. Immediately halt the freeze of state employment positions allocated to community residential, nonresidential, and administrative services required by Paragraph 11 and Attachment F, and promptly fill and maintain all positions currently authorized in community services, including partnership clinics and DMH Area Offices. Supply the Court Monitor, no later than February 1, 1982 with a list of all state employment positions frozen as of the date of this Order and a report on action taken to fill these positions.

5. Take no action to reduce the availability to class members of services at the Hill Adolescent Program.

6. Within fifteen days of this Order, take all necessary steps to restore full, annualized funding to every contract providing services to class members which is presently funded for less than this entire fiscal year, unless the defendants determine that such full funding cannot reasonably be spent due to constraints unrelated to deficiencies in the FY '82 budget. Submit a report to the Court Monitor, no later than February 1, 1982, describing in detail all steps taken to comply with this paragraph.

7. Within fifteen days of this Order, take all necessary steps to fully implement the procedures for funding the conversion of state employment positions into contract staff, as set forth in the memorandum of May 29, 1981 from Martha McCahill to the Monitor.

Such steps shall include the timely allocation of sufficient funds in the community account of DMH Region I (account number 5145) to implement these procedures so as to insure continuity of all services to class members. Submit a report to the Court Monitor, no later than February 1, 1982, describing in detail all steps taken to comply with this paragraph.

8. Take no action to reduce other contracts in Region I to satisfy this Order, except where savings accrue and are not needed to operate such program.

9. Within fifteen days of this Order, prepare and finally approve new spending plans and other fiscal documents which are necessary to fully implement this Order. Submit, no later than February 1, 1982, a report to the Court Monitor describing in detail all steps taken to comply with this paragraph.

10. Submit a report to the Court Monitor, no later than February 1, 1982, describing in detail all efforts made by the defendants, including the Governor's Office, to inform the Legislature of the necessity for approval of the appropriation of sufficient funds to permit compliance with the Consent Decree, including the names of all persons contacting the Legislature, the dates of said contacts, the substance of said contacts, copies of all written material submitted to the Legislature, and any and all information related to communications between any member of the defendants or any employee of any defendant and the Legislature, related to funding of the Consent Decree.

11. Undertake any and all actions within the defendants' discretion to obtain, by accessing funds under their discretionary control, by transferring funds under their discretion, by seeking approval from the Legislature of transfers of funds, by obtaining supplemental or deficiency appropriations, or by whatever mechanism may be available to the defendants, sufficient funding to comply with all provisions of the Consent Decree. Submit, no

later than January 15, 1982, a report to this Court on all actions taken pursuant to this paragraph and their effect.

12. Submit to this Court in the event that the actions under the foregoing paragraph are ineffective, a motion for relief from this Order accompanied by an appropriate motion under F.R.Civ.P. 60(b)(6) to revise this Consent Decree.

It is so Ordered.


United States District Judge