

2011 WL 6178845

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United States District Court,  
D. Minnesota.

James and Lorie JENSEN, as parents, guardians and next friends of Bradley J. Jensen; James Brinker and Darren Allen, as parents, guardians and next friends of Thomas M. Allbrink; Elizabeth Jacobs, as parent, guardian and next friend of Jason R. Jacobs; and others similarly situated, Plaintiffs,

v.

MINNESOTA DEPARTMENT OF HUMAN SERVICES, an agency of the State of Minnesota; Director, Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Clinical Director, the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Douglas Bratvold, individually, and as Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Scott TenNapel, individually and as Clinical Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; and State of Minnesota, Defendants.

Civil No. 09-1775 (DWF/FLN). | Dec. 5, 2011.

#### Attorneys and Law Firms

M. Ann Mullin, Esq., Mark R. Azman, Esq., and Shamus P. O'Meara, Esq., Johnson & Condon, PA, for Plaintiffs.

P. Kenneth Kohnstamm and Steven H. Alpert, Assistant Attorneys General, Minnesota Attorney General's Office, for State Defendants.

Samuel D. Orbovich, Esq., and Christopher A. Stafford, Esq., Fredrikson & Byron, PA, for Defendant Scott TenNapel.

#### Opinion

### FINAL APPROVAL ORDER FOR STIPULATED CLASS ACTION SETTLEMENT AGREEMENT

DONOVAN W. FRANK, District Judge.

\*1 This matter came duly on for a Fairness Hearing on December 1, 2011, before the Honorable Judge Donovan Frank upon Plaintiffs' Petition for Final Approval of Stipulated Class Action Settlement Agreement (Doc. No. [104] ), and Application for Attorneys' Fees and Costs (Doc. No. [122] ). All parties appeared through counsel.

The Court being duly advised in the premises, having heard the arguments of counsel, and considered all filings of record hereby makes the following:

#### ORDER

1. Plaintiffs' Petition for Final Approval of Stipulated Class Action Settlement Agreement (Doc. No. [104] ), and Application for Attorneys' Fees and Costs (Doc. No. [122] ) is hereby **GRANTED**.

2. The certification of the Settlement Class is hereby ratified and the Settlement Agreement ("Agreement"), attached as "Final Approval Order Exhibit A" and expressly incorporated herein, is approved and its terms adjudged to be fair, reasonable, adequate and in the best interests of the Settlement Class Members, and it is hereby ordered that the parties are directed to consummate the Agreement in accordance with its terms, and this Court hereby reserves continuing jurisdiction for the time period set forth in the Agreement to enforce compliance with the provisions of the Agreement and the Judgment, as well as assuring proper distribution of the Settlement payments.

3. This Action, and all claims released in the Agreement against the State and its agencies as well as Defendants Douglas Bratvold and Scott TenNapel, in their official and individual capacities, are hereby **DISMISSED WITH PREJUDICE**, and without costs to any party.

4. Pursuant to Paragraph XIV.B. of the Stipulated Class Action Settlement Agreement, incorporated herein as

Final Approval Order Exhibit A, and this Court's Order governing the Final List of Opt-Outs (Doc. No. [129] ), the Settlement Amount of \$3,000,000 is hereby reduced by \$23,600, for a reduced Settlement Amount of \$2,976,400.

5. By separate Order, the Court shall determine how the reduced Settlement Amount, minus attorneys' fees and costs awarded below, shall be apportioned amongst Plaintiffs and those Class Members who submitted Claim Forms, and further determine how any remaining amounts shall be distributed in accordance with the terms of the Agreement.

6. Settlement Class Members and Plaintiffs are permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Claims which are settled and/or released in the Agreement.

7. The Court finds and concludes that, both legally and as a matter of equity and fairness, the individual settlement amount being awarded to each individual class member is not a resource for eligibility purposes and, consequently, an individual settlement amount will not affect, in any way, a Class Member's eligibility for disability benefits or other related benefits, or otherwise jeopardize the Class Member's benefits or programming.

This provision contemplates that if any agency, entity, or individual, private or public, disputes the Court's jurisdiction to make this finding, both as a matter of law and equity; or, contends that a Class Member's eligibility

should be affected, the entity or individual must file a motion and come before this Court to address the claim. The Court also incorporates into this paragraph its remarks off the bench at the December 1, 2011 hearing.

\*2 8. Settlement Class Counsel shall be paid \$992,133.33, representing one-third (1/3) of the \$2,976,400 reduced Settlement Amount as reasonable attorneys' fees and costs. The Court finds that a one-third contingent fee is a fair and reasonable fee considering the complexity of the issues and the substantial efforts of Settlement Class Counsel in this matter, and considering the significant benefits the Settlement affords to the Class and all people with developmental disabilities in the state of Minnesota. With respect to the Court's finding and conclusion that the attorneys' fees are fair and reasonable, the Court also incorporates into this paragraph its remarks off the bench on December 1, 2011.

9. Defendants shall pay the entire \$2,976,400 reduced Settlement Amount to Settlement Class Counsel's trust account within fourteen (14) days of this Order and entry of Judgment approving the Class Action Settlement Agreement. Settlement Class Counsel is authorized to pay itself \$992,133.33 from the reduced Settlement Amount for approved attorneys' fees and costs.

**LET JUDGMENT BE ENTERED ACCORDINGLY FORTHWITH.**