

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

DISABILITY RIGHTS OF MISSISSIPPI

PLAINTIFF

V.

CAUSE NO. 3:13-cv-00547-HTW-LRA

MISSISSIPPI CHILDREN'S HOME
SERVICES

DEFENDANT

**ANSWER AND AFFIRMATIVE DEFENSES OF CARES, INC., INCORRECTLY
IDENTIFIED AS MISSISSIPPI CHILDREN'S HOME SERVICES**

Defendant CARES, Inc., incorrectly identified as Mississippi Children's Home Services ("CARES") files this, its answer and affirmative defenses to the Complaint filed by Disability Rights of Mississippi ("DRMS") as follows:

FIRST DEFENSE

The Complaint fails to state a claim or cause of action upon which any relief can be granted. The Complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

SECOND DEFENSE

DRMS lacks standing.

THIRD DEFENSE

DRMS failed to exhaust all avenues available, including mediation, to resolve this dispute through a non-adversarial process before filing suit.

FOURTH DEFENSE

This Court lacks subject matter jurisdiction over this proceeding as there is no case or controversy.

FIFTH DEFENSE

The federal statutory mandates which provide funding for DRMS do not provide a private right of action.

SIXTH DEFENSE

Plaintiff's complaint violates the Mississippi Litigation Accountability Act.

SEVENTH DEFENSE

Now, answering the specific allegations of the Complaint, CARES states as follows:

1. CARES lacks knowledge or information sufficient to form a belief as to the veracity of the allegations in paragraph 1; therefore, those allegations are denied.
2. The allegations of paragraph 2 are admitted.
3. The allegations of paragraph 3 are denied. The statutes referenced do not provide federal question jurisdiction and the Plaintiff failed to exhaust appropriate administrative remedies.
4. The allegations of paragraph 4 are denied. As the Court lacks subject matter jurisdiction over this action, venue is not proper in this Court either.
5. The allegations of paragraph 5 state conclusions of law to which no response is required; however, should this Court require a response, the allegations of paragraph 5 are denied to the extent they tend to impute liability to CARES.
6. The allegations of paragraph 6 state conclusions of law to which no response is required; however, should this Court require a response, the allegations of paragraph 6 are denied to the extent they tend to impute liability to CARES.

7. The allegations of paragraph 7 state conclusions of law to which no response is required; however, should this Court require a response, the allegations of paragraph 7 are denied to the extent they tend to impute liability to CARES.

8. The allegations of paragraph 8 state conclusions of law to which no response is required; however, should this Court require a response, the allegations of paragraph 8 are denied to the extent they tend to impute liability to CARES.

9. The allegations of paragraph 9 state conclusions of law to which no response is required; however, should this Court require a response, the allegations of paragraph 9 are denied to the extent they tend to impute liability to CARES.

10. The allegations of paragraph 10 state conclusions of law to which no response is required; however, should this Court require a response, the allegations of paragraph 10 are denied to the extent they tend to impute liability to CARES, and they are specifically denied to the extent they tend to suggest that DRMS has standing to bring a legal action against CARES for unfettered unlimited and expansive monitoring.

11. The allegations of paragraph 11 state conclusions of law to which no response is required; however, should this Court require a response, the allegations of paragraph 11 are denied to the extent they tend to impute liability to CARES, or authority to DRMS for unfettered unlimited and expansive monitoring.

12. The allegations of paragraph 12 are denied as written.

13. The allegations of paragraph 13 state conclusions of law to which no response is required; however, should this Court require a response, the allegations of paragraph 13 are denied to the extent they tend to impute liability to CARES, or authority to DRMS for unfettered unlimited and expansive monitoring.

14. The allegations of paragraph 14 state conclusions of law to which no response is required; however, should this Court require a response, the allegations of paragraph 14 are denied to the extent they tend to impute liability to CARES, or authority to DRMS for unfettered unlimited and expansive monitoring.

15. The allegations of paragraph 15 state conclusions of law to which no response is required; however, should this Court require a response, the allegations of paragraph 15 are denied to the extent they tend to impute liability to CARES, and specifically to the extent that DRMS intends to provide informational services to the residents of CARES's Jackson facility, monitor compliance with federal and state statutes protecting the residents' rights and inspect the facility. DRMS specifically seeks access to CARES's Jackson facility to conduct an open-ended general unlimited and unfettered operational investigation with no specific target or purpose, all of which is contrary to its federal mandate and applicable regulations.

16. The allegations of paragraph 16 state conclusions of law to which no response is required; however, should this Court require a response, the allegations of paragraph 16 are denied to the extent they tend to impute liability to CARES, and specifically to the extent that DRMS intends to provide informational services to the residents of CARES's Jackson facility, monitor compliance with federal and state statutes protecting the residents' rights and inspect the facility. DRMS specifically seeks access to CARES's Jackson facility to conduct an open-ended general and unlimited and unfettered operational investigation with no specific target or purpose, all of which is contrary to its federal mandate and applicable regulations.

17. The allegations of paragraph 17 state conclusions of law to which no response is required; however, should this Court require a response, the allegations of paragraph 17 are denied to the extent they tend to impute liability to CARES, and specifically to the extent that

DRMS intends to provide informational services to the residents of CARES's Jackson facility, monitor compliance with federal and state statutes protecting the residents' rights and inspect the facility. DRMS specifically seeks entry to CARES's Jackson facility to conduct an open-ended general unlimited and unfettered operational investigation with no specific target or purpose, all of which is contrary to its federal mandate and applicable regulations.

18. The allegations of paragraph 18 are denied.

19. The allegations of paragraph 19 state conclusions of law to which no response is required; however, should this Court require a response, the allegations of paragraph 19 are denied to the extent they tend to impute liability to CARES, and specifically to the extent that DRMS intends to provide informational services to the residents of CARES's Jackson facility, monitor compliance with federal and state statutes protecting the residents' rights and inspect the facility. DRMS specifically seeks access to CARES's Jackson facility to conduct an open-ended general unlimited and unfettered operational investigation with no specific target or purpose, all of which is contrary to its federal mandate and applicable regulations.

20. The allegations of paragraph 20 state conclusions of law to which no response is required; however, should this Court require a response, the allegations of paragraph 20 are denied to the extent they tend to impute liability to CARES.

21. CARES lacks knowledge or information sufficient to form a belief as to the veracity of the allegations in Paragraph 21; therefore, the allegations are denied.

22. CARES lacks knowledge or information sufficient to form a belief as to the veracity of the allegations in Paragraph 22; therefore, the allegations are denied.

23. CARES admits that Exhibit B speaks for itself, otherwise the allegations of paragraph 23 are denied.

24. CARES admits that Exhibit B speaks for itself, otherwise the allegations of paragraph 24 are denied.

25. CARES admits that Exhibit B speaks for itself, otherwise the allegations of paragraph 25 are denied.

26. CARES admits that Exhibit D speaks for itself, otherwise the allegations of paragraph 26 are denied.

27. CARES lacks knowledge or information sufficient to form a belief as to the veracity of the allegations in paragraph 27; therefore, the allegations are denied.

28. CARES reasserts and restates as if copied herein its affirmative defenses and responses 1-27.

29. The allegations of paragraph 29 are denied.

30. The allegations of paragraph 30 are denied.

31. The allegations of paragraph 31 are denied.

32. The allegations of paragraph 32 are denied.

33. The allegations of paragraph 33 are denied.

34. The allegations of paragraph 34 are denied.

35. The allegations of paragraph 35 are denied.

36. The allegations of paragraph 36 are denied.

37. The allegations of paragraph 37 are denied.

38. The allegations of paragraph 38 are denied.

39(a-d)The allegations of paragraph 39 (a-d) are denied.

WHEREFORE, having answered the complaint, CARES, Inc. requests that the Court dismiss this action with prejudice and grant it its attorneys' fees and costs and all other equitable relief to which it is entitled.

COUNTERCLAIM FOR DECLARATORY JUDGMENT

AND NOW, assuming the role of counterclaimant, CARES, Inc. ("CARES") files this Counterclaim against Disability Rights Mississippi ("DRMS") for declaratory judgment pursuant to 28 U.S.C. §2201 and shows:

1. CARES is a not for profit company organized under the laws of the State of Mississippi and currently doing business in the State of Mississippi.
2. DRMS is a not for profit company organized under the laws of the State of Mississippi and is currently doing business in the State of Mississippi.
3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1983, and 28 U.S.C. § 2201.
4. Venue is proper in this Court.
5. The Protection and Advocacy System ("System") in Mississippi is the federally-mandated and funded state entity created pursuant to the Developmental Disabilities Act, 42 U.S.C. § 15043. It was first organized in 1976. To avoid conflicts of interest when suing other Mississippi Departments of State Government, the System was incorporated in 1982. In 1986, it acquired the Protection and Advocacy for Individuals with Mental Illness Program, which was funded under the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801-51 (the "Act"). In 2009 the System became known as DRMS.
6. DRMS is a private entity that performs a public function and may be sued under 28 U.S.C. § 1983.

7. DRMS filed suit against CARES to conduct an unlimited and unfettered open-ended general operational investigation of its CARES Center (the "Center"), a Residential Psychiatric Treatment Facility. Admittedly, it is not investigating abuse or neglect at the Center. In its prayer, it seeks a preliminary and permanent injunction against CARES, its employees and agents to "provide DRMS and its agent with timely, full, meaningful, and unaccompanied access to monitor the [Center]." [Compl. ¶39(b)]. What it means by "timely, full, meaningful and unaccompanied access to monitor" is neither described nor defined. DRMS contends that it has an unlimited "statutory right to monitor the children" at the Center to "ensure that all individuals are protected and housed safely at that facility." [Dkt. 3, p. 15]. DRMS fails to describe its goals and does not define the parameters of the operational investigative monitoring it contemplates at the Center. Instead, DRMS seeks to conduct an unlimited, unbounded, and unaccompanied general operational investigation of the Center, all minor residents of the Center and all staff of the Center.

8. DRMS's unfettered and general operational investigation in the Center will cause injury to CARES and the vulnerable mentally ill children who are entrusted to it for their personal care, psychiatric and psychological treatment, and education. The carefully calibrated medical treatments, personal care, meals, educational, recreational and sleep schedules of the mentally ill minor residents will be significantly disrupted, (causing damage that cannot even be measured) by the unscheduled inspections and unlimited, unaccompanied and confidential conferences between Center residents and staff with DRMS representatives day or night, without defined parameters or boundaries¹. Further, psychiatric and/or psychological treatments will be compromised as well as the stability and progress made by the Center's vulnerable residents by

¹ Even if made during regular business hours the scope of the contemplated general inspections will be damaging since medical treatments, meals, school classes and recreational activities all take place during regular business hours.

the coercive conditions of these unscheduled, unlimited, and sweeping "conferences" sought by DRMS.

9. DRMS's statutory mandate permits it access to facilities like the Center to investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to DRMS or if there is probable cause to believe that the incidents of abuse or neglect occurred to an identifiable individual. It may also have reasonably limited access to facilities as defined under the statute and the applicable regulations; that access is not unlimited nor is it for purposes of an unlimited unfettered operational investigation as sought by DRMS.

10. The limitations imposed by the Act prevent unreasonable searches and seizures that are prohibited by the Fourth Amendment of the United States Constitution. The limitations of the Act also prevent invasions of privacy that are prohibited by the United States Constitution.

11. DRMS does not have statutory authority to seek entry into facilities like the Center for general operational investigations.

12. In its suit for an unlimited general operational investigation, DRMS is not acting on a complaint of abuse or neglect to a particular individual at the Center, nor is it acting on the suspicion of probable cause that a particular individual is subject to abuse or neglect at the Center.

13. DRMS's suit against CARES seeking an unlimited general operational investigation of the Center constitutes a violation of CARES's Fourth and Fourteenth Amendment rights under the United States Constitution. CARES and its residents are constitutionally protected against DRMS's unreasonable searches, seizures and invasions of privacy.

14. Pursuant to 28 U.S.C. § 2201, CARES seeks a declaration from this Court that (1) DRMS's statutory authority granted under the Act does not extend to unlimited general operational investigations like that sought by DRMS, and (2) this suit constitutes an improper exercise of the powers granted to DRMS pursuant to the Act.

15. The issues which CARES seek addressed by this Court constitute an actual controversy between the parties, are justiciable and can be presently litigated and decided.

16. CARES has standing to pursue its declaratory judgment action because it and its residents are suffering an injury and will suffer further injury if the issues are not addressed.

WHEREFORE, CARES seeks a declaration that (1) DRMS's statutory authority does not extend to unlimited general operational investigations like that sought by DRMS, and (2) this suit constitutes an improper exercise of the powers granted to DRMS pursuant to the Act. Additionally, it seeks its attorneys' fees, interest and costs as well as other relief which this Court deems just and proper. Further, CARES reserves its right and expressly does not waive its entitlement to amend its counterclaim and to assert additional claims as they may arise.

This, the 13th day of December, 2013.

Respectfully submitted,

CARES, INC., INCORRECTLY IDENTIFIED AS
MISSISSIPPI CHILDREN'S HOME SERVICES

By Its Attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which sent notification of such filing to the following:

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This, the 13th day of December, 2013.

s/ Sheryl Bey

SHERYL BEY