

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

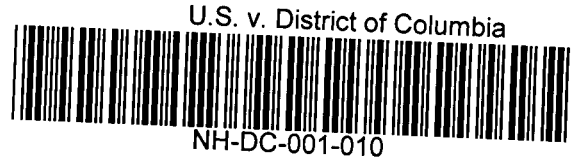
FILED

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CLERK, U. S. DISTRICT COURT  
DISTRICT OF COLUMBIA

UNITED STATES, )  
)  
Plaintiff, )  
)  
and )  
M. ANNE HART, DISTRICT )  
OF COLUMBIA LONG-TERM )  
CARE OMBUDSMAN, )  
)  
)  
Plaintiff-Intervenor, )  
)  
v. )  
)  
DISTRICT OF COLUMBIA, et al., )  
)  
Defendants. )

Civ. No. 95-948 (TFH)



ORDER

For the reasons set forth in the Court's bench ruling of December 20, 1995, and additionally for the reasons set forth below, it is hereby ORDERED that the plaintiff's motions for contempt and further remedial relief are GRANTED.

As stated in the bench ruling, the defendants are in civil contempt of this Court for failing to comply with the provisions of the July 6, 1995 stipulated order and subsequent orders of the Court. See NLRB v. Blevins Popcorn Co., 659 F.2d 1173, 118385 (D.C. Cir. 1981); Petties v. District of Columbia, 897 F.Supp. 626 (D.D.C. 1995) (setting forth elements of civil contempt). The Court's orders have been in effect and have required particular conduct on the part of the defendants, but the defendants have not complied. The noncompliance exists even though the principal order at issue here -- the July 6, 1995 order -- was stipulated to by the parties and was not imposed unilaterally upon the defendants by the Court. There appears to be no way to rationalize the defendant's willingness to enter into the stipulated order with their present noncompliance.

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The defendants' noncompliance is widespread and substantial. The principal areas of concern presently involve the payment of vendors, the provision of supplies and services necessary for adequate care, the discharge and outplacement of residents with mental retardation, and the psychiatric evaluation of residents with mental illness.

As for vendor payment, the Court ordered that the defendants pay vendors supplying goods and services to D.C. Village within 45 days of receiving invoices in order to avoid work stoppages and supply shortages. By the defendants' own admission, at least \$161,000 in vendor payments are overdue beyond the 45-day period. This figure was provided by counsel during the status call on December 20, 1995, but the defendant's written submissions suggest an even higher indebtedness total of \$380,323.34. Whichever figure is correct,<sup>1</sup> there is no disputing the substantial backlog in payments. The nonpayment has caused more than one threatened removal of contract nurses and now threatens to deprive the residents of the service of a physical therapist. Furthermore, as discussed immediately below, various supplies shortages have resulted from the nonpayment.

The supplies shortages, whether the result of vendor nonpayment, slow procurement processes, or poor planning, are serious. The Monitor reports that D.C. Village was temporarily without duoderm, a medication needed for the treatment of decubitus ulcers. D.C. Village was also temporarily out of its normal supply of saline used to cleanse these ulcers and other wound and incision sites. Perhaps most alarmingly, the Monitor reports that the stock of some categories of perishable food was once reduced to a one-day supply.

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<sup>1</sup>On several occasions, the proceedings in this case have been hampered by counsel for the defendants' factual and legal misrepresentations to this Court. Though these problems do not form the basis for the present finding of contempt, they concern the Court, regardless of whether they are intentional. The difficulty has risen in discussions with respect to many topics, including the status of vendor payments, the legal requirements of the reporting of outplacements to the Ombudsman, the legal requirements and factual status of the handling of the residents' personal needs allowances, and the defendants' ability to produce a list of vendors. Though some contemporaneous treatment of these problems can be found in the transcripts of status hearings in this case, the Court will review the matter more thoroughly if the communication problems continue.

As for the outplacement of residents with mental retardation, this process was supposed to be completed by October 31, 1995. The parties and monitor report that the outplacement process is still not near its conclusion. The defendants have sought an extension until the end of January 1996, but they admitted in court that the deadline may not be realistic. The requested deadline seems to the Court to lead inevitably to further noncompliance.

As for the evaluation of residents with mental illness, the defendants have admitted that they are uncertain how many residents fall into this category because D.C. Village lacks the psychiatric services necessary to evaluate residents.

The Court will suspend the imposition of sanctions designed to compel compliance until the next status hearing. The parties are advised, however, that the Court is more inclined to impose custodial sanctions or to order the appointment of a special master or private administrator to manage D.C. Village than to impose fines, should noncompliance continue.

It is **ORDERED** that the defendants shall comply with the following provisions.

I. Outplacement of Residents with Mental Retardation

A. Within seven days from the entry of this order, the defendants shall begin to provide the plaintiff and the plaintiff-intervenor with biweekly reports detailing what steps they have taken within the current biweekly period to reach compliance with §D of the July 6, 1995 order. The defendants shall continue to provide such reports until all D.C. Village residents with mental retardation are appropriately discharged from the facility pursuant to the July 6, 1995 order. In each report, the defendants shall identify specifically any financial and/or licensure problems which constitute barriers to placement, and the steps the defendants shall take to eliminate such barriers. The deadline for the outplacement of all D.C. Village residents with mental retardation is extended to February 28, 1996.

C. For as long as individuals with mental retardation continue to reside at D.C. Village, the defendants shall ensure uninterrupted clinical services, habilitation, and other services to all such residents.

## II. General Discharge and Outplacement Issues

A. Consistent with the Court's November 7, 1995 Order Modifying the Stipulated Order, Defendants shall ensure that prior to discharge, all D.C. Village residents are provided with an adequate and appropriate interdisciplinary assessment and individual discharge plan pursuant to federal law. All placement decisions are to be made on an individualized basis and shall be appropriate and adequate to meet each person's individualized needs.

B. The outplacement process team at D.C. Village shall be expanded beyond the social services department to also include nursing, dietary, therapeutic recreation departments, and when appropriate, physical therapy and occupational therapy. The social services department shall work closely with the nursing department and in all instances shall inform the assistant directors of nursing of all residents scheduled for discharge.

## III. Issues with Respect to the Discharge and Outplacement of Residents with Mental Retardation

A. Consistent with the Court's November 7, 1995 Order Modifying the Stipulated Order, for D.C. Village residents with mental retardation, in order to ensure that their special care needs are met, Defendants shall immediately identify and create a team to provide these individuals with sufficient specialty consultation services to ensure a safe and effective transition

to their new residences, to train the group home staff in how best to care for the individual, and to help meet the person's ongoing individualized needs. This team shall consist of a nutritionist, psychologist, speech pathologist, and recreation specialist. In assembling this team, Defendants shall solicit input from the Monitor. This team shall provide such specialty consultation services until the receiving facility staff is stabilized and their competency is demonstrated.

B. Within seven days from the entry of this Order, Defendants shall provide a medical assessment, conducted by an independent physician, for D.C. Village residents Cynthia W., Carla L., and Alvina B. to ensure that their respective medical needs are adequately addressed. If Defendants propose to transfer these residents to another nursing care facility, Defendants shall provide the Court, the United States and the Plaintiff-Intervenor with a detailed written evaluation from the independent physician stating that their health conditions require such a restrictive placement.

IV. Issues with Respect to the Discharge and Outplacement of Residents with Mental Illness

A. Within thirty days from the entry of this Order, Defendants shall ensure that all D.C. Village residents are provided with new and adequate psychiatric evaluations by appropriate professionals to determine if they have a primary or secondary diagnosis of mental illness. Defendants shall also provide D.C. Village residents with adequate psychiatric services at D.C. Village.

B. Consistent with the Court's November 7, 1995 Order Modifying the Stipulated Order, for D.C. Village residents identified as having a diagnosis of mental illness, in order to ensure that their special care needs are met, Defendants shall identify and create a team to provide these individuals with sufficient specialty consultation services to ensure a safe and effective transition to their new residences, to train the new residence staff in how best to care for the individual, and to help meet the individuals' ongoing individualized needs. This team shall consist of a psychiatrist, psychologist, geriatric-psychiatric nurse, and when appropriate, a recreation specialist and social worker. In assembling this team, Defendants shall solicit input from the Monitor. This team shall provide such specialty consultation services until the receiving facility staff is stabilized and their competency is demonstrated.

V. Measures to Remedy Shortages

A. Consistent with § B.2.b of the Stipulated Order of July 6, 1995, Defendants shall immediately and hereafter ensure an adequate daily supply of necessary treatment modalities for D.C. Village residents' decubitus ulcers, specifically, normal saline and duoderm.

B. Consistent with § C of the Stipulated Order, Defendants shall immediately pay in full amounts over forty-five days past due to all vendors supplying D.C. Village with these and other essential health care supplies to ensure that shortfalls and shortages do not occur at D.C. Village.

C. Defendants shall ensure immediately that the District of Columbia procurement office responds immediately to urgent requests for health care and other supplies to ensure that the health care needs of the D.C. Village residents are appropriately met.

D. Defendants shall ensure immediately that the food and drink provisions of § B.1 of the Stipulated Order are fully implemented to meet the needs of the residents. Defendants shall ensure that all of the D.C. Village residents are adequately hydrated at all times. To this end, Defendants shall ensure immediately that water, and cups for water, are present in sufficient quantity in each resident's room.

E. Consistent with § B.3 of the Stipulated Order, Defendants shall ensure immediately that adequate supplies of soap are available for residents and staff at all times.

#### VI. Provision of Health and Nursing Care

A. Defendants shall implement nursing practices consistent with generally accepted standards of care to redress the deficiencies as cited by the Court Monitor. Defendants shall ensure that basic care practices are part of daily and routine resident care for all D.C. Village residents. To promote responsibility and accountability, Defendants shall provide for adequate supervision and reporting to ensure that the residents' health care needs are met every day.

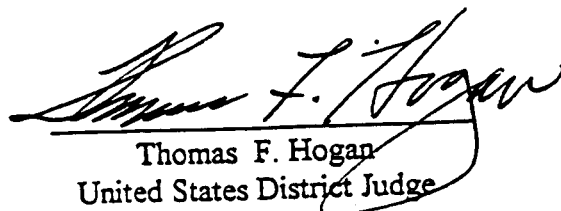
B. Consistent with § A.1.b of the Stipulated Order, Defendants shall ensure that D.C. Village residents with

decubitus ulcers, or at risk of obtaining decubitus ulcers, shall be provided with coordinated interdisciplinary care for the prevention and treatment of decubitus ulcers. Defendants shall provide these residents with routine skin care checks that meet the residents' needs. Residents shall be positioned appropriately and turned frequently enough to prevent skin breakdown and/or to treat existing skin breakdown. Defendants shall take steps to ensure that when the treatment nurses are not present on the units, including weekends, decubiti care and skin care remain an integral part of implemented nursing practice at D.C. Village.

C. Defendants shall systematically and individually ensure that the provisions of § A.2 of the Stipulated Order are fully implemented to meet the needs of the incontinent residents. Consistent with § A.2 of the Stipulated Order, Defendants shall especially ensure that individuals with decubitus ulcers are not left to sit or lie in their own soiled linens.

D. Defendants shall develop and implement hereafter infection control practices and procedures that comport with generally accepted nursing practices and that meet the needs of the D.C. Village residents. Defendants shall adequately monitor and take immediate steps to appropriately address any infections that are discovered.

December 22<sup>nd</sup> 1995

  
Thomas F. Hogan  
United States District Judge