

HARRIET A. FIELDS, Ed.D., R.N.

#604

**1722 19th Street, N.W.
Washington, DC 20009**

Message: (202) 234-7142

June 16, 1996

U.S. v. District of Columbia



NH-DC-001-030

**The Honorable Thomas F. Hogan
U.S. District Court for the District of Columbia
333 Constitution Ave, NW, 4th Floor
Washington, DC 20001**

**Re: The United States of America v. The District of Columbia, et al., Civ. No. 95-948, TFH,
D.C. Village Nursing Home (DCV), Court Order, July 6, 1995;
November 7, Order Modifying Stipulated Order of July 6, 1995;
Court Order, December 22, 1996;
Court Order, February 23, 1996**

Dear Judge Hogan:

As of this writing there are five residents remaining at DCV. All have identified outplacement sites.

Mr. M.W. is due to be outplaced into independent living in his own apartment in the District, as soon as his new home is equipped by DCV with necessary supplies and furniture and proper paper work is completed, for example, identification cards, housing pass, income verification, food stamps, metro passes.

Mr. J.B. and Mr. H.B. are scheduled Monday to be outplaced to Pleasant Living Convalescent Center in Edgewater, Maryland.

Mr. E.H. is scheduled to be outplaced to J.B. Johnson Nursing Center.

Mr. C.F. has an independent living site identified for him in the District, but at this writing no vacant room and no scheduled date to move. The systems identified above for Mr. M.W. also apply to Mr. C.F. and, in addition, Mr. C.F. will need a personal care aide daily.

Since the presentation by Dr. Harvey Sloane and the Court Monitor to the nursing home provider community in the District of Columbia on Tuesday, May 21, Mr. Bryant Hall, administrator of Capitol Hill Nursing Center, has admitted 14 more residents from DCV. These beds were made available by converting space through an exemption from the certificate of need expressly for DCV residents. This is a tribute to Mr. Hall for since this meeting he has nearly singularly among his peers, demonstrated a community commitment and concern for the District of Columbia's

most vulnerable and poor, the last remaining residents of DCV who had no home in which to go. In addition, Ms. Alberta Brasfield, former administrator at DCV and now the new administrator at Stoddard Baptist Nursing Home, admitted another DCV resident who had no other home identified. (Incidentally, this resident, Ms. S.B., outplaced yesterday reports today that "everyone is nice...the food is much better.") Through these actions most all DCV residents will remain in the District or just across the line in Carroll Manor Nursing Home in Hyattsville, Maryland. Only a handful of DCV residents have been outplaced beyond a fifty mile radius of the District and some at family members request. Therefore, nearly all DCV residents will be within the jurisdiction of the long term care ombuds program in the District.

Residents with Mental Retardation

As of June 13 all the residents with mental retardation have been outplaced. Judge Hogan, your Court Orders especially the Court Order of February 23 has been vital in ensuring that the most appropriate and current information is transferred with the residents to their new homes in order that the receiving facility staff are knowledgeable of the residents individual care needs. This is true for the outplacement of all the residents but especially so for the outplacement of the residents with mental retardation. In every instance the outplacement of this population required constant and vigilant oversight until literally the residents were out the door and in the transportation vehicle to take them to their new homes.

Mr. P.L. On June 13, Mr. P.L. was outplaced to Catonsville Community Convalescent Center in Catonsville, Maryland. All necessary and appropriate plans and action steps were and are in place. The Specialty Consultation Team, Georgetown University Child Development Center (GUCDC), visited the site on June 3 to assess the appropriateness of the site and the ability of staff to care for Mr. P.L.'s particular needs. GUCDC reports the following: activities which would be equivalent to day programming for Mr. P.L. take place daily at the facility; there are a few other residents with "pervasive developmental disabilities" similar to Mr. P.L.; a "sensory stimulation kit" has been acquired for the residents with mental retardation; there are occupational therapy, physical therapy and speech language services provided and daily physician visits; several residents have "feeding tubes" and the "facility is capable of handling Mr. L.'s needs."; the facility can accommodate Mr. P.L.'s wheelchair; the "administration were pleased that the GUCDC team will be available for consultation and training."

Mr. P.L. was outplaced accompanied by a registered nurse from DCV who has known Mr. P.L. for years. Two certified nurse aides (CNA's) from DCV who have known Mr. P.L. for years were with him for the day and evening shifts this past Thursday and Friday and one will be with him on the day shift through the weekend. In addition, a registered nurse (R.N.) from DCV who has known Mr. P.L. for quite some time was at Catonsville Convalescent Center when Mr. P.L. arrived and stayed with him for the day shift on Thursday and again on Friday. The R.N. reports there is a R.N. at Catonsville who will be caring for Mr. P.L. who knew him when he was a resident at Forest Haven years ago before he was admitted to DCV. According to the DCV

R.N., Mr. P.L. demonstrated recognition of this former Forest Haven now Catonsville staff person through his open, enthusiastic, and endearing smile upon seeing her. Next week GUCDC staff including the psychologist, occupational therapist, recreation therapist, speech language pathologist, and nutritionist are to commence training and consultation to the Catonsville Community Convalescent Center staff in the unique and individual care needs of this special resident.

Judge Hogan, I want you to know that the most valuable gift the residents with mental retardation can have is your Court Order for the Specialty Consultation Team to train, educate, and serve as consultants to the staff in the residents new homes. I believe this has already markedly improved the lives of the residents with mental retardation. It is certainly a model to be emulated from this time forward in the District and in the mental retardation community nationally. Just this past Wednesday, the coordinator of the GUCDC program marvelled at the improvement in the lives of the residents recently outplaced to the O Street, S.E. site of D.C. Family Services. Through GUCDC's presence as consultants and educational resources and their ability to work with the staff and the residents in their new home, GUCDC has seen residents up every day, dressed, with shoes on, sitting in chairs, at the dining table for meals, and out of doors. The program coordinator reports in all his years at DCV, he saw one resident, Mr. R.W., up out of bed "maybe three times." Now Mr. R.W. is up and dressed everyday.

The program coordinator also gave an example of the detrimental impact on the quality of life the lack of a specialty consultation team, such as provided for in the December 22 Court Order in this case, can have. While recently at PSI day program to provide specialty consultation services for Mr. K.F., a DCV resident outplaced to Wholistic Habilitative Services on April 18 and who commenced the day program on June 5, the program coordinator saw an individual he knew from Forest Haven where GUCDC had a presence several years ago.

While at Forest Haven, GUCDC was able to work with the staff and this individual (whom GUCDC had not seen in years) who had a habit of hitting himself in the head and causing injury to himself, so much so that the staff outfitted him with a metal helmet to protect himself. While at Forest Haven GUCDC was able to work with this individual and the staff to the point that he 'graduated' to wearing a baseball cap and then to the point that he no longer exhibited this self-destructive behavior. The project coordinator was touched and saddened to see last week this former Forest Haven resident exhibiting the same self-destructive behavior that GUCDC was able to eliminate years ago. The project coordinator opined that if a specialty consultation team had been in place for this resident when he went to his group home from Forest Haven (as well as many others in their experience) as it is in this case (Civ. No. 95-948) this individual would certainly today have a higher quality of life than he is obviously having now, and that his resorting to previous self-destructive behaviors is a direct result of the lack of knowledge by present caregivers of previous care interventions that at the time improved the individual's life. Your Court Order, Judge Hogan, provides continuity of care and, in turn, quality of life and protection of residents' rights.

Payment of Vendors Judge Hogan, I am relating all of this to you now because a situation has just come to my attention this past Thursday which shocked and distressed me and directly relates to the specialty consultation team in this case and the payment of vendors. In April, I originally requested from GUCDC information on payment for their services for the residents with mental retardation at DCV. At that time I had heard that the University had not been paid although GUCDC staff at DCV were receiving their pay checks. Georgetown was only able to get back to me June 13 which are the three pages in attachment one in this letter to the Court. According to GUCDC the defendants owe them \$668,685.94. I confirmed with the accounts analyst at GUCDC that this sum all relates to services provided to residents of DCV. Upon receiving this information on Thursday, I immediately shared it with Ms. Sue Brown who called Ms. Frances Bowie, Administrator of the Mental Retardation and Developmental Disabilities Administration (MRDDA) in the Department of Human Services. I faxed the attached vendor listing to Ms. Bowie and to Ms. Jeanette Michael, the consent decree coordinator at the Department of Human Services. In addition, I also spoke with Ms. Michael on Friday, June 14 about this matter. Ms. Michael told me that the Department of Human Services "knew that GUCDC is owed money but it comes under another Court Order, Joy v. Evans, through MRDDA." To me this is an inexplicable position to take, for the fact of the matter is that at times about half of the residents with mental retardation at DCV were not Evans class members and the GUCDC contract was extended and amended at DCV specifically designating GUCDC as the specialty consultation team pursuant to the Court Order of December 22, 1995, for all residents with mental retardation at DCV.

The accounts analyst has told me that GUCDC does not intend to terminate services because they are committed to their staff and to the residents, but that this chronic failure to pay is presenting a hardship to them. At this point in time GUCDC is the only vendor in this case that still has an on-going, vital, and direct impact on the protection of the residents rights. At the very least this vendor should be paid immediately for the services rendered since the time of the Court Order for the Specialty Consultation Team. It is distressing to me that the defendants have not honored the vital contribution this vendor provides to improve the quality of life of the District's most vulnerable by not reimbursing for services rendered. It is also of concern to me that although there is acknowledgement by the Department of Human Services that this vendor is due payment, the defendants position is that this vendor payment item pertains to another Court Order, even though MRDDA is part of the Department of Human Services and is listed in the United States Complaint filed on May 19, 1995, pertaining to this case, and the attached listing of outstanding invoices all relate to services provided to residents of DCV.

In my fax to Ms. Bowie, I asked her to get back to me as soon as possible, that we are in Court on Monday, and I need to know from her. As of this writing I have not heard from Ms. Bowie. As administrator of MRDDA, Ms. Bowie is listed as a defendant in this case in the Complaint filed with the Court on May 19, 1995. I have other concerns about MRDDA that relate to DCV residents with mental retardation who are now in their new homes. This concern was profiled in my June 6 letter to Ms. Sue Brown and for which the Court, the Plaintiff, the Plaintiff-Intervenor, and the Defendants were copied and is attachment two to this letter to the Court.

Day Programs There are two residents, Ms. S.A. and Ms. S.P. for whom off-site day programs are indicated in their individual habilitation plans and who have tubes. Ms. S.A. has a tracheostomy and Ms. S.P. has a gastric tube. There is apparently a pervasive policy in community based day programs in the District not to accept residents with tubes, for example, tracheostomy and gastric tubes. MRDDA's failure to provide day programs for residents whose individual habilitation plan calls for off-site community based day programs and allowing the policy by programs receiving medicaid funding to discriminate against individuals with tubes, violates the Court Order of July 6, 1995, and the residents rights under federal disabilities law. There are many states throughout the country where all day programs accept residents with all sorts of tubes. Maryland, for example, is one. The status of the provision of day programs will continue to be monitored.

Ms. A.R. outplaced to Wholistic Habilitative Services on April 18 is to begin her day program at Better Treatment Center on June 17.

Specialty Consultation Team for Residents with Mental Illness

Judge Hogan, another gift to the long term care community in the District of Columbia is your Court Order for the Specialty Consultation Team for residents with the label of mental illness. Geriatric Psychological Systems: has and still does provide counselling for the residents regarding transfer trauma; conducted assessments of the residents necessary for staff in the receiving facilities to provide care which meets the residents individual needs, these assessments are part of the residents outplacement discharge packets that go with the residents to their new homes; reviews psychotropic medications when indicated; has and continues to serve as consultants for care issues to meet the residents individual needs; has begun to and is scheduled to provide follow-up counselling services to residents in their new homes as well consultation services to the new caregivers of the residents.

Just this past week, I contacted a GPS counsellor on several occasions regarding the outplacement of a resident the counsellor was following. GPS, in turn, visited the resident on several occasions at DCV this past week before her outplacement and is scheduled to see her in her new home next week. The coordinator of the outplacement of the residents with mental illness at DCV, Ms. Catherine Carroll, has said of the specialty consultation team that, "it has been very helpful, it really has."

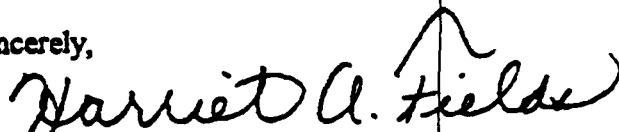
Outplacement Visits to Residents in their new homes

Once all the residents are outplaced, I will turn my attention to visiting the resident in their new homes at least two or three times until I can assure the Court that the residents remain in appropriate settings and that their individual needs are being met by their new caregivers. At which time I will submit a Final Report to the Court. Two Therapeutic Recreation staff at DCV, who have worked with and known the residents for years and who have consistently

demonstrated a keen sensitivity to the residents, have asked to accompany me on these visits. I believe this would be of great benefit to the residents by enabling them to see a familiar, friendly, and caring presence, and to the Court Monitor by providing a historical context to the residents current status.

Once again, Judge Hogan, it is a privilege to serve your Court for the best interests of the long term care residents of the District of Columbia.

Sincerely,



Harriet A. Fields, Ed.D., R.N.
Court Monitor

Attachment One - GUCDC vendor list of outstanding invoices

Attachment Two - June 6 letter to Ms. Sue Brown

cc: Mr. Richard J. Farano
Mr. David Deutsch
Civil Rights Division
U.S. Department of Justice
P.O. Box 66400
Washington, DC 20035

Mr. William Isaacson
Kaye, Scholer
901 15th Street, NW, Suite 1100
Washington, DC 20005

Ms. Barbara Mann
Office of the Corporation Counsel
441 4th Street, NW, Suite 680
Washington, DC 20001



GEORGETOWN UNIVERSITY MEDICAL CENTER

Child Development Center
Center for Child Health and Mental Health Policy

GEORGETOWN UNIVERSITY CHILD DEVELOPMENT CENTER

FACSIMILE TRANSMITTAL COVER SHEET

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TO: Dr. Harriet Fields

FAX #: 562-8030

FROM: Mariam Sharon, Account Analyst

PHONE NUMBER: 687-7537

DATE: 6/13/96

SUBJECT: Contract No: JA

MESSAGE: Here is the information that you requested. It is a retrospective history of payment since the beginning of the contract. The total due at this point is \$68,695.94. If you have any questions please feel free to call me.

THIS TRANSMISSION CONSISTS OF 3 PAGES INCLUDING THIS COVER SHEET

BILLING FOR RX:4285-870

Contract # JA91240

P.09

FAX NO. 2023322949

NCCNHR

JUN-16-96 SUN 16:00

INV #	DATE	PERIOD	TOTAL INVOICED AMOUNT FOR PERIOD	GROUPING SUBTOTAL	VOUCHER NUMBER	PERIOD COVERED	DATE	TOTAL PAID FOR PERIOD	OUTSTANDING AMOUNT
1	05/15/92	DEC 30 91 - FEB 29 92	5,523.11	5,523.11				0.00	(5,523.11)
2	08/24/92	MAR 1 92 - JUN 30 92	303,360.62		VOCEJAM30910/001	3/1-9/30	11/30/92	163,488.90	
3	09/30/92	JUL 1 92 - AUG 31 92	153,950.17		VOCEJAM30910/002	"	11/30/92	142,421.49	
4	07/27/95	SEP 92	50,990.20		VOCEJAM30910/003	"	11/30/92	197,386.40	(5,004.20)
5	03/17/93	OCT 92	41,293.40	549,594.39	VOCEJAN25809/001	SEP/OCT	08/27/93	46,297.60	5,004.20
6	03/17/93	NOV 92	79,330.19	79,330.19	VOCEJAN26012/0001	NOV	09/02/93	71,568.86	(7,761.33)
7	06/30/93	DEC 92	78,135.56		VOCEJAN32272/0001		10/27/93	312,914.71	
8	09/28/93	DEC 30 92 - APR 30 93	234,779.15	312,914.71	VOCEJAN32272/0001		10/27/93	"	0.00
9	09/28/93	MAY 1 93 - AUG 31 93	252,285.52		VOCEJAN33806/001	SEP	11/02/93	14,374.00	
				252,285.52	VOCEJAN33806/001	"	11/02/93	152,519.83	(85,391.69)
10	09/28/93	SEP 93	59,700.60	59,700.60				0.00	(59,700.60)
11	03/30/94	OCT 93 - DEC 93	202,472.21		VOCJAP31843/VOCJAP31844	OCT - JUN	J/V 11/28/94	747,660.47	
12	07/14/94	JAN 93 - MAY 94	285,483.09		VOCJAP31843/VOCJAP31844	OCT - DEC	"	"	
13	09/29/94	JUN 94 - AUG 94	187,707.72	675,663.02	VOCJAP31843/VOCJAP31844	OCT - DEC	"	"	71,997.45
14	09/29/96	SEP 94	51,718.09	51,718.09				0.00	(51,718.09)
15	02/03/95	OCT 94 - NOV 94	110,976.88	110,976.88	VOCEJAR04577/0001	OCT & NOV	04/13/95	50,498.00	
					VMSEJAX06009/0001	AD OCT-NOV	05/30/95	40,199.52	(20,279.36)
16	07/27/95	DEC 94	40,501.04		VOCEJAR15695/0001	DEC - FEB	12/04/95	140,128.00	
17	07/27/95	JAN 95	60,213.82		VOCEJAR15695/0001	"	"	"	
18	07/27/95	FEB 95	83,003.19	183,718.05	VOCEJAR15695/0001	"	"	"	(43,590.05)
19	07/27/95	MAR 95	38,864.35	38,864.35				0.00	(38,864.35)
20	07/27/95	APR 95	40,931.89	40,931.89				0.00	(40,931.89)
21	07/27/95	MAY 95	35,468.02	35,468.02				0.00	(35,468.02)
22	07/27/95	JUN 95	37,440.76	37,440.76				0.00	(37,440.76)
23	10/02/95	JUL 95	41,086.43	41,086.43				0.00	(41,086.43)

24	10/02/95	AUG 95	59,687.12	59,687.12				0.00	(59,687.12)
25	12/07/95	SEP 95	79,472.17	79,472.17	VOCEJAB03914/0001	SEPT/95	02/15/96	686.25	(78,785.92)
26	12/07/95	OCT 95	55,307.81	55,307.81	VOCEJAB03044/0001	OCT/95	01/29/96	55,307.81	0.00
27	01/26/96	NOV 95	44,932.57	44,932.57	VOCEJAB03949/0001	NOV & DEC	02/15/96	88,686.19	
28	01/26/96	DEC 95	43,753.62	43,753.62	VOCEJAB03949/0001	NOV & DEC	02/15/96	*	0.00
29	03/29/96	JAN 96	54,561.30	54,561.30				0.00	(54,561.30)
30	03/29/96	FEB 96	37,584.40	37,584.40				0.00	(37,584.40)
31	05/03/96	MAR 96	42,308.97	42,308.97				0.00	(42,308.97)
			<u>2,892,823.97</u>	<u>2,892,823.97</u>				<u>2,224,138.03</u>	<u>(668,685.94)</u>

HARRJET A. FIELDS, Ed.D., R.N.

#604

1722 19th Street, N.W.

Washington, DC 20009

Message: (202) 234-7142

June 6, 1996

**Ms. A. Sue Brown
D.C. Village Nursing Home
Washington, DC**

Re: Off-site day programs recommended for residents with mental retardation (Court Order, July 6, 1995, Section D. 1.) and the reported denial of acceptance of residents with tracheostomy and gastric tubes

Dear Ms. Brown:

I am writing to you in my capacity as Court Monitor to advise the defendants on how to comply with the Court Orders and federal law and regulations.

It was communicated yesterday during the course of the weekly outplacement meeting that the specialty consultation team for residents with mental retardation recommended a "community-based day treatment program (for Ms. S.A). Referrals to several community programs were made. Ms. A. was not accepted due to her tracheostomy." Further it was reported that the team recommended a "community-based day treatment program (for Ms. S.P.).... Day programs will not accept residents that are fed enterally."

There are off-site day programs operating in the District of Columbia that accept individuals with tracheostomy tubes and gastric tubes (for enteral feeding).

In a telephone conversation today with Dr. Ali, vice president for clinical services at PSI, a day program for residents with mental retardation, Dr. Ali informed me of the following:

- PSI accepts individuals with tracheostomy and gastric tubes.**
- Medicaid certified day programs are not permitted to deny admittance because of tracheostomy and/or gastric tubes.**
- PSI has in its program "several" medically fragile individuals with tracheostomy and/or gastric tubes.**
- PSI would welcome the individual habilitation plans (IHP) of the two residents with tubes**

at D.C. Family Services group home on O Street, S.E., whose IHP indicates off-site day programs. These individuals are Ms. S.A. and Ms. S.P. Information should be sent to:

Ms. Sandra Bouchelion
Intake Coordinator
PSI Services, Inc.
770 M Street, S.E.
Washington, DC 20003
[Telephone: (202) 547-3870]

In another telephone conversation today with Ms. Juanita Cook, program director of Better Treatment Center, an off-site day program for residents with mental retardation, Ms. Cook informed me of the following:

- Better Treatment Center is aware of the requirement for medicaid certified facilities not to discriminate against individuals with tracheostomy and gastric tubes.
- Better Treatment Center has a unit already set aside to handle the needs of such individuals, but needs to get the emergency equipment.
- Ms. Cook has known for years the two individuals mentioned above in addition to the third resident at D.C. Family Services for whom an off-site day program is recommended, Mr. T.M.
- Better Treatment Center would welcome the IHP's of these three individuals.
- Information should be sent to:

Ms. Juanita Cook
Program Director
Better Treatment Center
5511 14th Street, N.W.
Washington, DC 20001
[Telephone: (202) 829-2227]

According to federal disabilities law, it is improper and illegal to discriminate against individuals based upon their disability. This discrimination directly impacts the civil rights of the two individuals mentioned above, Ms. S.A. and Ms. S.P. Failure to provide community-based day treatment programs and allowing discrimination in medicaid certified programs to continue in other off-site day programs for individuals with mental retardation, directly denies the residents identified above their rights and renders the District of Columbia in further violation of the Court Orders.

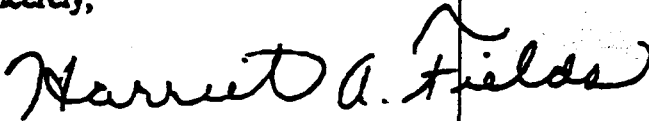
The purpose of the Court Orders for a specialty consultation team is to provide training, supervision, and consultation to caregivers who are unfamiliar with the unique and individual needs of the residents with mental retardation. It is the defendants responsibility with the assistance of the valuable gift the Court has provided to the mental retardation community through the issuance of the Court Orders, to work with those off-site day programs to demystify the tubes which result in policies that discriminate against those with disabilities in violation of

federal law.

The time of passivity and inertia in protecting the rights of the District of Columbia's most vulnerable is long gone. Let us help the defendants comply with the Court Orders for the best interests of the long term care residents of the District of Columbia.

The next Status Hearing in Court is June 18. Please let me know the progress of the defendants, including the Mental Retardation and Developmental Disabilities Administration (MRDDA), compliance with the Court Orders.

Sincerely,



Harriet A. Fields, Ed.D., R.N.
Court Monitor

cc. The Honorable Thomas F. Hogan
U.S. District Court for the District of Columbia

Mr. Richard J. Farano
Mr. David Deutsch
U.S. Department of Justice
Civil Rights Division

Mr. William Isaacson
Kaye, Scholer

Ms. Barbara Mann
Office of the Corporation Counsel for the District of Columbia

Mr. Wayne Casey, Acting Director
Department of Human Services
District of Columbia

Ms. Frances Bowie, Administrator
Mental Retardation and Developmental Disabilities Administration
District of Columbia

HARRIET A. FIELDS, Ed.D., R.N.
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1722 19th Street, N.W.
Washington, DC 20009
Message: (202) 234-7142

FAX TRANSMITTAL

TO: Mr. Richard Farano and Mr. David Deutsch

COMPANY: Civil Rights Division

FAX: 514-6273

PHONE: 307-3116

FROM: Dr. Harriet A. Fields

DATE: June 16, 1996

NO. OF PAGES(INCLUDING COVER): 13

MESSAGE: