

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF KENTUCKY

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 BREATHITT COUNTY, KENTUCKY,)
 NIM HENSON GERIATRIC CENTER,)
 and BREATHITT COUNTY)
 GERIATRIC CORPORATION)
)
)
 Defendants.)
 _____)

CIVIL NO. 04-76-KSF

Eastern District of Kentucky
FILED

FEB 17 2004

AT LEXINGTON
LESLIE G WHITMER
CLERK U S DISTRICT COURT

COMPLAINT

PLAINTIFF, THE UNITED STATES OF AMERICA, by its undersigned attorneys, hereby alleges upon information and belief:

1. The Attorney General files this complaint on behalf of the United States of America pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, to enjoin the named Defendants from depriving residents housed in the Nim Henson Geriatric Center (Nim Henson) of rights, privileges, or immunities secured and protected by the Constitution and laws of the United States.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345.

3. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 1997a.

4. The Attorney General has certified that all pre-filing requirements specified in 42 U.S.C. § 1997b have been met. The Certificate of the Attorney General is appended to this Complaint and is incorporated herein.

5. Venue in the Eastern District of Kentucky is proper pursuant to 28 U.S.C. § 1391.

DEFENDANTS

6. Defendant BREATHITT COUNTY (County) is a governmental subdivision created under the laws of the State of Kentucky. The County owns Nim Henson.

7. Defendant BREATHITT COUNTY GERIATRIC CORPORATION (Corporation) is a corporation organized and existing under the laws of Kentucky. The Corporation oversees the operations of Nim Henson.

8. Defendant Nim Henson is a nursing home currently located in Jackson, Kentucky.

FACTUAL ALLEGATIONS

9. Defendants are legally responsible, in whole or in part, for the operation of Nim Henson, for the nursing home conditions, and the health and safety of persons confined or residing in the facility.

10. At all relevant times, Defendants acted or failed to act, as alleged herein, under color of state law.

11. Nim Henson is an institution within the meaning of 42 U.S.C. § 1997(1).

12. Breathitt County receives federal Medicare and Medicaid funds for care provided at Nim Henson.

13. Persons institutionalized at Nim Henson are primarily geriatric residents, including both men and women, who have been placed in the facility to receive skilled nursing care. Many of the residents lack mobility, have significant mental impairments, or must rely on others for basic care.

14. Persons institutionalized at Nim Henson include "qualified individual[s] with a disability" for purposes of the Americans with Disabilities Act (ADA) and implementing regulations. 42 U.S.C. § 12101 et seq., 28 C.F.R. Part 35.

15. Defendants are "public entit[ies]" under the ADA and implementing regulations.

16. Defendants have failed and continue to fail to provide adequate medical, nursing, nutritional, wound, restorative, and psychiatric care and services to Nim Henson residents and to otherwise protect Nim Henson residents from harm.

17. Defendants have failed and continue to fail to assess Nim Henson residents to ascertain whether residents are receiving

adequate treatment in the most integrated setting appropriate to their individual needs.

VIOLATIONS ALLEGED

18. The acts and omissions alleged in paragraph 16 constitute a pattern or practice that violates Nim Henson residents' federal rights as protected by the Constitution of the United States, including the First and Fourteenth Amendments.

19. The acts and omissions alleged in paragraph 16 violate the nursing home reform provisions of the Omnibus Budget and Reconciliation Act of 1987 and its implementing regulations. 42 U.S.C. § 1396r, 42 U.S.C. § 1395i-3, 42 C.F.R. Part 483.

20. The acts and omissions alleged in paragraph 16 violate Section 504 of the Rehabilitation Act and implementing regulations. 29 U.S.C. § 794, 45 C.F.R. Part 84.

21. The acts and omissions alleged in paragraph 17 violate the Americans with Disabilities Act and implementing regulations. 42 U.S.C. § 12101 et seq., 28 C.F.R. Part 35.

22. Unless restrained by this Court, Defendants will continue to engage in the acts and omissions set forth in paragraphs 16-17 that deprive Nim Henson residents of rights, privileges, or immunities secured or protected by the Constitution of the United States and federal law, and will cause irreparable harm to these residents.

PRAYER FOR RELIEF

23. The Attorney General is authorized under 42 U.S.C. § 1997 to seek equitable and declaratory relief.

WHEREFORE, the United States prays that this Court enter an order permanently enjoining Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, omissions, and practices set forth in paragraphs 16-17 above, and that this Court require Defendants to take such actions as will ensure lawful conditions of institutionalization are afforded to residents of Nim Henson, including the provision of adequate treatment in the most integrated setting appropriate to their individual needs. The United States further prays that this Court grant such other and further equitable relief as it may deem just and proper.

Respectfully submitted,



JOHN ASHCROFT
Attorney General of the
United States


CERTIFICATE OF THE ATTORNEY GENERAL


I, JOHN ASHCROFT, Attorney General of the United States, certify that with regard to the foregoing Complaint, United States v. Breathitt County, I have complied with all subsections of 42 U.S.C. § 1997b(a)(1). I certify as well that I have complied with all subsections of 42 U.S.C. § 1997b(a)(2). I further certify, pursuant to 42 U.S.C. § 1997b(a)(3), my belief that this action by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

In addition, I certify that I have the "reasonable cause to believe," set forth in 42 U.S.C. § 1997a, to initiate this action. Finally, I certify that all prerequisites to the initiation of this suit under 42 U.S.C. § 1997 have been met.


Pursuant to 42 U.S.C. § 1997a(c), I have personally signed the foregoing Complaint. Pursuant to 42 U.S.C. § 1997b(b), I am personally signing this Certificate.

Signed this 9 day of February, 2004, at
Washington, D.C.



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Dated: _____, 2004.