

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THE STATE OF TENNESSEE; The)
 Honorable PHIL BREDESEN,)
 Governor of the State of Tennessee,)
 in his official capacity only;)
 POLLY DARNALL, Executive Director,)
 Tennessee State Veterans' Home Board,)
 in her official capacity only; GREG)
 CORVIG, Interim Administrator,)
 Tennessee State Veterans')
 Home - Humboldt, in his official)
 capacity only; and RUSSELL CAUGHRON,)
 Administrator, Tennessee State Veterans')
 Home - Murfreesboro, in his official)
 capacity only,)
)
 Defendants.)
)

CIVIL ACTION NO.

COMPLAINT

PLAINTIFF, THE UNITED STATES OF AMERICA ("Plaintiff"), 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 Defendants from depriving persons housed at the Tennessee State Veterans' Homes in Humboldt ("TSVH-Humboldt") and Murfreesboro ("TSVH-Murfreesboro"), located in Humboldt and Murfreesboro,

- 2 -

Tennessee, (collectively, the "TSVHs") 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 this district is proper pursuant to 28 U.S.C. § 1391(b)(1).

DEFENDANTS

6. Defendant State of Tennessee ("State") owns and operates the TSVHs, and as such has responsibility for the conditions of care and treatment provided to residents living there.

7. Defendant PHIL BREDESEN is the Governor of the State of Tennessee, and, in this capacity, heads the Executive Branch of the State's government and, among other duties, reviews and approves budget requests submitted by Executive Branch agencies

- 3 -

such as the Tennessee Department of Veterans' Affairs. He appoints the members of the Tennessee State Veterans' Home Board.

8. Defendant POLLY DARNALL is the Executive Director of the Tennessee State Veterans' Home Board ("The Board"). The Executive Committee of the Board has the authority for planning, implementating, and operating the TSVHs.

9. Defendant GREG CORVIG is the Interim Administrator of TSVH-Humboldt and is responsible for the day-to-day operation of TSVH-Humboldt. TSVH-Humboldt is located in Gibson County Tennessee, which is in the Western Judicial District of Tennessee.

10. Defendant RUSSELL CAUGHRON is the Administrator of TSVH-Murfreesboro and is responsible for the day-to-day operation of TSVH-Murfreesboro. TSVH-Murfreesboro is located in Rutherford County Tennessee, which is in the Middle Judicial District of Tennessee.

11. The individual Defendants named in paragraph 7 - 10 above are officers of the State of Tennessee and are sued in their official capacities only.

FACTUAL ALLEGATIONS

12. Defendants are legally responsible, in whole or in part, for the operation of the TSVHs and for the health and safety of the residents residing at the TSVHs.

- 4 -

13. The TSVHs are institutions within the meaning of 42 U.S.C. § 1997(1).

14. Defendants are obligated to operate the TSVHs in a manner that does not infringe upon the federal rights of individuals residing at the TSVHs, as protected by the Fourteenth Amendment to the Constitution of the United States and other federal law.

15. The TSVHs are long-term care facilities ("nursing homes") providing residential, intermediate or long-term skilled nursing care. TSVH residents are primarily elderly residents, most of whom are veterans or family members of a veteran.

16. Defendants are obligated to provide services and activities to individuals residing in the TSVHs in a manner and environment consistent with Title XVIII and Title XIX of the Social Security Act and implementing regulations.
42 U.S.C. § 1395i-3, 42 U.S.C. § 1396r, and 42 C.F.R. § 483.

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

18. Individuals are admitted to the TSVHs because they require skilled and long-term nursing care and related services and/or rehabilitation services for injuries, disabilities or sickness and require residential medical or nursing care, rehabilitation services, or health care and services for the treatment of such conditions.

- 5 -

19. Defendants have engaged in, and continue to engage in, a pattern or practice of failing to provide constitutionally adequate health care services to TSVHs' residents. Specifically, Defendants are failing to provide TSVHs' residents with:

- a. adequate nutrition and hydration care;
- b. adequate and safe psychotropic medication practice; and
- c. adequate pain management and end-of-life care.

20. Defendants have failed, and continue to fail, to provide TSVHs' residents with a safe environment by keeping residents safe from unreasonable harm and risk of harm from falling.

21. The factual allegations set forth in Paragraphs 19 and 20 have been known to Defendants for a substantial period of time; yet Defendants have failed to adequately address constitutionally deficient health care and undue safety risks for residents at the TSVHs.

VIOLATIONS ALLEGED

COUNT ONE:

Violations of the Due Process Protections of the Fourteenth Amendment to the United States Constitution

22. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 21 as if fully set forth herein.

- 6 -

23. The acts and omissions alleged in paragraphs 19 and 20 constitute a pattern or practice that violates the federal rights of individuals residing in the TSVHs, as protected by the Fourteenth Amendment to the Constitution of the United States and by other federal law.

24. Unless restrained by the Court, Defendants will continue to engage acts and omissions set forth in paragraphs 19 and 20 that deprive the TSVHs' 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.

COUNT TWO:

Violations of the Social Security Act

25. The United States incorporates by reference the allegations set forth in Paragraphs 1 through 21 as if fully set forth herein.

26. The acts and omissions alleged in paragraphs 19 and 20 violate Titles XVIII and XIX of the Social Security Act and implementing regulations. 42 U.S.C. § 1395i-3, 42 U.S.C. § 1396r, and 42 C.F.R. § 483.

27. Unless restrained by the Court, Defendants will continue to engage in the acts and omissions set forth in paragraphs 19 and 20 that deprive the TSVHs' residents of rights,

- 7 -

privileges, or immunities secured or protected by federal law, and will cause irreparable harm to these residents.

PRAYER FOR RELIEF

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

WHEREFORE, the United States of America respectfully requests that this Court:

a. Declare that the acts, omissions, and practices set forth in paragraphs 19 and 20 above constitute a pattern or practice of resistance to the TSVHs' residents' full enjoyment of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, and that those acts, omissions, and practices violate the Constitution and laws of the United States;

b. Permanently enjoin Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts and omissions set forth in Paragraphs 19 and 20 above, and require Defendants to take such actions as will ensure that lawful conditions of institutionalization are afforded to the TSVHs' residents; and

- 8 -

c. Grant such other and further equitable relief as the Court may deem just and proper.

Respectfully submitted,

UNITED STATES OF AMERICA, Plaintiff

A handwritten signature in black ink, appearing to read "Michael B. Mukasey", is written over a horizontal line. The signature is stylized and somewhat cursive.

MICHAEL B. MUKASEY
Attorney General of the United States

LAWRENCE J. LAURENZI
United States Attorney
Western District of Tennessee

Harriett Halmon

BY: s/ Harriett Halmon
Harriett Halmon
Assistant United States Attorney
800 Federal Building
Memphis, Tennessee 38103
Tel: (901) 544-4231

USA v. Hugh Sanders

Grace Chung Becker

GRACE CHUNG BECKER
Acting Assistant Attorney
General
Civil Rights Division

[Signature]

SHANETTA Y. CUTLAR
Chief
Special Litigation Section

[Signature]

JUDY PRESTON
Deputy Chief
Special Litigation Section

[Signature]

VERLIN H. DEERINWATER
COREY M. SANDERS
Attorneys
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
601 D. St. NW
PHB - Room 5928
Washington, DC 20004
(202) 514-6255
(202) 514-6273 (fax)