

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	Civil Action No.
)	1:10-CV-0249-CAP
THE STATE OF GEORGIA, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

ANSWER

Defendants The State of Georgia; Sonny Perdue, Governor, State of Georgia, in his official capacity; Frank E. Shelp, Commissioner, Georgia Department of Behavioral Health and Developmental Disabilities, in his official capacity; and Rhonda M. Medows, Commissioner, Georgia Department of Community Health, in her official capacity (collectively “Defendants”), through their undersigned counsel of record, hereby timely file this Answer to the Complaint filed on January 28, 2010 [dkt. 1].¹

Defendants deny the allegations contained in the unnumbered preamble to the Complaint. Defendants further respond that the State of Georgia does not discriminate against or unlawfully segregate persons with mental illnesses,

¹ Defendants’ Motion to Dismiss [dkt. 28] was denied in an order entered by the Court on August 9, 2010 [dkt. 42].

developmental disabilities, or addictive diseases. The Americans with Disabilities Act of 1990 (“ADA”), codified at 42 U.S.C. § 12131-12134, creates a means to stop actual and ongoing discrimination against certain persons. The ADA does not, however, provide a basis to federalize the State of Georgia’s administration of services to qualified individuals. Moreover, the ADA does not require states to close the State Psychiatric Hospitals, provide all services in a “community setting,” guarantee jobs, or provide limitless medical care, treatment, and housing. The Complaint contains many vague allegations and policy statements that treat monolithically all persons with mental illnesses, developmental disabilities, or substance abuse diagnoses, but it does not provide a basis for relief.

Defendants respond to the separately numbered paragraphs of the Complaint as follows:

1.

Defendants admit that this Court has subject matter jurisdiction. Defendants deny the remaining allegations in Paragraph 1 of the Complaint.

2.

Defendants admit that venue is proper in this Court. Defendants deny the remaining allegations in Paragraph 2 of the Complaint.

3.

Defendants admit the allegations in Paragraph 3 of the Complaint.

4.

Defendants admit the allegations in Paragraph 4 of the Complaint.

5.

Defendants admit the allegations in Paragraph 5 of the Complaint.

6.

Defendants admit the allegations in Paragraph 6 of the Complaint.

7.

Defendants deny the allegations in Paragraph 7 of the Complaint.

8.

Defendants admit that the State of Georgia coordinates, finances, and delivers treatment and support services to persons with mental illnesses, developmental disabilities, and addictive diseases through the Department of Behavioral Health and Developmental Disabilities (“DBHDD”) and the Department of Community Health (“DCH”). Defendants further admit that DCH contains a Division of Healthcare Facility Regulation. Defendants deny the remaining allegations in Paragraph 8 of the Complaint.

9.

Defendants admit the allegations in Paragraph 9 of the Complaint.

10.

Defendants admit that prior to July 1, 2009, the functions of the DBHDD were performed by the Department of Human Resources (“DHR”) and that some of the functions of DHR were transferred to DCH, effective on July 1, 2009, pursuant to legislation passed during the 2009 session of the Georgia General Assembly. Defendants deny the remaining allegations in Paragraph 10 of the Complaint.

11.

Paragraph 11 of the Complaint refers to Chapter 2 of Title 37 of the Official Code of Georgia Annotated (the “Georgia Code”), which speaks for itself as to its content, and Defendants deny any allegations that are inconsistent therewith.

12.

Paragraph 12 of the Complaint refers to O.C.G.A. § 37-2-1(b), which speaks for itself as to its content, and Defendants deny any allegations that are inconsistent therewith.

13.

Paragraph 13 of the Complaint refers to a website that speaks for itself as to its content, and Defendants deny any allegations that are inconsistent therewith or an incomplete recitation thereof.

14.

Defendants admit the allegations in the first sentence of Paragraph 14 of the Complaint. The second sentence of Paragraph 14 refers to O.C.G.A. § 37-2-5.1(c), which speaks for itself as to its content, and Defendants deny any allegations that are inconsistent therewith.

15.

Defendants admit the allegations in Paragraph 15 of the Complaint.

16.

Defendants admit that the DBHDD offers a range of treatment and support services to help persons with mental illnesses, addictive diseases, and developmental disabilities transition, integrate, and live in the community – when such services are clinically appropriate and consistent with such person’s or person’s guardian’s choice. Defendants deny the remaining allegations in Paragraph 16 of the Complaint.

17.

Defendants admit that some providers of services to persons with mental illnesses, developmental disabilities, and addictive diseases are licensed and regulated by DCH. Defendants deny the remaining allegations in Paragraph 17 of the Complaint. Moreover, to the extent that Paragraph 17 refers to Paragraphs 22 and 23 of the Complaint, Defendants incorporate by reference their answers to Paragraphs 22 and 23 as if fully restated herein.

18.

Defendants admit that DCH licenses and has authority to inspect some providers of services to persons with mental illnesses, developmental disabilities, and addictive diseases, including the State Psychiatric Hospitals. Defendants deny the remaining allegations in Paragraph 18 of the Complaint.

19.

In response to Paragraph 19 of the Complaint, Defendants refer to Chapter 7 of Title 31 of the Georgia Code, which speaks for itself as to the statutory authority and requirements for DCH's regulation of providers of services to persons with mental illnesses, developmental disabilities, and addictive diseases, and Defendants deny any allegations that are inconsistent therewith.

20.

In response to Paragraph 20 of the Complaint, Defendants refer to Chapter 7 of Title 31 of the Georgia Code, which speaks for itself as to the statutory authority and requirements for DCH's regulation of providers of services to persons with mental illnesses, developmental disabilities, and addictive diseases, and Defendants deny any allegations that are inconsistent therewith.

21.

In response to Paragraph 21 of the Complaint, Defendants refer to Chapter 7 of Title 31 of the Georgia Code, which speaks for itself as to the statutory authority and requirements for DCH's regulation of providers of services to persons with mental illnesses, developmental disabilities, and addictive diseases, and Defendants deny any allegations that are inconsistent therewith.

22.

In response to Paragraph 22 of the Complaint, Defendants refer to Chapter 7 of Title 31 of the Georgia Code, which speaks for itself as to the statutory authority and requirements for DCH's regulation of providers of services to persons with mental illnesses, developmental disabilities, and addictive diseases, and Defendants deny any allegations that are inconsistent therewith.

23.

In response to Paragraph 23 of the Complaint, Defendants refer to Chapter 7 of Title 31 of the Georgia Code, which speaks for itself as to the statutory authority and requirements for DCH's regulation of providers of services to persons with mental illnesses, developmental disabilities, and addictive diseases, and Defendants deny any allegations that are inconsistent therewith.

24.

Defendants admit that some individuals with disabilities utilize services provided or administered by the DBHDD and licensed by DCH. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 24 of the Complaint, and accordingly deny the allegations.

25.

Defendants admit the allegations in Paragraph 25 of the Complaint.

26.

In response to the first and second sentences of Paragraph 26 of the Complaint, Defendants admit that some persons with mental illnesses, developmental disabilities, or addictive diseases may be limited in one or more major life activities, such as eating, bathing, toileting, or taking medication. The

third sentence of Paragraph 26 contains a legal conclusion to which no response is required; however, to the extent that a response is required, Defendants deny the third sentence, as stated.

27.

Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of the Complaint, and accordingly deny the allegations.

28.

Defendants admit that while some individuals served by the State Psychiatric Hospitals do not object to receipt of treatment and services outside the hospitals, other such individuals (or their legal guardians) do object. Defendants deny the remaining allegations in Paragraph 28 of the Complaint.

29.

Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 of the Complaint, and accordingly deny the allegations.

30.

Paragraph 30 of the Complaint quotes from the State of Georgia's Olmstead Plan, which speaks for itself as to its content, and Defendants deny any allegations that are inconsistent therewith.

31.

Defendants admit that some individuals served by the State Psychiatric Hospitals can clinically and appropriately receive treatment and services in a community setting, if consistent with the choice of the individuals (or their legal guardians). Defendants deny the remaining allegations in Paragraph 31 of the Complaint.

32.

Defendants admit that an aspiration of the State of Georgia is to provide services and supports to persons with developmental disabilities in a community setting, if clinically appropriate and consistent with the choice of the individuals (or their legal guardians). Defendants deny the remaining allegations in Paragraph 32 of the Complaint.

33.

Defendants admit that some individuals with developmental disabilities are currently receiving care and treatment in the State Psychiatric Hospitals pending a

waiver slot pursuant to the State's Medicaid Plan. Defendants deny the remaining allegations in Paragraph 33 of the Complaint.

34.

Defendants admit that some persons with developmental disabilities receive crisis services in the State Psychiatric Hospitals, as is consistent with state law. Defendants deny the remaining allegations in Paragraph 34 of the Complaint.

35.

Defendants admit that it can be difficult to locate and provide services in a community setting for individuals with developmental disabilities and a history of challenging behaviors. Defendants deny the remaining allegations in Paragraph 35 of the Complaint.

36.

Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 of the Complaint, and accordingly deny the allegations.

37.

Defendants admit that some individuals are readmitted for short stays in the State Psychiatric Hospitals. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 regarding the

cause of each individual's admission to the State Psychiatric Hospital or what services, if any, could have prevented the admission. Defendants deny the remaining allegations in Paragraph 37 of the Complaint.

38.

Defendants deny the allegations in Paragraph 38 of the Complaint.

39.

Defendants deny the allegations in Paragraph 39 of the Complaint.

40.

Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40 of the Complaint, and accordingly deny the allegations.

41.

Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 of the Complaint, and accordingly deny the allegations.

42.

Defendants deny the allegations in Paragraph 42 of the Complaint.

43.

Defendants deny the allegations in Paragraph 43 of the Complaint.

44.

Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 of the Complaint, and accordingly deny the allegations.

45.

Defendants deny the allegations in Paragraph 45 of the Complaint.

46.

Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 of the Complaint, and accordingly deny the allegations.

47.

Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 of the Complaint, and accordingly deny the allegations.

48.

Defendants deny the allegations in Paragraph 48 of the Complaint.

49.

Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 of the Complaint, and accordingly deny the allegations.

50.

Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 of the Complaint, and accordingly deny the allegations.

51.

Defendants deny the allegations in Paragraph 51 of the Complaint.

52.

Defendants admit that the financial cost of care and treatment that some individuals are now receiving in the State Psychiatric Hospitals could be less if such care and treatment were received in the community. Defendants deny the remaining allegations in Paragraph 52 of the Complaint.

53.

Defendants deny the allegations in Paragraph 53 of the Complaint.

54.

Defendants lack knowledge or information sufficient to determine what Plaintiff means by “supported housing,” which alleged “mental health treatment professionals” have opined about the term, or all that Plaintiff means by the phrase “services to support their success as tenants and their integration into the community.” Accordingly, Defendants deny the allegations in Paragraph 54 of the Complaint.

55.

Paragraph 55 of the Complaint refers to a written document that speaks for itself as to its content, and Defendants deny any allegations that are inconsistent therewith.

56.

Defendants admit that personal care homes are one source of housing for persons discharged from the State Psychiatric Hospitals. Defendants deny the remaining allegations in Paragraph 56 of the Complaint.

57.

Defendants admit that the State of Georgia provides some form of housing assistance to Georgians generally, including persons with mental illnesses, developmental disabilities, and substance abuse diagnoses. Defendants lack

knowledge or information sufficient to quantify what Plaintiff means by the phrase “extremely limited,” or to define the terms “specialized services” or “supported housing”; accordingly, Defendants deny the remaining allegations in Paragraph 57 of the Complaint.

58.

Defendants admit that Assertive Community Treatment (“ACT”) is an intensive form of case management services. Defendants deny the remaining allegations in Paragraph 58 of the Complaint.

59.

Defendants admit the first sentence in Paragraph 59 of the Complaint. Defendants deny the allegations in the second and third sentences in Paragraph 59.

60.

Defendants admit that community-based crisis stabilization services can effectively deliver care and treatment to persons with developmental disabilities, mental illnesses, or substance abuse diagnoses. Defendants deny the remaining allegations in Paragraph 60 of the Complaint.

61.

Defendants admit that mobile crisis stabilization services are available in some areas of the State. Defendants lack knowledge or information sufficient to

quantify what Plaintiff means by the phrase “sufficient quantity or geographic diversity”; accordingly, Defendants deny the remaining allegations in Paragraph 61 of the Complaint.

62.

Defendants admit that the lack of an income and unemployment can create difficulties for persons with disabilities. Defendants deny the remaining allegations in Paragraph 62 of the Complaint.

63.

Defendants admit that some persons in the State Psychiatric Hospitals receive services in vocational rehabilitation and some types of employment training services. Defendants also admit that, as the State of Georgia’s revenues declined dramatically during the past several years, various State programs have received reduced appropriations. Defendants deny the remaining allegations in Paragraph 63 of the Complaint.

64.

Defendants admit that some persons with disabilities lack a means of personal transportation, and that a lack of transportation can create difficulties. Defendants deny the remaining allegations in Paragraph 64 of the Complaint.

65.

Defendants admit that the State of Georgia's transportation services vary across the State. Defendants deny the remaining allegations in Paragraph 65 of the Complaint.

66.

To the extent that Paragraph 66 of the Complaint alleges deficiencies in the treatment and services that the State of Georgia provides to persons with substance abuse diagnoses, Defendants deny the allegations. To the extent that Paragraph 66 relates to other providers, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations, and accordingly deny the allegations.

67.

Defendants admit that case expeditors work with the State Psychiatric Hospitals on treatment planning. To the extent that the allegations in Paragraph 67 refer to a "State policy," such policy speaks for itself as to its content, and Defendants deny any allegations that are inconsistent therewith. Defendants deny the remaining allegations in Paragraph 67 of the Complaint.

68.

To the extent that the allegations in Paragraph 68 refer to the “State’s own policies,” such policies speak for themselves as to their content, and Defendants deny any allegations that are inconsistent therewith. Defendants lack knowledge or information sufficient to determine what Plaintiff refers to as “professional standards”; accordingly, Defendants deny the remaining allegations in Paragraph 68 of the Complaint.

69.

Defendants lack knowledge or information sufficient to determine which clinical records Plaintiff refers to as the basis of its allegations in Paragraph 69 of the Complaint, and accordingly deny the allegations.

70.

Defendants deny the allegations in Paragraph 70 of the Complaint.

71.

Defendants cannot speak for the Community Service Boards or their unnamed “professionals”; thus, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71 of the Complaint, and accordingly deny the allegations.

72.

Defendants deny the allegations in Paragraph 72 of the Complaint.

73.

Paragraph 73 of the Complaint refers to the U.S. Supreme Court's decision in Olmstead v. L.C., 527 U.S. 581 (1999), which speaks for itself as to its content, and Defendants deny any allegations that are inconsistent therewith. Defendants deny the remaining allegations in Paragraph 73.

74.

Paragraph 74 of the Complaint and its subparts refer to several written documents that speak for themselves as to their content, and Defendants deny any allegations that are inconsistent therewith. Defendants deny the remaining allegations in Paragraph 74.

75.

Paragraph 75 of the Complaint refers to several written documents that speak for themselves as to their content, and Defendants deny any allegations that are inconsistent therewith.

76.

Paragraph 76 of the Complaint refers to several written documents that speak for themselves as to their content, and Defendants deny any allegations that are inconsistent therewith.

77.

In response to Paragraph 77 of the Complaint, Defendants hereby incorporate by reference and restate their responses to Paragraphs 1 to 76.

78.

Defendants deny the allegations in Paragraph 78 of the Complaint.

79.

Defendants deny the allegations in Paragraph 79 of the Complaint.

80.

Defendants deny the allegations in Paragraph 80 of the Complaint.

* * *

Defendants deny all other allegations and claims in the Complaint that were not expressly admitted herein and also deny that Plaintiff is entitled to any of the relief requested in its Prayer for Relief.

* * *

AFFIRMATIVE DEFENSES

Defendants state the following separate defenses without assuming the burden of proof that otherwise would rest with Plaintiff:

FIRST DEFENSE

Plaintiff fails to state a claim for which relief can be granted.

SECOND DEFENSE

Plaintiff lacks standing because the Complaint has not set forth a case or controversy under Article III of the United States Constitution.

THIRD DEFENSE

Plaintiff's claims are barred, in whole or in part, by operation of the Settlement Agreement that it executed with the State of Georgia in January 2009.

FOURTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

FIFTH DEFENSE

Plaintiff is not entitled to the relief that it seeks based on the principles of federalism.

SIXTH DEFENSE

Plaintiff is not entitled to the relief that it seeks because the requested modifications would constitute a “fundamental alteration” to the State of Georgia’s existing system for funding and provision of services to persons with mental illnesses, developmental disabilities, and addictive diseases, which is prohibited by federal regulations implementing the ADA, 28 C.F.R. § 35.130(b)(7), and the U.S. Supreme Court’s decision in Olmstead v. L.C., 527 U.S. 581, 603 (1999).

SEVENTH DEFENSE

The relief that Plaintiff seeks in the Complaint is not required by or an enforceable remedy under Title II of the ADA.

EIGHTH DEFENSE

The Complaint fails to allege facts and fails to make a showing sufficient to support any grant of injunctive relief.

* * *

Defendants reserve the right to assert, and hereby give notice that they intend to rely upon, any other defense(s) that may become available during discovery proceedings, and Defendants hereby reserve the right to amend their Answer to assert any such defense(s).

* * *

WHEREFORE, Defendants respectfully request judgment in their favor and request that the Court enter an Order dismissing Plaintiff's Complaint in its entirety and with prejudice and awarding Defendants any further and additional relief as the court deems just and fair.

Respectfully submitted, this 23rd day of August, 2010.

THURBERT E. BAKER
Attorney General
Georgia Bar No. 033887

DENNIS R. DUNN
Deputy Attorney General
Georgia Bar No. 234098

SHALEN S. NELSON
Senior Assistant Attorney General
Georgia Bar No. 636575

MARK J. CICERO
Assistant Attorney General
Georgia Bar No. 125686

JASON S. NAUNAS
Assistant Attorney General
Georgia Bar No. 142051

State Law Department
40 Capitol Square, S.W.
Atlanta, Georgia 30334
Telephone: (404) 656-3357
Facsimile: (404) 463-1062
Email: jnaunas@law.ga.gov

/s/ Mark H. Cohen

MARK H. COHEN
Special Assistant Attorney General
Georgia Bar. No. 174567
Troutman Sanders LLP
5200 Bank of America Plaza
600 Peachtree Street, N.E.
Atlanta, Georgia 30308
Telephone: (404) 885-3597
Facsimile: (404) 962-6753
Email: mark.cohen@troutmansanders.com

/s/ Josh Belinfante

(with express permission by Mark H. Cohen)

JOSH BELINFANTE
Special Assistant Attorney General
Georgia Bar No. 047399
Robbins Freed & Ross LLC
999 Peachtree Street, N.E., Suite 1120
Atlanta, GA 30309
Telephone: (678) 701-9381
Facsimile: (404) 601-6733
Email: josh.belinfante@robbinslawllc.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing *Answer* was electronically filed with the Clerk of Court using the CM/ECF system, which automatically serves notification of such filing to all counsel of record.

This 23rd day of August, 2010.

/s/ Mark H. Cohen

MARK H. COHEN

Special Assistant Attorney General

Georgia Bar. No. 174567