

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

LARS KNIPP by his next friend,)
Deborah Stone; JAMES KIM, by)
his next friend, Grace Kim; SUSANNAH)
TROGDON, by her next friend, Samuel)
Trogon; AMBI HEARD; SHAUN)
MITCHELL; and ROBERT CHAFFIN)
by his next friends, Tom Chaffin and)
Lena Margareta Larsson Chaffin,)

Plaintiffs,)

CIVIL ACTION)
FILE NO.)

v.)

GEORGE ERVIN "SONNY" PERDUE)
III, in his official capacity as Governor,)
State of Georgia, CLYDE L. REESE, III)
in his official capacity as Commissioner,)
Georgia Department of Community)
Health; DR. FRANK E. SHELP, in his)
official capacity as Commissioner,)
Georgia Department of Behavioral Health)
and Developmental Disabilities.)

Defendants.)

**COMPLAINT
INTRODUCTION**

1. Plaintiffs are adults diagnosed with severe mental health or developmental disabilities. They need extensive supervision and assistance in order to live in the

community. Until recently, such services were provided through a state Medicaid program called the Service Options Using Resources in a Community Environment (“SOURCE”).

2. Plaintiffs each received termination notices because the Georgia Department of Community Health opted to change the SOURCE program so that it would not serve individuals with mental health disabilities or developmental disabilities, unless such individuals also had a physical disability.

3. With the loss of SOURCE benefits, Plaintiffs will lose the services they need to continue to live in the community and will be at substantial risk of having to enter an institution.

4. Defendants’ actions violate the Americans with Disabilities Act (ADA), Title II, 42 U.S.C. § 12132, and its implementing regulations, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794a, and its implementing regulations. Among other things, these laws require Defendants to administer their services and programs in the most integrated setting appropriate to the needs of individuals with disabilities.

5. Plaintiffs seek declaratory and injunctive relief to preserve their receipt of care in the community.

JURISDICTION AND VENUE

6. This is an action for declaratory and injunctive relief for violation of Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12132 and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794.

7. The Court has jurisdiction over Plaintiffs' claims under 28 U.S.C. §§1331, 1343(a)(3), (4). Declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 65. Plaintiffs' causes of action for disability discrimination are authorized by 42 U.S.C. § 12133 and 29 U.S.C. § 1391(b).

8. Venue is proper because all or a substantial part of the actions and omissions of which Plaintiffs complain occurred in this District. 28 U.S.C. §1391(b).

Defendants are located in this Division.

DEFENDANTS

9. Defendant Governor Ervin "Sonny" Perdue, III is the Governor of the State of Georgia. Defendant Perdue is sued in his official capacity.

10. Defendant Clyde L. Reese, III is the Commissioner of the Georgia Department of Community Health ("DCH"). DCH is the state agency responsible for the administration and supervision of Georgia's Medicaid program under title XIX of the Social Security Act. 42 C.F.R. §431.10 (2010). DCH is the responsible agency for the Service Options Using Resources in a Community

Environment (“SOURCE”) Program. Commissioner Reese bears ultimate responsibility for the implementation and management of Georgia’s Medicaid program. Defendant Reese is sued in his official capacity.

11. Defendant Dr. Frank E. Shelp is the Commissioner of the Georgia Department of Behavioral Health and Developmental Disabilities (DBHDD). DBHDD is the state agency that focuses on policies, programs, and services for people with severe and persistent mental illness, and developmental and intellectual disabilities. Defendant Shelp is sued in his official capacity.

PLAINTIFFS

12. Plaintiffs are adults with diagnoses of mental illness or mental retardation.

13. Lars Knipp is diagnosed with schizophrenia and bipolar disorder. He experiences auditory and visual hallucinations. Mr. Knipp has been receiving supervision and personal supports through the SOURCE program through the Georgia Department of Community Health. On January 29, 2010, Mr. Knipp received a letter stating he was terminated from the SOURCE program. His SOURCE benefits will cease immediately if he loses his pending administrative appeal. Mr. Knipp’s next friend is his mother, Debra Stone.

14. James Kim is diagnosed with schizophrenia, traumatic brain injury and depression. Mr. Kim has been receiving supervision and personal supports through

the SOURCE program operated by the Georgia Department of Community Health since February 2009. On March 1, 2010, Mr. Kim received a letter stating he was terminated from the SOURCE program. His SOURCE benefits will cease immediately if he loses his pending administrative appeal. James Kim's next friend is his mother, Grace Kim.

15. Susannah Trogdon is diagnosed with mental retardation. Ms. Trogdon has been receiving personal supports through the SOURCE program through the Georgia Department of Community Health since 2005. On December 29, 2009, Ms. Trogdon received a letter stating she was terminated from the SOURCE program. Her SOURCE benefits ceased on July 1, 2010 when a state administrative hearing officer upheld the termination due to the Department of Community Health's change in eligibility for SOURCE to exclude people with developmental disabilities. Ms. Trogdon's father, Samuel Trogdon, is her next friend.

16. Ambi Heard is diagnosed with schizophrenia. Ms. Heard has been receiving supervision and personal supports through the SOURCE program operated by the Georgia Department of Community Health since January 14, 2008. On February 10, 2010, Ms. Heard received a letter stating she was terminated from the SOURCE program. Her SOURCE benefits will cease immediately if she loses her

pending administrative appeal. Ms. Heard does not have a next friend available and is capable of making decisions on the lawsuit and has been making decisions.

17. Shaun Mitchell is diagnosed with schizophrenia. Mr. Mitchell has been receiving supervision and personal supports through the SOURCE program through the Georgia Department of Community Health since December 2008. On December 21, 2009, Mr. Mitchell received a letter stating he was terminated from the SOURCE program. His SOURCE benefits ceased, although his provider has continued to provide some benefits to him in part because she did not understand the benefits were terminated. His provider is no longer willing to provide services without SOURCE funding. Mr. Mitchell does not have a next friend available and is capable of making decisions and has been making decisions regarding the lawsuit.

18. Robert Chaffin is diagnosed with schizophrenia and experiences hallucinations, delusions and paranoia. Mr. Chaffin has been receiving supervision and personal supports through the SOURCE program through the Georgia Department of Community Health since February 13, 2008. On February 5, 2010, Mr. Chaffin received a letter stating he was terminated from the SOURCE program. His SOURCE benefits ceased on July 1, 2010 when a state administrative hearing officer upheld the termination due to the Department of

Community Health's change of eligibility for SOURCE to exclude people whose sole disability is mental illness. Mr. Chaffin's next friends are his brother and sister-in-law, Tom Chaffin and Lena Margareta Larsson Chaffin.

STATUTORY FRAMEWORK

Medicaid Act

19. The Medicaid program, established by Title XIX of the Social Security Act, 42 U.S.C. § 1396, et seq. (hereafter the "Medicaid Act"), is a federally funded cooperative program with the states, designed to provide medical and remedial services to low-income people. States are not obligated to participate in the Medicaid program, but if they do, they must comply with the requirements of the Medicaid Act and its implementing regulations promulgated by the Center for Medicare and Medicaid Services (hereafter, "CMS"). 42 U.S.C. § 1396a et seq., 42 C.F.R. §§ 430, et seq.

20. The Department of Community Health is designated as the state Medicaid agency responsible for the administration and supervision of Georgia's Medicaid Program under Title XIX of the Social Security Act.

21. The Medicaid Act authorizes states to obtain Home and Community Based Service (HCBS) waivers from CMS to provide for alternatives to institutional services. Waiver programs cover a range of home-based services. Such waiver

services can be made available to persons who meet the requirement for residence in an intermediate care facility for the mentally retarded (ICF-MR). See 42 U.S.C. § 1396n(c).

22. The Medicaid Act also authorizes states to provide Home and Community Based Services to people with incomes of less than 150% of the poverty level in order to provide for alternatives to institutional services. 42 U.S.C. § 1396n(i). This is referred to as Section 1915(i) of the Social Security Act. Services under this program cover the same wide range of home-based services and waivers under 42 U.S.C. § 1396n(c). There is no requirement for need for institutional care. See 42 U.S.C. § 1396n(i).

Georgia Operation of the SOURCE Program

23. Service Options Using Resources in Community Environment (SOURCE) is a Medicaid funded program in Georgia that enables adults with disabilities who otherwise would have to live in an institution to live in the community.

24. SOURCE is an enhanced primary care case management service. The goal of the program is to serve individuals in community settings by linking the primary care physician with home and community based services.

25. Under SOURCE, an individual care plan is designed based on the need for medical monitoring and assistance with functional tasks. Family members, other

informal caregivers, staff from support agencies and housing providers participate in care plans.

26. In addition to case management, SOURCE offers personal support services, assisted living services, extended home health, home delivered meals, adult day health care, emergency response services and 24-hour medical access to a case manager and primary care physician.

27. The SOURCE program was initially part of the Georgia state plan for Medicaid services, meaning it was available to the Medicaid eligible population generally.

28. According to the State of Georgia, the SOURCE program was put under the auspices of the Home and Community Based Waiver program pursuant to 42 U.S.C. § 1396n(c) on October 1, 2007 and was taken out of the state Medicaid plan. Prior to the transfer of SOURCE, SOURCE had been open to all individuals eligible for Medicaid who needed institution level services.

29. Despite the paperwork change shifting the federal law from state plan services to HCBS waivers under which it operated the SOURCE program, the SOURCE program continued to admit individuals whose disabilities were exclusively mental illness or developmental disabilities.

30. Beginning in about December 2009, the State asserted that the 2007 change noted above changed SOURCE eligibility from anyone eligible for Medicaid to only those people who were aged (over 65) or who had a physical disability and met the requirements for nursing facility services. For the most part, this means only people with physical disabilities meet the requirements.

31. The state could have included people eligible for care in ICF-MRs (people with developmental disabilities) under the 42 U.S.C. § 1396n(c) waiver but did not do so.

32. The State of Georgia voluntarily ended its ability to provide SOURCE services to people with mental illnesses and developmental disabilities.

33. Starting in about December 2009, Defendants began to terminate SOURCE services to people with mental disabilities.

34. Because Plaintiffs have appealed denials of SOURCE services, the State continues to provide those services to three of the Plaintiffs at this time. Ms. Trogdon, Mr. Mitchell and Mr. Chaffin's services are no longer being provided.

35. As recently as February 2010, Georgia was still promoting the SOURCE program as an important part of its effort to provide services to people with mental disabilities in the community. In a document filed by the State of Georgia with this Court, Defendant Shelp stated:

Georgia's use of Medicaid waivers has also increased dramatically since 2003. . .

Georgia has also opened the SOURCE program to the mental health and developmentally disabled population. SOURCE is a primary care, enhanced case management model. In 2003, just less than 3,000 persons received treatment through SOURCE. By 2009, the number was over 18,000.

(Declaration under penalty of perjury, Par. 41 of Frank E. Shelp, M.D., M.P.H. February 22, 2010, filed in United States of America v. State of Georgia, et al., Civil Action No. 1:09-CV-0119-CAP United States District Court, Northern District of Georgia).

FACTS CONCERNING PLAINTIFFS

36. Plaintiffs have severe chronic mental illnesses or developmental disabilities that cause them to need extensive supervision and extensive personal assistance. Plaintiffs were receiving supervision and assistance in the community through the SOURCE program, but were sent termination notices after Respondent Department of Community Health opted to make changes to the SOURCE program. Plaintiffs were each found eligible for the SOURCE program and found to meet the institutional level of care necessary for the SOURCE program. Later, Plaintiffs were found ineligible due to the change in eligibility for the SOURCE program.

Due to the loss of these services, the Plaintiffs are now likely to have to enter institutions.

37. After terminating Plaintiffs' SOURCE services, Defendants have done nothing to provide alternative services to Plaintiffs. Plaintiffs requested additional, alternative, or the same services they had been receiving through reasonable accommodation letters that were sent to the Defendants. A letter requesting a reasonable accommodation was sent to Defendants on behalf of Lars Knipp, James Kim, Ambi Heard, Shaun Mitchell, and Robert Chaffin on July 19, 2010. A letter requesting a reasonable accommodation on behalf of Susannah Trogdon was sent to DBHDD on June 29, 2010. A letter requesting a reasonable accommodation for Ms. Trogdon was sent to DCH on March 31, 2010.

LARS KNIPP

38. Lars Knipp is a twenty-year-old man, who has been diagnosed as having schizoaffective disorder, schizophrenia, and bipolar disorder. He has a history of harming himself and violence toward others. He regularly experiences hallucinations.

39. Until his current stable placement in a SOURCE-funded personal care home, Mr. Knipp was in and out of hospitals for mental illness repeatedly over the last four years.

40. Mr. Knipp was hospitalized for his mental illness at Wellstar Hospital on six separate occasions between July 2006 and December 2009. He was hospitalized at these various time for symptoms including experiencing delusions and hallucinations, being violent, having suicidal ideation, exhibiting bizarre behavior, being actively psychotic, experiencing auditory hallucinations, and threatening personal care home providers and staff.

41. Between his visits to Wellstar in July 2006 and January 2008, Mr. Knipp spent a week at Riverwoods Psychiatric Center and a month and a half at Devereux Institute, which is an institution for children with emotional and behavioral difficulties. Mr. Knipp was at Northwest Georgia Regional Hospital, a state mental health facility, from January 16, 2008 through February 29, 2008 and returned there in March 2008. Mr. Knipp was also hospitalized at Atlanta Medical Center for mental health reasons in March 2008.

42. In addition to his frequent hospitalizations, Mr. Knipp has lived in four different personal care homes over the last two years. He has had difficulty finding a place to live that worked out for him until now.

43. After an exhaustive search for a personal care home, Mr. Knipp's SOURCE case manager ultimately found him a personal care home operated by Ray Johnson. Mr. Knipp moved into Mr. Johnson's personal care home in December 2009. Mr.

Knipp is doing as well as he has done in a long time. His grades in school are up, and he has not been hospitalized or had a major mental health crisis since he entered Mr. Johnson's personal care home.

44. In the personal care home, Mr. Knipp receives ALS funded by SOURCE. He receives twenty-four-hour supervision while he is at home. He is given his medications at the proper times, and his assistant documents each time Mr. Knipp takes his medications. His main assistant Patrick Wooten has figured out how to respond to Mr. Knipp's outbursts and knows how to calm him down.

45. Mr. Knipp was sent a letter on January 29, 2010 stating that he was terminated from the SOURCE program for not meeting "level of care." Mr. Knipp's mother filed an appeal for him. The case is currently before an Administrative Law Judge on cross motions for summary judgment. Pursuant to SOURCE rules, Mr. Knipp will lose his SOURCE funding immediately if and when he loses his SOURCE administrative appeal.

46. Mr. Knipp cannot stay in his personal care home if he loses his SOURCE services. Mr. Knipp will lose the other SOURCE services he receives, including enhanced case management and regular visits by a SOURCE nurse. Neither the Georgia Department of Community Health nor the SOURCE provider has offered Mr. Knipp any services to replace what he has been receiving through SOURCE.

47. The loss of Mr. Knipp's SOURCE services and his current personal care home would destabilize Mr. Knipp and cause him to decompensate. Mr. Knipp will likely have to be hospitalized again in the near future if he loses his SOURCE-funded services, particularly the twenty-four-hour supervision and assistance with medications.

JAMES KIM

48. James Kim is a twenty-eight-year-old man diagnosed with schizophrenia and a traumatic brain injury. He has seizures and delusions.

49. Mr. Kim was hit by a car when he was five years old when he was chasing a ball. He suffered a major head and brain injury and was in a coma for over two months.

50. Due to his traumatic brain injury, Mr. Kim has significant problems controlling his anger. He has punched a hole in a wall, thrown and destroyed a television set, and caused other damage to his current house. He often tries to hurt himself.

51. Mr. Kim has been receiving SOURCE services in a personal care home operated by Gwinnett Homes since February 2009. Mr. Kim went to Gwinnett Homes after he had been in and out of Summit Ridge Hospital on several occasions for hurting himself and causing property damage.

52. Mr. Kim was hospitalized most recently at Georgia Regional Hospital Atlanta in July 2010 after attacking a hospital employee at a referring hospital, threatening to commit suicide with a knife, causing property damage, and causing a public disturbance. He was able to leave the hospital because he could return to the close supervision at the Gwinnett Homes personal care home.

53. Gwinnett Homes provides Mr. Kim with ALS. Mr. Kim is provided twenty-four-hour supervision, assistance with his medications, prepared meals, and transportation. The personal care home also provides him personal support services. The personal home director, Seema Mason, continuously works to negotiate and work with individuals when Mr. Kim has difficulties due to his disability, including most recently speaking on Mr. Kim's behalf at a criminal hearing. Mr. Kim is also provided case management and nursing services through SOURCE.

54. Mr. Kim was sent a termination notice from the SOURCE program on March 1, 2010. Mr. Kim appealed the SOURCE termination. He has an administrative hearing scheduled for September 28, 2010. He will lose his SOURCE funding immediately if he loses his SOURCE appeal.

55. When Mr. Kim loses his SOURCE funding, he will be discharged from his personal care home, and he will lose his SOURCE services.

56. If Mr. Kim loses SOURCE, he would very likely not continue his current medications. As a result, his psychosis and impulse control would worsen, and he would become a threat to himself or others. In addition, if Mr. Kim does not take his seizure medication, he would begin suffering seizures which might cause permanent impairment or death.

57. Mr. Kim would be a threat to himself or others within weeks if he loses his SOURCE funded ALS. Mr. Kim would likely be committed to a mental health institution or incarcerated within weeks if he loses his SOURCE-funded ALS.

SUSANNAH TROGDON

58. Susannah Trogdon is a forty-three-year-old woman with mental retardation. She lives with her father Samuel Trogdon, who is seventy years old, and her thirty-nine-year-old brother, who is often not home.

59. Ms. Trogdon is not able to be on her own for more than five or ten minutes without being at risk of injury. On one occasion when Mr. Trogdon had to leave her alone for a few minutes while he ran to the corner pharmacy, Ms. Trogdon placed a plastic bowl on the stove and turned on the burner. She melted the plastic bowl.

60. Ms. Trogdon does not know how to use a phone or call for emergency services.

Each time Ms. Trogdon would take a bath on her own, she would let the water overflow because she would not think to turn the bath water off. It happened so many times her father had to replace the floor in the bathroom.

61. Ms. Trogdon also needs assistance with baths and mobility because she suffers from vertigo and has frequent falls.

62. Ms. Trogdon is not able to go shopping, manage her money, or use public transportation on her own.

63. Ms. Trogdon's mental condition is worse, according to her father, now than it used to be. Ms. Trogdon has an extremely poor memory.

64. Ms. Trogdon's mother, who was her primary caregiver, passed away in 2005.

65. Ms. Trogdon went to live in a personal care home for a short time after her Mom's death, but then returned to live with her father that same year.

66. Ms. Trogdon was able to come live with her father because she had been approved for SOURCE. As part of her SOURCE, she received enhanced case management and, more importantly, five and a half hours of personal support each day from Monday through Friday.

67. The personal support came from an aide, who would assist Ms. Trogdon with bathing, brushing her teeth, meal preparations, taking her medications, and supervising her.

68. Ms. Trogdon was sent a notice of termination from the SOURCE program on December 29, 2009. She appealed and had an administrative hearing. The Department of Community Health's decision was affirmed on July 1, 2010 due to the fact that individuals with developmental disabilities are no longer eligible for SOURCE. She lost her SOURCE funding on the date of her hearing, and she no longer receives the case management or personal support services.

69. Mr. Trogdon has attempted to obtain other services for Ms. Trogdon, including applying for a Medicaid waiver for developmental disabilities and seeking day services. To date, he has not been able to obtain any other services for Ms. Trogdon.

70. Mr. Trogdon has to make sure someone is with Ms. Trogdon at all times, and usually it has to be him. He cannot take care of his real estate business. The constant care for Ms. Trogdon is taking a physical toll on him. He will not be able to keep his daughter with him much longer without the personal support being restored. Mr. Trogdon states, "I will probably end up bankrupt due to our loss of income, and I cannot survive on social security alone. My nerves are frayed and I

am exhausted. I will have to assess the situation each month. I am trying my best to hold on because I love my daughter. I just don't know how much longer I can keep this up.”

71. Ms. Trogdon needs 24-hour supervision and will very likely be admitted to an institution if she cannot have services similar to what she had been receiving through SOURCE restored.

AMBI HEARD

72. Ambi Heard is a thirty-four-year-old woman diagnosed with schizophrenia. She experiences paranoia and delusions. At times, she is violent. She has slapped staff members and her roommate at times.

73. Ms. Heard says that she hears things that others cannot hear and that are too advanced for other people to understand like God and the devil. She says that she took herself to jail once to see what it feels like to have control from God. She often states that she is an angel and that she has lived for billions of years.

74. Ms. Heard came to Gwinnett Homes on December 28, 2007 after being discharged from Anchor Hospital where she had been receiving in-patient mental health treatment for serious delusions from November 11, 2007 to December 28, 2007.

75. Ms. Heard was transferred to Gwinnett County because she had had several failed attempts at living in personal care homes in Atlanta. Prior to going to Anchor Hospital, Ms. Heard had been homeless living near Moreland Avenue in Atlanta, Georgia. She was not taking her medications at that time.

76. Ms. Heard was admitted into the SOURCE program on January 14, 2008. As part of her ALS, Ms. Heard is provided with supervision and her medications. She is also given prepared meals and assisted with her daily activities.

77. Her assistants in the personal care home are proactive in working with her. As part of her ALS, they provide her with twenty-four hour supervision when she is in the house, and they know how to respond to her needs, particularly when she becomes aggressive.

78. In February 2009, Ms. Heard was hospitalized at Summit Ridge due to increased erratic behavior, delusions, and refusal to take medications. She was in the hospital from February 23, 2009 to March 3, 2009. Ms. Heard was able to be discharged from Summit Ridge relatively quickly because she had a stable place to which to return where she could receive ALS and other services.

79. Ms. Heard was sent a termination notice from the SOURCE program on February 10, 2010 stating that she was being terminated for not meeting level of

care. Ms. Heard appealed. She has an appeal hearing on September 23, 2010. If Ms. Heard loses her appeal, she will be immediately terminated from SOURCE.

80. If Ms. Heard is not able to keep her SOURCE benefits or have a similar financial subsidy for ALS, then she would have to leave her personal care home.

81. Ms. Heard would likely become non-compliant with her medications if she lost her SOURCE-funded ALS. If she became non-compliant with her medications, this would result in her decompensating, with exacerbation of psychotic symptoms.

82. If she loses her SOURCE provided services, Ms. Heard will likely become an imminent risk of harm to herself and possibly others due to her tendency toward violence during her psychosis. She will likely once again be hospitalized for an inability to care for herself.

SHAUN MITCHELL

83. Shaun Mitchell is a thirty-year-old man diagnosed with schizophrenia. Mr. Mitchell came to Gwinnett Homes in October 2008 after having been at Georgia Regional Hospital Atlanta for four months for his mental illness. While at Georgia Regional, Mr. Mitchell was diagnosed as being psychotic.

84. Mr. Mitchell had been in a personal care home prior to his four-month hospitalization in 2008. He had not been taking his medications and had threatened his personal care home provider.

85. Mr. Mitchell's current personal care home provider, Seema Mason of Gwinnett Homes, met Mr. Mitchell at Georgia Regional Hospital Atlanta. The Georgia Regional Hospital social worker and Ms. Mason worked out that Mr. Mitchell would come to the personal care home with the understanding that he would apply for and receive SOURCE funding for ALS.

86. Mr. Mitchell's psychosis was still active when he was discharged from Georgia Regional and admitted into Ms. Mason's personal care home. His behavior was considerably influenced by delusions or hallucinations or serious impairment of judgment or inability to function in almost all areas.

87. Mr. Mitchell has become much more stable since living in Ms. Mason's personal care home. Mr. Mitchell remains stable, in part, due to the fact that he receives Risperdal shots every two weeks from a SOURCE-funded nurse.

Risperdal is an anti-psychotic drug used for the treatment of schizophrenia. This medication lasts for two weeks.

88. Mr. Mitchell also needs the other ALS services he receives, particularly the provision of transportation, meal preparation, and coordination of doctor visits.

90. Mr. Mitchell's SOURCE has been in limbo since the end of 2009. When the SOURCE provider checked the Department of Community Health website, it showed that Mr. Mitchell was active with SOURCE, so Ms. Mason has continued to provide services for him. However there have been no SOURCE payments for him since the end of 2009.

91. Ms. Mason can no longer continue to provide services to Mr. Mitchell without SOURCE. She will have to discharge him from her personal care home.

92. If he lost the SOURCE-funded shots every two weeks and did not have someone providing him with medication assistance such as SOURCE provides, Mr. Mitchell would likely not take his medications. If this happened, he would decompensate quickly and very likely be institutionalized in a mental health hospital.

ROBERT CHAFFIN

93. Robert Chaffin is a fifty-five-year-old man diagnosed with schizophrenia. He has hallucinations, delusions, and paranoia.

94. Mr. Chaffin often gets so paranoid that he won't talk to anyone. Often, he will not spend more than five or ten minutes out of his room with others before he rushes back to his bed and pulls a sheet over his head.

95. Mr. Chaffin has many delusions, including that he works at a gas station, is connected to FBI informants, and that he once belonged to the mafia.

96. Mr. Chaffin has been receiving SOURCE-funded ALS in a personal care home operated by Betty Usher since February 2008. He came to live in Ms. Usher's personal care home after his elderly mother became too sick to care for him.

97. As part of his ALS, Mr. Chaffin received twenty-four-hour supervision, assistance with his medications, and extensive assistance with all regular activities of daily living, including such simple activities as shaving and dressing.

98. Mr. Chaffin has sometimes threatened his personal care home assistants, but they know him and know how to calm him down.

99. Ms. Usher has also found Mr. Chaffin day programs. She originally found him a program in Kirkwood, but when that fell through, Ms. Usher arranged for Mr. Chaffin to receive Assertive Community Treatment ("ACT") services through New Joshua, which is a wellness and recovery center for mental illness, as well as a five-day a week peer support program.

100. Mr. Chaffin was sent a letter terminating him from the SOURCE program in February 2010. Mr. Chaffin appealed the termination. He had an administrative

hearing, which he lost on July 1, 2010 due to the change in eligibility criteria for SOURCE. Mr. Chaffin has not been on the SOURCE program since that date.

101. Despite his loss of SOURCE, Ms. Usher has not yet discharged Mr. Chaffin because she is afraid he would end up in a hospital very quickly. Ms. Usher will not be able to keep Mr. Chaffin for much longer without SOURCE funding.

102. Mr. Chaffin has an extreme need for stability. The slightest change in his life, including a change in his services or his home, will put his life into a tailspin.

103. Mr. Chaffin will likely have an exacerbation of his symptoms resulting in hospitalization if he is required to leave his SOURCE home and if loses the provision of the services that he receives through SOURCE.

104. Packing Mr. Chaffin's belongings or transporting him to a new place would cause him to experience severe anxiety and would also cause exacerbation of symptoms and hospitalization. Mr. Chaffin would likely be a harm to himself or others if this happens. Mr. Chaffin needs at least the amount of assistance and services that he had been receiving as ALS through SOURCE in order to avoid institutionalization.

FIRST CLAIM FOR RELIEF

Title II of the Americans with Disabilities Act

105. Plaintiffs adopt and restate the allegations set forth in the preceding paragraphs.

106. Title II of the Americans with Disabilities Act (ADA) provides that “no qualified individual with a disability shall, by reason of disability, be excluded from participation in or be denied benefit of the services, programs, or activities of a public entity or be subject to discrimination by such entity.” 42 U.S.C. § 12132.

107. A “public entity” is defined as any State or local government or other instrumentality of a State or local government. See 42 U.S.C. § 12131 (1)(A) & (C).

108. Regulations implementing Title II of the ADA require that a public entity administer its services, programs and activities in “the most integrated setting appropriate” to the needs of qualified individuals with disabilities. 28 C.F.R. § 35.130(d) (2009).

109. Regulations implementing Title II provide that “a public entity may not, directly through contractual or other arrangements, utilize criteria or other methods of administration; (i) that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or] (ii) that have the

purpose or effect of defeating or substantially impairing accomplishment of the objectives of the entity's program with respect to individuals with disabilities..." 28 C.F.R. § 35.130(b)(3) (2009). Regulations implementing Title II further provide: "(b)(1) A public entity, in providing any aid, benefit, or services, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability: (iii) Provide a qualified individual with a disability an aid, benefit or service that is not as effective in affording equal opportunity to obtains the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; (iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others; (v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminated on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program." 28 C.F.R. § 35.130(b)(1) (2009).

110. The United States Supreme Court in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), held that unnecessary institutionalization of individuals with

disabilities is a form of discrimination under Title II of the ADA. In doing so, the Supreme Court interpreted the ADA's "integration mandate" as requiring persons with disabilities to be served in the community when: (1) the state determines that community-based treatment is appropriate; (2) the individual does not oppose community placement; and (3) community placement can be reasonably accommodated. 527 U.S. at 607.

111. DCH, DBHDD, and the State of Georgia are public entities under Title II of the ADA and its implementing regulations.

112. Plaintiffs are individuals with disabilities in that they each have a mental impairment that substantially limits one or more of their major life activities, including but not limited to, thinking, communicating, learning, working, caring for themselves, and concentrating. See 42 U.S.C. § 12102.

113. Plaintiffs are qualified individuals in that they are capable of safely living in community settings with necessary services and they meet the essential eligibility requirements for the receipt of services from and participation in the State Medicaid program, in state-funded mental health and developmental disabilities programs with or without reasonable modifications to the rules, policies, and practices of those programs.

114. Plaintiffs' community placements were the result of the State's determination that community-based treatment was appropriate for them.

Plaintiffs do not oppose community placement. Plaintiff's community placement can be reasonably accommodated, as demonstrated by the fact that all are currently being provided services in the community. Plaintiffs' care in the community supported by SOURCE or an alternative program is far less expensive than the cost of their care in an institution.

115. Plaintiffs are being discriminated against based on their particular type of disability.

116. Without reasonable modification or accommodation of the rules, policies, and procedures governing the waiver programs, the State Medicaid Plan, or to alternative services provided to adults with mental illnesses or developmental disabilities, Plaintiffs will be forcibly isolated and segregated. Plaintiffs are facing forced institutionalization as a direct result of Defendants' actions.

117. Plaintiffs are entitled to live and receive services in the most integrated settings, including in their current setting or in settings more integrated than those in which they currently reside and receive services.

118. Defendants' failure to make reasonable modifications or accommodations to the SOURCE program or to provide alternative integrated services for individuals

with mental illnesses or developmental disabilities denies Plaintiffs the staffing and services they need to remain in a community based setting. The failure to make reasonable modifications or accommodations to allow Plaintiffs to remain in their current integrated settings or to live and receive services in even more integrated settings constitutes unlawful discrimination in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 and its implementing regulation, 28 C.F.R. § 35.130(d) (2009).

SECOND CLAIM FOR RELIEF

Section 504 of the Rehabilitation Act

119. Plaintiffs adopt and restate the allegations set forth in the preceding paragraphs.

120. Section 504 of the Rehabilitation Act of 1973 provides, “no otherwise qualified individual with a disability in the United States... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).

121. “Individual with a disability” is one who has a disability as defined by the Americans with Disabilities Act. 29 U.S.C. § 705(20)(B) referencing 42 U.S.C. § 12102.

122. “Program or activity” includes a department, agency, special purpose district, or other instrumentality of a State or local government. 29 U.S.C. § 794 (b)(1)(A).

123. “Recipient” of federal financial assistance also includes any public or private agency or other entity to which Federal financial assistance is extended directly or through other recipient. 28 C.F.R. §41.3(d) (2009).

124. Regulations implementing Section 504 require a recipient of federal financial assistance to administer its services, programs, and activities in the “most integrated setting appropriate” to meet the needs of the qualified individuals with disabilities. 28 C.F.R. §41.51(d) (2009).

125. Plaintiffs are “qualified person[s] with disabilities” within the meaning of Section 504 because they have physical and/or mental impairments that substantially limit one or more major life activities, and they meet the essential eligibility requirements for the SOURCE program.

126. Plaintiffs are being discriminated against based on their particular type of disability.

127. Without reasonable modification or reasonable accommodation of the rules, policies, and procedures governing the SOURCE program, Plaintiffs will be forcibly isolated. A reasonable modification or accommodation will enable them

to stay in their community placement, which is a more integrated setting appropriate to their needs than an institution.

128. Plaintiffs' community placements were the result of the State's determination that community-based treatment was appropriate for them.

Plaintiffs do not oppose community placement. Plaintiff's community placement can be reasonably accommodated, as demonstrated by the fact that all are currently being provided services in the community. Plaintiff's care in the community supported by SOURCE is far less expensive than the cost of their care in an institution.

129. Without reasonable modification or accommodation of the rules, policies, and procedures governing the waiver programs, the State Medicaid Plan, or to alternative services provided to adults with mental illnesses or developmental disabilities, Plaintiffs will be forcibly isolated and segregated. Plaintiffs are facing forced institutionalization as a direct result of Defendants' actions.

130. Plaintiffs are entitled to live and receive services in the most integrated settings, including in their current setting or in settings more integrated than those in which they currently reside and receive services.

131. Defendants' failure to make reasonable modifications or accommodations to the SOURCE program or to provide alternative integrated services for individuals

with mental illnesses or developmental disabilities denies Plaintiff's the staffing and services they need to remain in a community based setting. The failure to make reasonable modifications or accommodations to allow Plaintiffs to remain in their current integrated settings or to live and receive services in even more integrated settings constitutes unlawful discrimination.

RELIEF REQUESTED

Wherefore, Plaintiff's request that the Court grant the following relief:

1. Declare Defendants' failure to make reasonable accommodations or modifications to the SOURCE program or to comparable alternative services to individuals with mental illnesses or developmental disabilities so as to provide services to Plaintiffs in the most integrated settings appropriate to their needs to be unlawful discrimination in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act;
2. Grant appropriate preliminary and permanent injunctions including, enjoining Defendants from failing to provide reasonable accommodations and reasonable modifications to Plaintiffs and requiring Defendants to continue the provisions of individualized coverage of Plaintiffs' service needs in the least restrictive, most integrated setting through the SOURCE program or a comparable

alternative service program for individuals with mental illnesses or developmental disabilities;

3. Waive the requirement for the posting of a bond as security for the entry of preliminary relief;

4. Award the Plaintiffs the costs of this action and reasonable attorney's fees pursuant to 29 U.S.C. § 794a and 42.U.S.C. §12133 and any other applicable provision of law; and

5. Grant such other and further relief as the Court deems to be just and equitable.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the foregoing has been prepared in Times New Roman (14 point) font, as approved by the Court in L.R. 5.1.B.

/s/ C. Talley Wells
C. Talley Wells
Georgia Bar No. 747657
Counsel for Plaintiffs