

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BILL M., et al,)	CASE NO. 4:03CV3189
)	
Plaintiffs,)	
)	
v.)	DEFENDANTS' ANSWER TO
)	SECOND AMENDED COMPLAINT
NEBRASKA DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES)	
FINANCE AND SUPPORT, STEPHEN)	
B. CURTISS, et al.,)	
)	
Defendants.)	

COME NOW the Defendants and in answer to the Plaintiffs' Second Amended Complaint hereby admit, deny, and allege as follows:

1. Paragraph 1 of Plaintiffs' Second Amended Complaint is a characterization of their action such that a response should not be required, but to the extent that a response is required, the Defendants hereby deny.

2. The Defendants admit that the Court has jurisdiction over the claims presented in the Second Amended Complaint and that venue is proper. The Defendants hereby deny the remaining allegations of Paragraphs 2-4 of the Second Amended Complaint.

3. The Defendants hereby admit Paragraphs 5-16 of the Second Amended Complaint.

4. Paragraphs 17-20 of the Second Amended Complaint are characterizations of the Defendants to which a response should not be required, but to the extent that a response is required, the Defendants hereby deny.

5. The Defendants deny Paragraphs 21-29 of the Second Amended Complaint.

6. Paragraphs 30-53 constitute Plaintiffs' characterization of various state and federal laws, and do not constitute a short and plain statement of the Plaintiffs' claim showing that the Plaintiffs are entitled to relief. Therefore, pursuant to Fed. R. Civ. P. 8(a), these paragraphs do not require an answer. To the extent that an answer is required, Defendants hereby deny Paragraphs 30-53 of the Second Amended Complaint.

7. The Defendants hereby admit Paragraphs 54-89 of the Second Amended Complaint.

8. Paragraph 90 is an incorporation by reference of the previous 89 paragraphs of the Second Amended Complaint. The Defendants hereby incorporate by this reference our previously stated responses to Paragraphs 1-89 as our response to Paragraph 90.

9. The Defendants hereby admit Paragraphs 91 and 92 of the Second Amended Complaint.

10. The Defendants hereby deny Paragraphs 93-98 of the Second Amended Complaint.

11. Paragraph 99 of the Second Amended Complaint is an incorporation by reference of the previous Paragraphs 1-98. In answer to Paragraph 99, Defendants hereby incorporate by reference our previous responses to Paragraphs 1-98 set forth above.

12. The Defendants hereby admit Paragraphs 100-102 of the Second Amended Complaint.

13. As to Paragraph 103, the Defendants hereby admit that the Plaintiffs treating professionals considered community-based placement to be appropriate for Plaintiffs. The Defendants deny the balance of the averments of Paragraph 103 of the Second Amended Complaint.

14. The Defendants hereby deny Paragraphs 104-106 of the Second Amended Complaint.

15. Paragraph 107 is an incorporation by reference of the previous Paragraphs 1-89 of the Second Amended Complaint. The Defendants respond to Paragraph 107 by incorporating our previous responses to Paragraphs 1-89 as set forth above.

16. As to Paragraph 108, the Defendants hereby admit that the Plaintiffs have requested ICF/MR or Home and Community-Based Services from their NDHHS service coordinators and that they are eligible for some such specific services but deny that they all necessarily are eligible for all requested services.

17. The Defendants hereby deny Paragraphs 109-112 of the Second Amended Complaint.

18. As to Paragraph 113 of the Second Amended Complaint, the Defendants admit that Defendant Montanez has current administrative responsibility and authority over a methodology known as the Objective Assessment Process (OAP) for determining the level of funding for Home and Community-Based Services which will be provided to each recipient of said services and that this level of funding effectively

determines the amount, duration, and scope of services furnished to the Plaintiffs and similarly situated individuals until or unless said service levels are adjusted based on currently existing program policies or changed needs for said individuals. Defendants hereby deny that Defendant Nelson has any role or responsibility adopting or administering said methodology since that authority is primarily placed by state law with Director Montanez pursuant to Neb. Rev. Stat. § 83-1209(3). The Defendants further allege that most of the current OAP methodology was actually adopted prior to the arrival of Directors Nelson and Montanez within the Health and Human Services System of the State of Nebraska.

19. Defendants hereby deny Paragraphs 114-116 of the Second Amended Complaint.

20. As to Paragraph 117 of the Second Amended Complaint, the Defendants hereby incorporate by this reference our response to Paragraph 113 above.

21. Defendants hereby deny Paragraphs 118-120 of the Second Amended Complaint.

22. As to Paragraph 121 of the Second Amended Complaint, the Defendants are unable to specifically respond because of the vague, imprecise language of the allegations, specifically “many of them” and “many of those similarly situated,” but to the extent a response is required, the Defendants hereby deny. Defendants further allege that the Plaintiffs are on notice of a right to appeal pursuant to state law, specifically Neb. Rev. Stat. § 83-1219 and the related regulations, 205 NAC 2-005, and that current written notices provided to clients or client representatives contain a statement of the right of appeal. The Defendants further deny that all Plaintiffs were denied a hearing as

to their eligibility and/or level of services and allege that two or more of the named Plaintiffs have had administrative appeal hearings.

23. The Defendants hereby deny Paragraphs 122-123 of the Second Amended Complaint.

24. The balance of the Second Amended Complaint is a series of requests for relief with no averments or fact such that a response should not be required, but to the extent that a response is required, the Defendants hereby deny the balance of the Second Amended Complaint.

25. The Defendants further allege that none of the named Plaintiffs reside in an institution or nursing home, that none of them are under imminent threat of having to move to an institution or nursing home, and that all of them live and receive their program services in the community.

WHEREFORE the Defendants respectfully request that the Court dismiss Plaintiffs' Second Amended Complaint with prejudice at the Plaintiffs' cost.

DATED this 17th day of August, 2006.

NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES
FINANCE AND SUPPORT, et al.,
Defendants,

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2006, I electronically filed the foregoing with the clerk of the court using the CM/ECF system which sent notification of such filing to the following: Dianne D. DeLair, Douglas D Dexter, Bradford E. Kistler, Bruce G. Mason, Shirley A. Mora James, David W. Rowe, and Michael J. Rumbaugh.

s/Michael J. Rumbaugh
Michael J. Rumbaugh
Assistant Attorney General

56-268-18