

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

KATHLEEN S., et al.

v.

DEPARTMENT OF PUBLIC WELFARE
OF THE COMMONWEALTH OF
PENNSYLVANIA, et al.

CIVIL ACTION

NO. 97-6610

Broderick, J.

February 25, 1998

MEMORANDUM

Plaintiffs, five individuals who are residents of Haverford State Hospital ("HSH"), a state-operated psychiatric hospital located in Delaware County, Pennsylvania, move for class certification in this action brought under the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12101 et seq., against the Department of Public Welfare of the Commonwealth of Pennsylvania, Feather O. Houstoun in her official capacity as Secretary of Public Welfare, and the County of Delaware (collectively "Defendants"). Plaintiffs seek certification of a class including all persons institutionalized at HSH as of August 26, 1997. In addition, Plaintiffs seek certification of a sub-class including all Delaware County residents institutionalized at HSH as of August 26, 1997. Plaintiffs allege that the Defendants are in violation of the ADA because they have discriminated against the proposed class and sub-class members through their failure to

provide those individuals with services in the most integrated setting appropriate to their needs. The Defendant the County of Delaware opposes the motion. For the following reasons, the Court will grant Plaintiffs' motion for class certification.

Federal Rule of Civil Procedure 23(a) establishes four prerequisites to a class action: (1) the class must be so numerous that joinder of all members is impracticable; (2) there must be questions of law or fact common to the class; (3) the claims of the representative parties must be typical of the claims of the class; and (4) the representative parties must fairly and adequately protect the interests of the class.

Fed.R.Civ.P. 23(a). In order to establish that class certification is proper, Plaintiffs must establish that all four requisites of Rule 23(a) are met. Baby Neal for and by Kanter v. Casey, 43 F.3d 48, 55 (3rd Cir. 1994). In addition, a putative class must comply with one of the parts of Rule 23(b). Id. at 55-56. In this case, Plaintiffs seek certification pursuant to Rule 23(b)(2) which requires that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thus making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed.R.Civ.P. 23(b)(2).

The first requirement of Rule 23(a) is that the class be so numerous that joinder of the class would be impracticable.

However, "'impracticable does not mean 'impossible.' The representatives of the proposed class need only show that it is extremely difficult or inconvenient to join all members of the class." Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 1762 at 159. Furthermore, the Third Circuit has noted that the numerosity requirement should not be rigorously applied in cases where injunctive relief is requested. Weiss v. York Hospital, 745 F.2d 786, 808 (3rd Cir. 1984). In that case, the Third Circuit upheld the certification of a class of 92 members who were not geographically dispersed and who could be identified with minimal effort. Id.; see also Ardrey v. Federal Kemper Ins. Co., 142 F.R.D. 105, 110 (E.D.Pa. 1992) (joinder of 200 geographically concentrated and easily identifiable members of a proposed class was impracticable); Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 1762 at 177-179 (collecting cases where joinder found impracticable when there were 200 or fewer class members).

In the present case, Plaintiffs allege that there are approximately 247 members of the proposed class and approximately 185 members of the proposed sub-class. The Court is satisfied that the first prong of Rule 23(a) is met and that the Defendant's objection to the numerosity requirement is without merit.

Rule 23(a) next requires that there be issues of law or fact

common to the class as a whole. The Third Circuit has noted that the "commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class." Baby Neal for and by Kanter v. Casey, 43 F.3d 48, 56 (3rd Cir. 1994). In addition, "class members can assert such a single common complaint even if they have not all suffered actual injury; demonstrating that all class members are subject to the same harm will suffice." Under this standard, it is clear that class and sub-class members share a common issue, that is, whether the Defendants have discriminated against HSH residents in violation of the ADA by failing to provide them with services in the most integrated setting appropriate to their needs. Thus, the Court finds that the second prong of Rule 23(a) is satisfied and that the Defendant's objection to the commonality requirement is without merit.

Next, Rule 23(a) requires that the Plaintiffs' claims are typical of those of the proposed class members. In Baby Neal, the Third Circuit noted that "cases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims.... Actions requesting declaratory and injunctive relief to remedy conduct directed at the class clearly fit this mold." Baby Neal,

43 F.3d at 58. Plaintiffs here seek declaratory and injunctive relief to enjoin Defendants from continuing to violate Plaintiffs' and class members' rights under the ADA. The Defendants' allegedly discriminatory conduct which Plaintiffs seek to challenge under the ADA affects both Plaintiffs and the class members in the same way in that it subjects them to allegedly illegal segregation. Therefore, the Court finds that the third prong of Rule 23(a) is satisfied and that the Defendant's objection to the typicality requirement is without merit.

Finally, Rule 23(a) requires Plaintiffs to show that they will fairly and adequately represent the interests of the class members. The Third Circuit has held that Plaintiffs fulfill this requirement if they can show that they have "the ability and the incentive to represent the claims of the class vigorously, that [they have] obtained adequate counsel, and that there is no conflict between the [named Plaintiffs'] claims and those asserted on behalf of the class." Hassine v. Jeffes, 846 F.2d 169, 179 (3rd Cir. 1988).

In this case, it is uncontested that the Plaintiffs have and will continue to vigorously pursue the interests of the class, and that the Plaintiffs' attorneys are qualified, experienced civil rights litigators. In addition, the Court finds that there are no conflicts of interest between the Plaintiffs and the

putative class members. Indeed, the claims Plaintiffs assert on their own behalf are the same as those asserted on behalf of the putative class members, and the relief they seek, if granted, will benefit both Plaintiffs and class members. Therefore, the Court finds that the final prong of Rule 23(a) is satisfied and that the Defendant's objection to the adequacy of representation requirement is without merit.

In addition to satisfying Rule 23(a), Plaintiffs must show that one of the subsections of Rule 23(b) is met. In this case, Plaintiffs seek class certification under Rule 23(b)(2) which permits a class action if "the party opposing the class action has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed.R.Civ.P. 23(b)(2). The Third Circuit has held that "this requirement is almost automatically satisfied in actions primarily seeking injunctive relief." Baby Neal, 43 F.3d at 58, 59 (citing Weiss v. York Hospital, 745 F.2d at 811). The Third Circuit noted that what is important under Rule 23(b)(2) is that the relief sought by the named plaintiffs should benefit the entire class. Id. at 59.

There is no doubt that the requirements of Rule 23(b)(2) are satisfied in this case. Plaintiffs allege that the Defendants have discriminated against class members in violation of the ADA

by failing to provide them with services in the most integrated setting appropriate to their needs. Plaintiffs seek declaratory and injunctive relief on behalf of the entire class, and such relief, if granted, will benefit the entire class.

Therefore, the Court finds that class certification is proper in this case, and the Plaintiffs' motion will be granted in that the Court will certify a class comprising all persons institutionalized at Haverford State Hospital as of August 26, 1997, and a sub-class comprising all Delaware County residents institutionalized at Haverford State Hospital as of August 26, 1997.

An appropriate Order follows.

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ORDER

AND NOW, this 25th day of February, 1998; Plaintiffs having filed a motion for class certification; the Defendant the County of Delaware having opposed the motion; for the reasons set forth in the accompanying Memorandum of this date;

IT IS ORDERED: The Plaintiffs' motion for class certification is **GRANTED**;

IT IS FURTHER ORDERED: The following class is certified: All persons institutionalized at Haverford State Hospital as of August 26, 1997;

IT IS FURTHER ORDERED: The following sub-class is certified: All Delaware County residents institutionalized at Haverford State Hospital as of August 26, 1997;

IT IS FURTHER ORDERED: The Court reserves the right to alter or amend the definition of the class, the sub-class, or to certify additional sub-classes at any time before the decision on the merits.

RAYMOND J. BRODERICK, J.