

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

LEAH JIMMIE, JOSETTE : **CIVIL ACTION NO. 3:09-CV-1112**
HALECHKO, LEWIS BOWERS, and :
JANICE SLATER, by and through : **(Judge Conner)**
their next friend, Carl Mosier; :
RONALD PEARSON and WILLIAM :
SACKS, by and through their next :
friend, Connie Hammann; and :
EDWARD NAUSS and BENJAMIN :
PERRICK, by and through their next :
friend, Akhnaton Browne; :
on behalf of themselves and :
all others similarly situated, :

Plaintiffs :

v. :

DEPARTMENT OF PUBLIC WELFARE :
OF THE COMMONWEALTH OF :
PENNSYLVANIA and ESTELLE B. :
RICHMAN, in her official capacity as :
Secretary of Public Welfare of the :
Commonwealth of Pennsylvania, :

Defendants :

ORDER

AND NOW this 1st day of December, 2010, Upon consideration of Plaintiffs' Unopposed Motion for Final Approval of the Proposed Class Action Settlement Agreement (Doc. 49) and, following the fairness hearing held on December 1, 2010, it is hereby ORDERED as follow:

1. Plaintiffs' Motion is GRANTED.

2. The class notice scheme and the contents of the class notice satisfied the requirements of due process and the Federal Rule of Civil Procedure. All class members received personal notice either by hand delivery (for those class members who remain institutionalized in state hospitals) or by first class mail, postage prepaid. All notices were delivered by October 1, 2010, affording class members approximately 40 days to submit any comments on or objections to the Settlement Agreement.

3. The Settlement Agreement is approved as fair, adequate and reasonable as required by Federal Rule of Civil Procedure 23(e). In support of this conclusion, the Court makes the following findings:

a. The complexity and likely duration of the litigation weighs in favor of approval of the Settlement Agreement. Further litigation of this case would prove complex and costly, given the vigorously disputed factual issues and the strongly contested legal issues. Further litigation also would require a substantial expenditure of time (including additional discovery, trial, and appeals), which could delay benefits to members of the Class.

b. The reaction of the class members to the Settlement Agreement weighs in favor of approval. There have been no significant objections to the settlement.

c. The stage of the proceedings and the amount of discovery completed weigh in favor of approval. The parties only entered into this Agreement after Plaintiffs' counsel received and reviewed substantial document discovery and retained experts who reviewed relevant materials and provided Plaintiffs' counsel with input. In addition to the discovery, Plaintiffs had explored many of the key legal issues in briefing and arguing the motion to dismiss and in negotiations with Defendants. Also, Plaintiffs' expert psychologists met with Defendants' officials and staff and that meeting was informed the settlement discussions. In sum, Plaintiffs had sufficient information to assess the relative strengths and weaknesses of their case and to make an informed judgment regarding the settlement.

d. The risks of establishing liability weigh in favor of approval. Defendants vigorously contested the factual and legal issues involved in this case. Since many of the issues are novel and complex, there is a risk that Plaintiffs might not succeed on the merits at trial or on appeal.

e. The risk of not securing full relief also weighs in favor of approval. While Plaintiffs might have secured a general injunction if they prevailed at trial and on appeal, they may not have secured a detailed order that provides concrete and detailed steps to improve the delivery of institutional and community services to class members. The Agreement provides Plaintiffs and class members with much of the relief that they had

sought and it does so far sooner than any relief that they could have secured after years of litigation and appeals.

f. The risk of class decertification, though small, cannot be discounted entirely and weighs in favor of settlement.

g. Defendants' ability to withstand a greater judgment also militates in favor of settlement. Although the Plaintiffs sought only injunctive relief, compliance requires the Defendants to expend financial resources. Given the current budgetary constraints faced by the Commonwealth, this factor weighs in favor of approval of the settlement.

h. The range of reasonableness of the Settlement Agreement in light of the best possible recovery weighs in favor of approval. The Agreement provides Plaintiffs and class members with much of the relief they had sought, including: (1) a process to identify persons with dual diagnoses in the state hospitals; (2) a time line for Defendants to seek funding for community mental retardation services for class members; (3) changes to the discharge planning process to facilitate more successful transitions; (4) comprehensive and detailed reforms of the treatment provided to individuals with dual diagnoses in the state hospitals; and (5) establishment of a task force to review community services for persons with dual diagnoses and to make recommendations to address any gaps in service.

i. The range of reasonableness of the Settlement Agreement in light of the attendant risks of litigation also supports approval of the settlement. The risks of proceeding to trial and through appeals on complex factual and legal issues are not insignificant. Aside from the risks relating to establishing liability, the Agreement also eliminates the risk that any relief afforded would not be as comprehensive as that provided by the Agreement and that class members would have to wait years for any potential relief rather than securing relief through settlement now.

4. The Settlement Agreement is incorporated into this Order. The Court shall retain continuing jurisdiction over this case in accordance with the terms of the Settlement Agreement for purposes of interpretation and enforcement of the Agreement.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge