

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 STATE OF ARKANSAS;)
 THE HONORABLE MIKE BEEBE,)
 Governor of the State of Arkansas,)
 in his official capacity only;)
 JOHN M. SELIG,)
 Director of the Arkansas Department of)
 Human Services, in his official capacity only;)
 JAMES C. GREEN,)
 Director of the Arkansas Division of)
 Developmental Disabilities Services,)
 in his official capacity only; and)
 GENE GESSOW,)
 Director of the Arkansas Division of)
 Medical Services,)
 in his official capacity only,)
)
 Defendants.)
)
 _____)

CIVIL ACTION NO:

COMPLAINT FOR VIOLATIONS
OF THE AMERICANS WITH
DISABILITIES ACT

42 U.S.C. §§ 12131-12134

COMPLAINT

The United States alleges, based on information and belief, that the State of Arkansas (“State”) discriminates against persons with disabilities in violation of Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12131-12134, and its implementing regulations. Specifically, the State segregates hundreds of individuals with developmental disabilities in institutions that are not the most integrated setting appropriate to their needs, and fails to provide adequate community supports and services to individuals who are discharged

from the institutions or who are at risk of institutionalization. Indeed, the State gives individuals with developmental disabilities the draconian choice of receiving services in segregated institutions or receiving no services at all. The alleged discrimination goes to the heart of the ADA and Congress' intent to eliminate the segregation and isolation of individuals with disabilities. As Congress stated in the Findings and Purposes of the ADA: "Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2).

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action under Title II of the ADA, 42 U.S.C. §§ 12131-12132, and 28 U.S.C. §§ 1331 & 1345. This Court may grant the relief sought in this action pursuant to 28 U.S.C. §§ 2201 & 2202.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391, as a substantial portion of the acts and omissions giving rise to this action occurred in the Eastern District of Arkansas. 28 U.S.C. § 1391(b).

PARTIES

3. Plaintiff is the United States of America.
4. Defendant, the State of Arkansas, is a "public entity" within the meaning of the ADA, 42 U.S.C. § 12131(1); 28 C.F.R. § 35.104, and is therefore subject to title II of the ADA, 42 U.S.C. § 12131 et seq., and its implementing regulations, 28 C.F.R. Part 35.
5. Defendant Mike Beebe, Governor of the State of Arkansas, is the Chief Executive of the State and responsible for operation of its executive agencies. Defendant Beebe is sued in his official capacity as Governor.

6. Defendant John M. Selig is the Director of the Arkansas Department of Human Services (“DHS”), and responsible for all operations of DHS. Defendant Selig is sued in his official capacity as Director of DHS.

7. Defendant James C. Green is the Director of the Arkansas Division of Developmental Disabilities Services (“DDS”), and is responsible for all operations of DDS. Defendant Green is sued in his official capacity as Director of DDS.

8. Defendant Gene Gessow is the Director of the Arkansas Division of Medical Services (“DMS”), and is responsible for all operations of DMS. Defendant Gessow is sued in his official capacity as Director of DMS.

FACTS

The State’s Developmental Disability Care System

9. The State delivers developmental disability services primarily through DHS and DDS.

10. DDS is responsible for the overall coordination of services for people with developmental disabilities in the State of Arkansas. DDS’s responsibilities include management of the State’s Human Development Centers, home and community based services, and day to day operations of the Home and Community-based waiver under the federal Medicaid Waiver Program.

11. DMS oversees the State’s Medicaid program. DMS’s responsibilities include general administrative authority over, and oversight of, the State’s Home and Community-based waiver under the federal Medicaid Waiver Program.

12. DDS and DMS are divisions of DHS. DHS is the State’s executive department responsible for providing health and human services to people in the state of Arkansas, and oversees DDS and DMS.

13. The State provides institutionalized services to individuals with developmental disabilities in six Human Developmental Centers (“HDCs”) located throughout the State.

14. The State receives Medicaid funding from the United States Department of Health and Human Services for its six HDCs. For Medicaid purposes, each HDC is certified to care for individuals as an Intermediate Care Facility for the Mentally Retarded.

15. The HDCs are congregate institutions that segregate individuals with developmental disabilities from the community. The HDC setting discourages its residents from engaging independently in activities of daily living, fosters dependence on institutional supports, and erodes the skills necessary for community living. While confined to the HDCs, residents have limited access to community activities and amenities and limited opportunities to interact with people without disabilities.

16. The State funds community services primarily through its Home and Community-based waiver under the federal Medicaid Waiver Program. The State’s Home and Community-based waiver services are delivered through private providers who are approved by DDS.

The Individuals Confined to the Human Development Centers

17. The individuals served by the HDCs are persons with diagnoses of developmental disability (“Residents”).

18. For each of these Residents, the impairment signified by their diagnosis substantially limits major life activities. Each Resident is a qualified individual with a disability, as defined in the ADA.

19. Most, if not all, of the approximately 1,100 Residents confined to the HDCs can handle or benefit from community settings, and therefore can be served successfully in a more integrated setting in the community.

20. The State's treatment professionals agree that hundreds of Residents currently confined to the HDCs could be served in the community with appropriate supports and services.

21. Many Residents in the HDCs do not object to receiving services in a setting less-restrictive than an HDC. The State has not given many Residents, and/or their family/guardian, the opportunity to make an informed objection to receiving services in a setting less-restrictive than an HDC.

The State's Failure to Transition Individuals Confined to the Human Development Centers to the Most Integrated Setting Appropriate to Their Needs

22. Typically, the State does not meaningfully consider an HDC Resident for a more integrated setting unless the Resident or their family/guardian proactively requests a more integrated setting.

23. Most Residents, and/or their families/guardians, do not proactively request a more integrated setting because the State does not properly educate Residents, and/or Residents' families/guardians, on what community resources are available, or the possible benefits for Residents of community placements.

24. The State does not adequately assess whether HDC Residents could be served in a more integrated setting appropriate to their needs.

25. The State does not properly educate staff at the HDCs on how to appropriately assess a Resident for community placement, what community resources are available, or the possible benefits for Residents of community placements.

26. HDC staff typically tailor any assessment of a Resident’s appropriateness for community placement based upon their limited understanding of what community resources are available (or not available), rather than specifying what supports and services a Resident needs in order to be adequately supported in the community.
27. While confined to the HDCs, Residents do not receive appropriate treatment to support their eventual discharge to a less restrictive setting in the community.
28. Residents who have been confined to the HDCs for many years are not actively reassessed for opportunities to move to a less restrictive setting appropriate to their needs.
29. For the few HDC Residents the State identifies as eligible for a more integrated setting, the State does not develop adequate discharge plans.
30. The State does not collect after-care data sufficient to determine the efficacy of its discharge plans and of the services and supports provided to individuals upon discharge from the HDCs.
31. The State is actively expanding its institutions, at the cost of developing community alternatives to institutionalization.
32. The State fails to properly evaluate individuals with developmental disabilities for a more integrated setting before these individuals become residents of the HDCs. Institutionalizing these individuals fosters their dependence on institutional supports, and erodes the skills necessary for community living.

The State's Inadequate Community Services

33. The State fails to provide services in the community in sufficient quality, quantity, and geographic diversity to enable individuals with developmental disabilities to be served in the most integrated setting appropriate to their needs.

34. The State has not conducted an adequate assessment of the needs of its developmental disability services system, including, particularly, those services necessary in order to provide services to all HDC Residents in the most integrated settings appropriate to their needs.

35. Individuals with a developmental disability and a history of challenging behaviors face a particularly acute shortage of community service options.

36. Numerous Residents are confined to the HDCs because the services necessary to address their needs in the community are not offered by the State in sufficient quality, quantity, and geographic diversity to serve Residents' needs.

37. The State does not provide appropriate assistance to the HDCs to find community providers that could serve HDC Residents in a more integrated setting.

38. Many individuals are repeatedly re-admitted to the HDCs because of a lack of sufficient supports and services in the community.

39. The State does not provide short-term crisis stabilization services in the community in a sufficient quantity or geographic diversity to serve all qualified individuals who require these services. Many admissions to the HDCs start as respite admissions that become regular admissions. These Residents remain confined to the HDCs because there are insufficient crisis stabilization services in the community to address their short-term emergent needs and to respond to those needs with additional support on an as-needed basis.

40. Many individuals with developmental disabilities are segregated in the HDCs for no reason other than that they are waiting for funding to become available to support their placement in a Home and Community-based waiver slot under the federal Medicaid Waiver Program.

41. The current wait list for a Home and Community-based waiver slot totals approximately 1,400 people waiting for community services. This wait list moves at an extremely slow pace, with most people waiting several years for funding for community services. Individuals currently at the bottom of the wait list will likely wait more than a decade to receive community services.

VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT

42. The allegations of Paragraphs 1 through 41 are hereby realleged and incorporated by reference.

43. Defendants discriminate against “qualified individual[s] with a disability,” within the meaning of the ADA, by administering the State’s developmental disability system in a manner that denies hundreds of people with developmental disabilities the opportunity to receive services in the most integrated setting appropriate to their needs. These individuals are qualified to receive services in a more integrated setting and do not oppose receiving services in a more integrated setting.

44. The State’s actions as alleged herein constitute discrimination in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulations.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays that the Court:

45. Enjoin Defendants (1) from administering developmental disability services in a setting that unnecessarily isolates and segregates individuals with disabilities from the community, (2) to

administer developmental disability services in the most integrated setting appropriate to the needs of the individuals with disabilities; and

46. Order such other appropriate relief as the interests of justice require.

Dated: May 5, 2010

Respectfully submitted,

FOR THE UNITED STATES:

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