

7-15-96

52,220 A

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FILED

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LOU ALEKSICH, JR., Clerk
 By _____
 Deputy Clerk

52,220 A

IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF MONTANA
 HELENA DIVISION

10 HIRLEY SMALL; HOWARD JAY WOODS;
 NDREW ADLER; DIAN WALLILA;
 11 EDWARD W. NELSON;
 nd, CHARLES ZWERNEMAN, on behalf
 12 f themselves and all others
 imilarly situated,
 13
 Plaintiffs,
 14
 vs.
 15
 STATE OF MONTANA; MARC
 16 RACICOT, Governor of the
 State of Montana; PETER BLOUKE,
 17 Director, Montana Department of
 Public Health and Human Services
 18 DAN ANDERSON, Administrator,
 Addictive and Mental Disorders
 19 Division, Department of Public
 Health and Human Services;
 20 CARL KEENER, Medical Director
 of the Montana State Hospital;
 21 RON BALAS, Superintendent,
 Montana Mental Health Nursing
 22 Care Center; MONTANA HEALTH
 FACILITY AUTHORITY; and,
 2 JERRY HOOVER, Executive Director,
 Montana Health Facility Authority,
 2
 Defendants.

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CIVIL ACTION

OCT 15 1998

NATIONAL CLEARING HOUSE
 FOR LEGAL SERVICES, INC.

NO. CV-96-49-H-CCL

COMPLAINT FOR
 DECLARATORY AND
 INJUNCTIVE RELIEF
 (CLASS ACTION)

INTRODUCTION

1. This suit is brought as a civil rights suit under 42 U.S.C. 1983, and under the Americans with Disabilities Act of 1990 (the "Act", or "ADA") (42 U.S.C. 12101, et seq) and its

1 interpretive regulations. This suit seeks to enjoin the financing
2 and reconstruction of the Montana State Hospital (MSH) for
3 individuals with mental disorders, at Warm Springs, Montana;
4 require the State of Montana, through its Department of Public
5 Health and Human Services (DPHHS) to develop a comprehensive
6 system of community treatment services for individuals with
7 mental disorders; and, release plaintiffs and the plaintiff class
8 from segregated state institutional settings to integrated
9 community settings appropriate to their needs.

10 2. Currently, the system of publicly funded mental health
11 care in Montana includes the Montana State Hospital (MSH)
12 institution at Warm Springs, the Montana Mental Health Nursing
13 Care Center (MMHNCC) institution at Lewistown, and community
14 treatment services available through five regional community
15 mental health centers. By contract with the regional mental
16 health centers, DPHHS provides a wide range of community services
17 to consumers. The Addictive and Mental Disorders Division of
18 DPHHS administers these institutional and community services.
19 Providing treatment to plaintiffs in the community would not
20 require the fundamental alteration of the current system under
21 which community services are provided.

22 3. Title II of ADA requires that the State not discriminate
23 in the provision of services to its citizens based upon their
24 disability and that the State provide services "in the most
25 integrated setting appropriate to the needs of qualified
26 individuals with disabilities." 42 U.S.C. 12132, 28 C.F.R. 35.130
27 (d). Defendants' treatment of plaintiffs violates the Americans
28 with Disabilities Act of 1990 and its implementing regulations by

1 ailing to administer treatment in integrated, noninstitutional
2 settings.

3 4. Plaintiffs are exactly the type of persons Congress had
4 n mind in 1990, when it enacted the ADA. The Congressional
5 **statutory** findings include:

6 a. "historically, society has tended to isolate and
7 **segregate** individuals with disabilities, and despite some
8 **improvements**, such forms of discrimination against individuals
9 rith disabilities continue to be a serious and pervasive
10 **problem**";

11 b. "**discrimination** against individuals with disabilities
12 **persists** in such critical areas as . . . institutionalization";

13 c. "**individuals** who have experienced discrimination on the
14 **basis** of disability have often had no legal recourse to redress
15 **such** discrimination";

16 d. "**individuals** with disabilities continually encounter
17 **various** forms of discrimination, including . . . segregation";

18 e. "**the** Nation's proper goals regarding individuals with
19 disabilities are to assure . . . **independent living**." 42 U.S.C.
20 Section 12101(a).

21 5. Plaintiffs and plaintiff class members have been and are
22 currently discriminated against in the exact manner Congress
23 found existed throughout the country. Each of the above
24 Congressional findings apply to plaintiffs:

- 25 they have been isolated and segregated;
- 26 they have been institutionalized;
- 27 they have had no legal redress; and
- 28 they have been denied the opportunity to achieve

1 independent living.

2 6. The 1995 Montana legislature authorized the redesign
3 and reconstruction of MSH. This project will be financed by the
4 issuance of revenue bonds by the Montana Health Facility
5 Authority (MHFA). MHFA is authorized, under the enabling
6 legislation, to issue revenue bonds in the approximate amount of
7 \$26,500,000.00. MHFA will thereafter enter into a mortgage loan
8 agreement with DPHHS to pay the cost of the reconstruction.
9 Total cost of the project will be approximately \$40,000,000.00.
10 DPHHS proposes to pay this debt by pledging revenues received
11 from charging patients for services received at MSH and MMHNCC.
12 MHFA has passed a preliminary resolution authorizing the issuance
13 of these bonds and intends to do so upon the finalization and
14 approval of construction bids.

15 7. Named plaintiffs are current adult patients receiving
16 treatment for mental disorders at MSH. All of the plaintiffs are
17 "qualified" individuals with "disabilities" and are protected by
18 the provisions of the ADA. 42 U.S.C. 12102 (2)(A)-(C). All of
19 the named plaintiffs and the proposed plaintiff class, could be
20 served in the community if treatment services were available.
21 Institutional treatment services are not necessary for the
22 treatment of plaintiffs. Neither are institutional treatment
23 services as effective as community treatment services for the
24 treatment of their disorders.

25 8. Some of the named plaintiffs have spent years confined
26 at MSH waiting for a community placement because there are not
27 enough community treatment services for the patients needing
28 them. Plaintiffs are institutionalized and segregated without

1 ope of discharge because DPHHS refuses to provide the community
2 reatment services that would accomplish their discharge.

3 9. Payment of the costs of the redesign and reconstruction
4 f MSH will require a minimum patient base at both MSH and **MMHNCC**
5 n order to generate revenues to service the mortgage loan. This
6 ill require that the patient census at both MSH and **MMHNCC** be
7 **ufficiently** high to cover this debt. It will divert state
8 **esources** from appropriate and more cost effective community
9 **reatment** services into state institutional services that are
10 **ess** effective, and unnecessary.

11 10. The reconstruction of MSH will further require the
12 **aximum** utilization of the facility, in order for DPHHS to
13 **ustify** the needless expenditure of funds for this project.

14 11. DPHHS has announced that in 1996, as a cost savings
15 **rogram**, publicly funded **mental health** treatment services will be
16 **rovided** through a system of managed care, with an independent
17 **managed** care organization administering the program. The managed
18 **care** organization will receive all state funds for mental health
19 **care**, and will have authority to determine how those funds will
20 **be** expended for patients receiving publicly funded mental health
21 care in Montana, with the exception of funding for patients at
22 state operated institutions.

23 Under the proposed managed care contract the managed care
24 organization will be required by the state to purchase a set
25 number of bed days at these institutions, regardless of clinical
26 need, and will also be required to make guaranteed payments
27 sufficient to cover the annual bond payments.

28 12. DPHHS has specifically excluded the patients at MSH and

MMHNCC from the protection and community services afforded under
the proposed managed care system. This exclusion means that
funds must be spent at MSH and MMHNCC regardless of need,
effectiveness or appropriateness of the services. The managed
care organization will be able to discontinue funding to prevent
the unnecessary institutionalization and segregation of every
person receiving inappropriate inpatient treatment in the state,
except for plaintiffs and the members of the plaintiff class who
are confined at MSH and MMHNCC.

13. DPHHS is required by ADA to undertake a self-evaluation
of its current services, policies and practices, and the effects
thereof. This includes a self-evaluation for programmatic
discrimination. Those services, policies and practices that do
not meet the requirements of the Act, must be modified. 28 C.F.R.
35.105 (a)(b). DPHHS has illegally refused to complete a "self-
evaluation" for programmatic discrimination, nor make the
necessary modifications as required by law.

14. Defendants illegal refusal to provide services in an
integrated setting, most appropriate to the needs of plaintiffs,
discriminates against plaintiffs by reason of their disability,
in violation of 42 U.S.C. 12132 and 42 U.S.C. 1983.

15. DPHHS's illegal refusal to provide community treatment
services to plaintiffs violates 42 U.S.C. 12132 and 28 C.F.R.
35.130 (d) which requires the defendants to provide services "in
the most integrated setting appropriate to the needs of the
qualified individuals with disabilities."

16. DPHHS's illegal refusal to provide community treatment
services for plaintiffs violates ADA's requirement that a public