

11-15-96

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1 onnie J. Olson
2 Glen Smith, Jr.
3 Maire Gallagher
4 Attorneys at Law
5 Montana Advocacy Program
6 P.O. Box 1680
7 16 North Park, Room 211
8 Helena, MT 59624
9 (406) 444-3 889

6 Ira A. Bumim
7 Judge David L. Bazelon Center
8 for Mental Health Law
9 1101 15th Street N.W., Suite 1212
10 Washington, DC 20005
11 (202) 467-5730

12 ATTORNEYS FOR PLAINTIFFS

13 IN THE UNITED STATES DISTRICT COURT
14 DISTRICT OF MONTANA
15 HELENA DIVISION

16 SHIRLEY SMALL, et. al.,
17
18 Plaintiffs,
19
20 vs.
21 STATE OF MONTANA, et.al.,
22
23 Defendants.

NO. CV-96-49-H-CCL

PLAINTIFFS' PRELIMINARY
PRETRIAL STATEMENT
PURSUANT TO LOCAL
RULE 235-1 (c)

FILED
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NOV 18 1996

LOU ALEKSICH, JR., Clerk
By _____
Deputy Clerk

RECEIVED

OCT 15 1998

NATIONAL CLEARING HOUSE
FOR LEGAL SERVICES, INC.

24 INTRODUCTION

25 Plaintiffs' respectfully submit this Preliminary Pretrial Statement pursuant to Local Rule
26 235-1 (c) of the United States District Court for the District of Montana and in conformity with
27 this Court's Order dated November 7, 1996.

28 FACTUAL OUTLINE OF THE CASE

This is a civil rights action filed on behalf of plaintiffs' and the proposed plaintiff class who

1 re individuals confined, or at risk of confinement, within state operated institutions for the
2 treatment of mental disorders.

3 Plaintiffs filed this action on behalf of themselves and the approximately 200 persons
4 residing at the Montana State Hospital (MSH) at Warm Springs, Montana, and the approximately
5 44 persons residing at the Montana Mental Health Nursing Care Center (MMHNCC) in
6 Lewistown, Montana. All of the plaintiffs and the proposed plaintiff class are qualified individuals
7 with disabilities, and qualify for the protections of the Americans with Disabilities Act 42 U.S.C.
8 12101, et seq, and 42 U.S.C. 1983.

9 Named plaintiffs are six current or former patients at MSH, Shirley Small, Howard Jay
10 Woods, Andrew Adler, Dian Wallila, Edward W. Nelson and Charles Zwememan. Since the filing
11 of this suit, Shirley Small, Edward W. Nelson, and Charles Zwememan have been discharged to
12 community based treatment services. Neither Shirley, Ed nor Charles had any change occur in
13 their conditions or behaviors. None of the three are now provided services that were not available
14 at the commencement of this suit. They were discharged by virtue of being named plaintiffs in this
15 suit.

16 Persons are confined at MSH and MMHNCC that, by admission of the defendants and
17 their agents, do not need to be segregated in an institution, away from their home communities.
18 All of the plaintiffs, and the proposed class they represent, are unnecessarily segregated within
19 state operated institutions. All could be treated in the community without a fundamental
20 alteration in the mental health system, and without placing an undue burden upon defendants.

21 The treatment of the named plaintiffs typifies the treatment of the members of the plaintiff
22 class. The discharge of Shirley Small, Ed Nelson and Charles Zwememan without any change in
23 their conditions or behaviors evidences the ability of defendants to provide services to plaintiffs in
24 a community setting. Providing services to Shirley, Ed and Charles did not place an undue burden
25 on defendants, nor require any fundamental alteration in the existing system of providing
26 community care. Providing similar services to the class would not require a fundamental alteration

1 n the existing system, nor place an undue burden on defendants.

2 Instead of seeking to provide plaintiffs the type of treatment services that would integrate
3 them into Montana's broader community, defendants have opted instead to redesign MSH and
4 pay for it in such a manner that the unnecessary segregation of persons at MSH and MMHNCC
5 will be ongoing. The defendants propose a funding scheme under which the only way to pay for
6 this reconstruction project will be to have a minimum patient population confined within MSH
7 and MMHNCC, regardless of need. This will create powerful incentives that will lead to the
8 t&necessary segregation and confinement of persons at those institutions. As the lender on the
9 proposed MSH redesign project, defendant Montana Health Facility Authority (MHFA) is
10 providing aid in the perpetuation of this unnecessary segregation, by requiring repayment of the
11 bonds for the project be made in a manner that will require the confinement of persons who could
12 be served in integrated community settings.

13 The state of Montana is about to contract with a managed care organization for the
14 provision of all publicly funded mental health services in Montana. The managed care contract
15 excludes plaintiffs and the proposed plaintiff class from the protections, benefits and services of
16 managed care. Every person in the state receiving publicly funded mental health services, whether
17 they are involuntarily committed patients or voluntary patients, will have the managed care
18 organization overseeing their care. Defendants have chosen to deny persons involuntarily
19 committed and segregated within their institutions these same benefits and protections.

20 The current managed care proposal calls for the managed care company to pay more for
21 services for 49 patients than for 150 patients at MMHNCC, thus creating powerful financial
22 incentives towards institutional care. This is in addition to the fact that the managed care
23 proposal exempts MSH and MMHNCC, and only these state operated institutions, from
24 managed care funding controls and treatment oversight.

25 Defendants undertook all of the above without completing the self-evaluation for
26 programmatic discrimination, and making those necessary modifications to avoid discrimination
27

1 based on disability, that is required under ADA.

2 Plaintiffs have no adequate remedy at law available to them. They are therefore required to
3 seek the equitable relief available through this Court on behalf of themselves and the proposed
4 class.

5 ISSUES CONCERNING JURISDICTION

6 The plaintiffs believe there are no issues with respect to jurisdiction.

7 ISSUES OF FACT AND LAW

8 Whether the failure of defendants to provide mental health treatment services to
9 defendants in the most integrated setting appropriate to individual needs violates the ADA, its
implementing regulations and 42 U.S.C. 1983?

10 Whether the exclusion of plaintiffs from the proposed managed care system in Montana
11 discriminates against them on the basis of a disability in violation of the ADA, its
implementing regulations and 42 U.S.C. 1983?

12 Whether the issuance of bonds and lending the proceeds therefrom to DPHHS aids in the
13 perpetuation of discrimination and thereby violates the ADA its implementing regulations
and 42 U.S.C. 1983?

14 Whether the failure of defendants to undertake a self-evaluation for programmatic
15 discrimination and make those modifications necessary to end prohibited discriminatory
practices violates ADA and its interpretive regulations?

16 STIPULATIONS OF FACT AND LAW

17 There is no dispute that there are approximately 200 persons confined at MSH and
18 approximately 144 persons confined at MMHNCC. There is no dispute that the state of Montana
19 is undertaking a system of managed care for all publicly funded mental health services. There is
20 no dispute that all persons involuntarily committed to state operated institutions will be excluded
21 from managed care oversight of their treatment. There is no dispute that the DPHHS has applied
22 for a loan from the MHFA for the reconstruction of MSH and that the MHFA has passed a
23 preliminary resolution of approval for the issuance of revenue bonds to fund the loan. There is no
24 dispute that the only source of payment for this debt are charges for patient services at MSH and
25 MMHNCC. There is no dispute that in order to pay the bond debt a minimum number of patients
26 will have to be confined at MSH and MMHNCC.

1 All expert reports to be served by September 1, 1997.

2 Requests for production of documents and interrogatories to be served by September 1,
3 1997.

4 Supplemental fact witnesses, reasonably likely to be used at trial, to be identified by
5 September 22, 1997.

6 Supplemental expert reports to be served by October 27, 1997.

7 Deposition of fact and expert witnesses, and close of discovery by November 17, 1997.

8 All motions to compel discovery to be filed by December 15, 1997.

9 MODIFICATION OF LOCAL RULE 235 PRETRIAL PROCEDURE

10 Standard pretrial procedure appears to be appropriate.


11 PLACEMENT UPON COURT'S EXPEDITED TRIAL DOCKET

12 It does not appear to be advisable to place the case on the Court's expedited trial docket,

13 PROSPECTS FOR COMPROMISE

14 The parties have not engaged in settlement negotiations. Plaintiffs are amenable to
15 settlement discussions, but unsuccessful efforts to negotiate the issues in this case were made
16 prior to the filing of this suit, and therefore settlement does not seem likely between the parties.

17 DATED this 18th day of November, 1996.

18 
19 Lonnie J. Olson
20 Allen Smith, Jr.
21 Marie Gallagher
22 Attorneys at Law
23 Montana Advocacy Program
24 P.O. Box 1680
25 3 16 North Park, Room 211
26 Helena, MT 59624
27 (406) 444-3 889

28 Ira A. Burnim
Judge David L. Bazelon Center
For Mental Health Law
1101 15th Street N.W., Suite 1212
Washington, DC 20005
(202) 467-5730

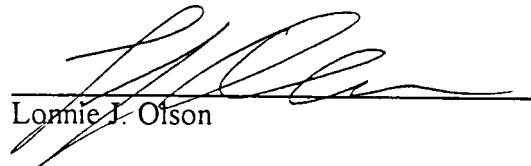
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 18th, 1996, I caused a true and accurate
3 copy of the foregoing Rule 235 (c) Preliminary Pretrial Statement, to be served upon the
4 following by depositing a true and correct copy thereof in the United State Mail, postage prepaid,
5 and addressed as follows, to wit:

6 Kimberly A. Kradolfer
7 Assistant Attorney General
8 Justice Building
9 2 15 North Sanders
10 P.O. Box 201401
11 Helena, MT 59620-1401

12 Russ Cater
13 Bada Lovitt
14 Department of Public Health
15 & Human Services
16 1400 Broadway
17 Helena, MT 59620-42 10

18 G. Curtis Drake
19 P. Keith Keller
20 Keller, Reynolds, Drake,
21 Johnson & Gillespie, P.C.
22 38 South Last Chance Gulch
23 Helena, MT 59601

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25
26
27
28

Lonnie J. Olson

1 entity modify its programs when necessary to avoid discrimination
2 by making "reasonable modifications in policies, practices, or
3 procedures when the modifications are necessary to avoid
4 discrimination on the basis of disability." 28 C.F.R. 35.130
5 (b) (7)

6 17. DPHHS's illegal refusal to provide community treatment
7 services violates ADA's requirement that a public entity may not,
8 based upon disability, provide a qualified individual with a
9 service that is not as "effective" as that provided to others. 28
10 C.F.R. 35.130 (b)(1)(iii).

11 18. DPHHS's illegal refusal to provide community treatment
12 services violates ADA's requirement that a public entity may not
13 provide different or separate services to an individual or to any
14 class of individuals with disabilities, unless such action is
15 necessary" to provide services that are as effective as those
16 provided to others. 28 C.F.R. 35.130 (b) (1) (iv).

17 19. The issuance of bonds and the lending of proceeds
18 therefrom is an aid, benefit or service under the ADA. MHFA's
19 issuing bonds and lending the proceeds therefrom to DPHHS
20 violates ADA's requirement that a public entity, in providing any
21 aid, benefit or service, may not, directly or through
22 contractual, licensing, or other arrangements, aid or perpetuate
23 discrimination, on the basis of disability. 28 C.F.R. 35.130
24 (b) (1) (v).

25 20. DPHHS's illegal refusal to provide persons
26 institutionalized at MSH and MMHNC the same services and
27 protections under the proposed managed care contract afforded all
28 others discriminates against plaintiffs, and the members of the

1 plaintiff class by reason of their disability, in violation of 42
2 .S.C. 12132 and 42 U.S.C. 19873.

3 21. DPHHS's illegal refusal to provide persons
4 institutionalized at MSH and MMHNCC the same services and
5 protections under the proposed managed care contract provided all
6 others violates ADA's requirement that a public entity may not
7 provide different or separate services to an individual or to any
8 class of individuals with disabilities, unless- such action is
9 "necessary" to provide services that are as effective as those
10 provided to others. 28 C.F.R. 35.130 (b)(1)(iv).

11 22. Plaintiffs bring suit under federal statute. They seek
12 a declaration that the current system of providing treatment
13 services within institutions is unlawful discrimination. They
14 seek a declaration that the refinancing package, and the
15 reconstruction of MSH is violative of ADA. They seek a
16 declaration that the proposed managed care contract is violative
17 of ADA. Plaintiffs seek an injunction, prohibiting the defendants
18 from issuing bonds, and entering into the financial arrangement
19 which would finance the reconstruction. Plaintiffs seek an
20 injunction against the reconstruction of MSH generally.
21 Plaintiffs further seek an injunction requiring DPHHS to complete
22 a "self-evaluation" for programmatic discrimination as required
23 by ADA, and make the necessary modifications required thereunder.
24 Plaintiffs further seek an injunction against DPHHS entering into
25 a managed care contract that is violative of ADA. Finally,
26 plaintiffs seek injunctive relief directing DPHHS to design and
27 promptly implement a plan adequate to provide services in the
28 most integrated setting appropriate to plaintiffs needs.

JURISDICTION

23. This Court has jurisdiction under 28 U.S.C. 1331 and 1334.

24. Plaintiff's claims are authorized by 28 U.S.C. 2201 and 2202 and 42 U.S.C. 1983 and 12133.

PLAINTIFFS

25. Plaintiff Shirley Small is a thirty five year old woman who is currently institutionalized at MSH. She has been institutionalized most of her life, being first confined at age twelve. Shirley suffers from undifferentiated schizophrenia, and borderline intellectual functioning. She has a full scale IQ of seventy six.

The only reason Shirley remains confined against her will at MSH is the lack of a community placement for her. She was recommitted to MSH on February 9, 1996 for a period of six months. At her recommitment hearing the court appointed examiner, a member of Shirley's MSH treatment team, testified that Shirley did not need to be at MSH. She remains confined at MSH even though she needs services that are no different than those provided to others by defendants in the community.

26. Plaintiff Howard J. Woods is thirty five years old. He is currently confined at MSH for treatment of frontal lobe syndrome and organic personality disorder. This is his first occasion to be hospitalized for a mental disorder. Jay was injured in an automobile accident in July, 1993. At the time, he was a divorced father of two and employed as an automobile mechanic. His pick-up truck was broadsided by a semi-trailer. As a result, he suffered a closed head injury and became comatose .

1 for approximately 10 days. He was released from hospitalization,
2 fter approximately 3 months, with noted deficits in
3 rientation, memory and reasoning. In October 1994, Jay suffered
4 et another motor vehicle accident, being struck by a car as a
5 pedestrian. He again entered a comatose state. After recovering
6 onsciousness, Jay was transferred to a community hospital, and
7 hereafter in February, 1995 committed to MSH. He suffers from
a motor aphasia and has problems with swallowing, speech, and
9 mobility. MSH has no specialized treatment for persons with
10 losed head injuries. Jay could be placed in the community if
11 ervices provided to others, were provided to him. Instead he
12 emains warehoused, separated from his family, without hope of
13 eceiving appropriate treatment or discharge.

14 27. Plaintiff Andrew Adler is a sixty year old man who has
15 een institutionalized at MSH by order of involuntary commitment
16 dated July 7, 1994. Andy has had both legs amputated below the
17 nee. He is confined to a wheel chair. Andy has a full scale IQ
18 of between sixty two and sixty seven. At various times in his
19 Life, he has been a resident of group homes, and was once a
20 patient at the Montana Development Center for persons with
21 developmental disabilities.

2 Andy is currently diagnosed as suffering from a Bipolar
2 Disorder. In addition, he suffers many physical ailments.

2 Andy has the strong support of his family, who would like to
2 see him placed in the community. He is currently on the
2 statewide list for openings in the developmental disability
2 system. He remains at MSH, not because of his need for
2 institutional confinement, but only because he has not been a

1 ;successful applicant for those openings. Andy has long expressed
2 his wish to live in the community of Helena. Instead, he remains
3 at MSH against his will.

4 28. Dian Wallila is fifty years old, and has been
5 hospitalized at MSH on and off since age seventeen. She has
6 spent approximately nineteen years confined at MSH. Her
7 diagnosis upon her most recent admission was mild mental
a retardation. Dian has a full scale IQ of seventy one and limited
9 social and living skills.

10 Dian has a strong commitment to her family and strong family
11 interaction. Her most recent discharge was to an apartment in
12 Butte, with case management.

13 Dian remains at MSH, as a result of her mild mental
14 retardation, because there are no appropriate services presently
15 available to her, although these services are made available by
16 defendants to others. She remains at a mental hospital against
17 her will as she has for the greater portion of her adult life
18 because of her retardation and the defendant's failure to provide
19 services in the most integrated setting appropriate to her needs.

20 29. Edward W. Nelson is forty five years old. He has spent
21 the majority of his recent years living independently, with case
22 management, in Havre, Montana. His diagnosis is schizophrenia,
23 undifferentiated and mild mental retardation. His full scale IQ
24 is seventy seven. Since his admission to MSH on August 3, 1995 he
25 has also developed polydipsia.

26 Ed's condition is chronic, yet he has been able to live with
27 assistance in the community. Prior to his current admission,
28 Ed's last admission to MSH was for four days in 1991. He is

1 eady for discharge to community services, awaiting return to his
2 riends and family. Ed has proven over many years his ability to
3 ive in his home town of Havre. He only needs services
4 **efendant's** provide to others and previously provided to him.
5 et, he remains confined at MSH against his will.

6 30. Charles Zwerneman is a thirty five year old man who is
7 iagnosed as suffering from schizoaffective disorder and
a olydipsia. Charles was first diagnosed with mental illness after
9 || graduating from high school. Since that time he has been
10 || **hospitalized** at MSH on eight occasions. He is presently
11 **ospitalized** at MSH and has been since his most recent admission
12 on May 1a, 1995. At the time of his admission his treatment plan
13 **as** to stabilize him on medications, provide group therapies for
14 **hemical** dependency and schizophrenia, provide medication
15 **education** to him, and return him to the community with intensive
16 **aftercare** services. Although all of the treatments recommended
17 **ave** been provided and Charles has cooperated and is stabilized,
18 || **he** remains confined against his will at MSH because there is no
19 **community** placement available to him.

20 DEFENDANTS

2 31. The State of Montana is a political entity created and
2 governed by the Constitution and statutes for and by the people
'2 of the State.

2 32. Defendant Marc Racicot is the Governor of the State of
2 Montana and is sued in his official capacity. Under state law,
2 Defendant Racicot is responsible for supervising Defendant
2 **Blouke's** administration of DPHHS. Defendant Racicot is also
i responsible for administering the laws of the State of Montana,

1 or proposing a budget for DPHHS to the legislature, and ensuring
2 hat Defendant Blouke operates DPHHS in conformity with federal
3 nd state law. The Governor is responsible for reviewing and
4 pproving mandated state plans that have, over a period of years,
5 eprived plaintiffs of their statutory rights as identified in
6 he individual counts of this complaint. Despite knowledge that
7 he rights of the plaintiff class have been and continue to be
a iolated, the Governor has failed to correct the conditions that
9 ause the plaintiffs' rights to be violated. The Governor has
10 also failed to order the implementation of state plans that would
11 rotect the rights of the plaintiffs and the proposed class.

12 33. Defendant Peter Blouke is Director of the Department
13 of Public Health and Human Services. He is responsible for the
14 idministration of DPHHS, the enactment of policies for DPHHS, and
15 he conduct of daily affairs at MSH and MMHNCC. Defendant Blouke
16 is responsible for supervising, directing, organizing, planning,
17 administering and executing the functions of DPHHS, which has the
18 responsibility of care for patients at MSH and MMHNCC and in the
19 community. As Director he is also responsible for ensuring that
20 DPHHS operates in conformity with federal and state law.

2: 34. Dan Anderson is the Administrator of the Addictive and
2: Mental Disorders Division of DPHHS. He is the chief
2: administrative officer of this division of DPHHS. As division
2. administrator, he is responsible for supervising, directing,
2 organizing, planning, administering, and executing the functions
2 of this division of DPHHS in the community and at MSH and MMHNCC.
2 He is responsible for ensuring that the Mental and Addictive
2 Disorders Division of DPHHS operates in conformity with federal

1 .nd state law.

2 35. Carl Keener is the medical director of the Montana
3 State Hospital. As medical director, he is the chief
4 administrative officer of the Montana State Hospital. He is
5 responsible for supervising, directing, organizing, planning,
6 administering, and executing the functions of the Montana State
7 Hospital. He is also responsible for ensuring that the Montana
8 State Hospital operates in conformity with federal and state law.

9 36. Ron Balas is Superintendent at the Montana Mental
10 Health Nursing Care Center. As Superintendent, he is the chief
11 administrative officer of MMHNCC. As superintendent, he is
12 responsible for supervising, directing, organizing, planning,
13 administering, and executing the functions of MMHNCC. He is
14 responsible for ensuring that the MMHNCC operates in conformity
15 with federal and state law.

16 37. The Montana Health Facility Authority is a statutorily
17 created public instrumentality of the state of Montana under
18 Section 2-15-1815, MCA. It consists of a seven member board,
19 whose daily operations are conducted by an Executive Director.
20 Its purpose is to issue bonds, and lend the proceeds therefrom to
21 further health care in the state of Montana. It is a public
22 entity and required to conform its activities to the requirements
23 of state and federal law.

2 38. Jerry Hoover is the Executive Director of the Montana
2 Health Facility Authority. He is responsible for the
2 administration of MHFA, the enactment of policies for MHFA and
2 the conduct of daily affairs for MHFA. Director Hoover is
2 responsible for supervising, directing, organizing, planning,

1 &ministering and executing the functions of MHFA. As Director,
2 **ie** is also responsible for ensuring that MHFA operates in
3 **conformity** with federal and state law.

4 CLASS ACTION ALLEGATIONS

5 39. Pursuant to Federal Rule of Civil Procedure 23 (a) and
6 (b) (2), plaintiffs bring this action on behalf of themselves and
7 **the** class of all persons who are now or in the future will be
a **confined** at MSH or MMHNCC for treatment of a mental disorder.

9 40. The plaintiff class is so numerous that joinder of all
10 its members is impracticable. Approximately two hundred adults
11 **are** confined at MSH; approximately seventy are confined at
12 **MMHNCC**. There are thousands of individuals receiving mental
13 **health** treatment in Montana who are at risk of such confinement.

14 41. These named plaintiffs will fairly represent and
15 **adequately** protect the interests of members of the class as a
16 **whole**. The named plaintiffs do not have interests antagonistic
17 to those of other class members. The named plaintiffs are
18 represented by counsel who can adequately represent the interests
19 of the class. Counsel for plaintiffs have prior experience in
20 class action litigation, have extensive experience representing
21 individuals with mental disorders, and are familiar with the
22 legal claims made by and on behalf of plaintiffs.

23 42. A **community** of interest exists between plaintiffs and
24 members of their class. There are common questions of law and
25 fact because all members of the class are in or at risk of
26 confinement in state institutions.

27 43. All members of the class seek to vindicate rights,
28 privileges, and immunities secured by Title II of the Americans

1 with Disabilities Act and its interpretive regulations.

2 44. The questions of law and fact common to all class
3 members predominate over any- questions affecting individual
4 members of the class.

5 45. The claims of the named plaintiffs are typical of the
6 claims of the class.

7 46. Defendants have acted or refused to act on grounds
8 generally applicable to the class, thereby making appropriate
9 final injunctive and declaratory relief with respect to the class
10 as a whole.

13 STATEMENT OF FACTS COMMON TO ALL CLAIMS

12 47. Plaintiff Shirley Small is confined at MSH, although
13 her treatment team believes her ready for discharge. She is
14 confined because services appropriate to her undifferentiated
15 schizophrenia and borderline intellectual functioning are not
16 available in the most integrated setting appropriate for her, the
17 community. Shirley is institutionalized because DPHHS refuses to
18 provide her the community treatment services that are provided to
19 others and that would allow her to be integrated into a community
20 setting.

21 48. Plaintiff Howard Jay Woods is hospitalized at MSH
22 because of his organic personality disorder developed after two
23 motor vehicle accidents. He receives no specialized treatment
24 and has no realistic hope of receiving any specialized treatment
25 at MSH. Jay could be placed in the community if services were
26 available. As they are not, he is warehoused at MSH. Jay remains
27 institutionalized because DPHHS refuses to provide the community
28 treatment services provided to others that would allow him to be

1 ntegrated into a community setting.

2 49. Andrew Adler is hospitalized at MSH as a result of his
3 Bipolar Disorder and Developmental Disability. He receives no
4 habilitation. He is ready for discharge but languishes on a
5 statewide developmental disability waiting list. He is likely to
6 deteriorate if he remains at MSH. Andy remains institutionalized
7 because DPHHS fails to provide him the community treatment
8 services made available to others that would allow him to be
9 ntegrated into a community setting.

10 50. Plaintiff Dian Wallila is presently hospitalized at
11 MSH. Her diagnosis is mild mental retardation. She receives no
12 habilitation at MSH. Her condition is likely to deteriorate if
13 her institutionalization continues. Dian is institutionalized
14 because the DPHHS refuses to provide her services that are
15 provided to others and would allow her to be integrated into a
16 community setting.

17 51. Edward W. Nelson is a patient at MSH, confined
18 involuntarily under a diagnosis of schizophrenia,
19 undifferentiated, and mild mental retardation. Ed lived for
20 years in the community until his most recent admission in August
21 of 1995. There is no plan to return Ed to his home and prior
22 living arrangements. He receives no habilitation at MSH. He is
23 likely to deteriorate if his institutionalization continues.' Ed
24 is institutionalized because DPHHS refuses to provide the
25 community treatment services made available to others that would
26 allow him to be integrated into a community setting.

27 52. Plaintiff Charles Zwerneman is a patient at MSH. He
28 has met the objectives of his treatment for his schizoaffective

1 **disorder** and polydipsia. Yet he remains institutionalized
2 **because** the treatment services that would make it possible for
3 **him** to return to his home community, services that are provided
4 **to** others, are not made available for him. Charles is
5 institutionalized because the DPHHS refuses to provide the
6 **community** treatment services that would allow him to be
7 integrated into a community setting.

a 53. DPHHS treatment of the named plaintiffs is typical of
9 its treatment of the members of the plaintiff class. Although
10 institutionalization is unnecessary and appropriate treatment
11 services could be provided in the community and are provided to
12 others, they illegally refuse to provide such services in
13 integrated settings appropriate to the needs of plaintiffs and
14 the plaintiff class.

15 THE PLAINTIFF CLASS

16 54. The defendants' treatment of the named plaintiffs is
17 typical of their treatment of the members of the plaintiff class.

18 55. Class members are qualified individuals with
19 disabilities who have been professionally evaluated by the
20 defendants' agents and determined to have mental disorders and to
21 be in need of treatment services. All members of the plaintiff
22 class are "qualified individuals with disabilities" and are
23 protected by the provisions of the ADA. 42 U.S.C. 12102 (2).(A)-
24 (C) .

25 56. Many class members are confined at MSH and MMHNCC even
26 though those facilities are inappropriate placements and provide
27 institutional treatment services that are not as effective as
28 community treatment services and are unnecessary to provide

1 effective treatment.

2 57. All members of the class could be served in the
3 community. Some members of the class are on waiting lists that
4 extend for years. Others need only the expansion of existing
5 services. None require a fundamental alteration in the system.
6 The defendant's have refused to even make the reasonable
7 modifications in the system required to serve these class members
a in the community.

9 58. All members of the class are at risk of unnecessary
10 admissions and continued confinement in order for DPHHS to
11 generate revenue to pay for the costs of reconstruction of MSH.
12 The class is subjected to institutional confinement based upon
13 the need of DPHHS to generate revenue, not based upon their
14 treatment needs.

15 59. All members of the class are the victims of unlawful
16 discrimination based on DPHHS's refusal to provide treatment
17 services to class members in the most integrated setting
18 appropriate to their needs.

19 60. All members of the class are the victims of unlawful
20 discrimination in the separate services and protections they will
21 receive under DPHHS's proposed managed care contract.

22 CAUSES OF ACTION

23 §1. Defendants' illegal refusal to provide services in an
24 integrated setting discriminates against plaintiffs by reason of
25 their disability in violation of 42 U.S.C. 12132 and 42 U.S.C.
26 1983.

27 62. Contrary to the recommendations of its own
28 professionals, and the requirements of law, Defendants continue

1 to violate 42 U.S.C. 12132 and 28 C.F.R. 35.130 (d) which
2 requires DPHHS to provide services to its patients "in the most
3 integrated setting appropriate to the needs of the qualified
4 individuals with disabilities."

5 63. DPHHS's illegal refusal to provide community treatment
6 services violates ADA's requirement that a public entity modify
7 its programs in order to make them accessible to individuals with
8 disabilities by making "reasonable modifications in policies,
9 practices, or procedures when the modifications are necessary to
10 avoid discrimination on the basis of disability." 28 C.F.R.
11 35.130 (b)(7).

12 64. DPHHS's illegal refusal to provide community treatment
13 services violates ADA's requirement that a public entity may not,
14 based upon disability, provide a qualified individual with a
15 service that is not as "effective" as that provided to others. 28
16 C.F.R. 35.130 (b)(1)(iii).

17 65. DPHHS's illegal refusal to provide the same services and
18 protections to plaintiffs as are provided to all others under the
19 managed care proposal violates ADA's requirement that a public
20 entity may not discriminate against plaintiffs by reason of their
21 disability, or provide separate services that are not "necessary"
22 to be as effective as those provided to others. 42 U.S.C. 12132
23 and 28 C.F.R. 35.130 (b)(1)(iv).

24 66. DPHHS's illegal refusal to provide community treatment
25 services violates ADA's requirement that a public entity may not
26 provide different or separate services to an individual or to any
27 class of individuals with disabilities unless such action is
28 "necessary" to provide services that are as effective as those

1 provided to others. 28 C.F.R. 35.130 (b)(1)(iv).

2 67. DPHHS is required by ADA to undertake a programmatic
3 "self-evaluation" of its current services, policies and
4 practices, and the effects thereof. To the extent modification is
5 required, the necessary modifications must be made. 28 C.F.R.
6 35.105 (a)(b). DPHHS has illegally refused to complete a "self-
7 evaluation" for programmatic discrimination, nor has it made the
a necessary modifications as required by law.

9 68. DPHHS's proposal to utilize revenues from MSH and
10 MMHNCC to build a segregated institution and confine plaintiffs
11 therein rather than funding integrated services appropriate to
12 plaintiffs' needs violates 42 U.S.C. 12132 and 28 C.F.R. 35.130
13 (d) which require DPHHS to provide services to its patients "in
14 the most integrated setting appropriate to the needs of the
15 qualified individuals with disabilities."

16 69. MHFA's issuing bonds, and lending the proceeds
17 therefrom to DPHHS, violates ADA's requirement that a public
18 entity, in providing any aid, benefit or service, may not,
19 directly or through contractual, licensing, or other
20 arrangements, on the basis of disability, aid or perpetuate
21 discrimination. 28 C.F.R. '35.130 (b)(i)(v).

22 70. Defendants, through their acts and omissions, have
23 irreparably harmed and will continue to irreparably harm
24 plaintiffs and the class they represent. Plaintiffs have no
25 adequate remedy at law to secure redress of their rights.

26 PRAYER FOR RELIEF

27 WHEREFORE, Plaintiffs pray this Court:

28 71. Assume jurisdiction of this case.

1 72. Order that plaintiffs may maintain this action as a
2 class action pursuant to Federal Rule of Civil Procedure 23.

3 73. Declare the unnecessary institutionalization of
4 individuals with mental disorders to be unlawful.

5 74. Declare unlawful the issuance of bonds and the mortgage
6 loan transaction between defendants, to finance the
7 reconstruction of MSH.

8 75. Declare DPHHS's refusal to undertake and complete the
9 self-evaluation required under ADA, unlawful.

10 76. Declare DPHHS's refusal to provide the same services
11 and protections to plaintiffs and the plaintiff class as are
12 provided to others under the managed care proposal to be
13 unlawful.

14 77. Enjoin MHFA from issuing bonds to finance the
15 reconstruction of the MSH.

16 78. Enjoin MHFA and DPHHS from entering into a mortgage
17 loan agreement to finance the reconstruction of MSH.

18 79. Enjoin DPHHS from entering into any managed care
19 contract that discriminates against plaintiffs and the plaintiff
20 class in the provision of services and protections.

21 80. Issue injunctive relief requiring DPHHS to undertake a
22 self-evaluation as required by law, and make those modifications
23 of its services, policies and practices as are necessary to meet
24 the requirements of the Act.

25 81. Issue injunctive relief directing DPHHS to propose and
26 implement a plan to:

27 (1) appropriately screen and evaluate all patients confined
28 at MSH and MMHNCC to determine treatment needs and determine


1 whether services in a community setting is the most integrated
2 setting appropriate to their treatment needs;

3 (2) ensure that all patients currently receiving treatment
4 at MSH and MMHNCC for whom the most integrated setting
5 appropriate to their needs is a community setting, are
6 discharged; and,

7 (3) ensure that comprehensive community treatment services
8 are provided to plaintiffs so that plaintiffs receive services in
9 the setting that is in the most integrated setting appropriate to
10 their treatment needs.

11 82. Award plaintiffs their costs, expenses and reasonable
12 attorney's fees pursuant to 42 U.S.C. 12205 and 42 U.S.C. 1988.

13 83. Grant such other and further relief as the Court deems
14 just and equitable.

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18 Lonnie J. Olson
Allen Smith, Jr.
19 Maire Gallagher
C.J. Lassila
20 Attorneys at Law
Montana Advocacy Program
21 P.O. Box 1680
316 North Park, Room 211
22 Helena, MT 59624
(406) 444-3889
23
24
25
26
27
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