UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James and Lorie Jensen, as parents, guardians and next friends of Bradley J. Jensen; James Brinker and Darren Allen, as parents, guardians and next friends of Thomas M. Allbrink; Elizabeth Jacobs, as parent, guardian and next friend of Jason R. Jacobs; and others similarly situated,

Plaintiffs,

v.

Minnesota Department of Human Services, an agency of the State of Minnesota; Director, Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Clinical Director, the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Douglas Bratvold, individually, and as Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Scott TenNapel, individually and as Clinical Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; and the State of Minnesota,

Defendants.

Civil No. 09-1775 (DWF/FLN)

ORDER

Mark R. Azman, Esq., and Shamus P. O'Meara, Esq., O'Meara Leer Wagner & Kohl, PA, counsel for Plaintiffs.

Aaron Winter, Scott H. Ikeda, and Anthony R. Noss, Assistant Attorneys General, Minnesota Attorney General's Office, counsel for State Defendants.

Samuel D. Orbovich, Esq., and Christopher A. Stafford, Esq., Fredrikson & Byron, PA, counsel for Defendant Scott TenNapel.

INTRODUCTION

Before the Court is the Court Monitor's August 6, 2014 *Report to the Court: Approval of Revised Olmstead Plan* ("*Olmstead* Plan Report") (Doc. No. 333) recommending Court approval of the State of Minnesota's proposed modifications to Minnesota's *Olmstead* Plan ("Proposed *Olmstead* Plan") (Doc. No. 326-1). For the reasons discussed below, the Court declines to approve the Proposed *Olmstead* Plan as it is currently written.

BACKGROUND

In the Court's December 5, 2011 Final Approval Order for the Stipulated Class Action Settlement Agreement ("Settlement Agreement"), the Court ordered the following with respect to the *Olmstead* Plan:

> Within eighteen (18) months of the Court's approval of this Agreement, the State and the Department shall develop and implement a comprehensive *Olmstead* Plan that uses measurable goals to increase the number of people with disabilities receiving services that best meet their individual needs and in the "Most Integrated Setting," and is consistent and in accord with the U.S. Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 582 (1999).

(Doc. No. 136, Ex. A at 18.) Since the Court's December 5, 2011 Order, the Court and the Court Monitor have reiterated these requirements in numerous orders and reports. (*See, e.g.*, Doc. No. 311 at 2 (reiterating that the *Olmstead* Plan must include "measurable

goals" and providing examples of such goals); Doc. No. 212 at 9 (reiterating that a comprehensive *Olmstead* Plan must use measurable goals).)

Pursuant to the terms of the Settlement Agreement, the State and the Department of Human Services ("DHS") were to develop and implement a comprehensive *Olmstead* Plan within eighteen months of the Court's approval of the Settlement Agreement. (Doc. No. 136, Ex. A at 18.) After the State and DHS failed to complete this directive by the original due date, the Court ordered the State and DHS to file the *Olmstead* Plan with the Court by November 1, 2013—five months after the due date—for the Court's review and approval. (Doc. No. 224 at 5.) The State submitted the *Olmstead* Plan to the Court on October 31, 2013. (Doc. No. 246-1.) On January 22, 2014, the Court provisionally approved the *Olmstead* Plan, subject to the Court's review of the State's modifications and any submissions by Plaintiffs' Class Counsel, and directed the State to file a revised *Olmstead* Plan by July 15, 2014. (Doc. No. 265 at 3-4.)

On July 10, 2014, the State filed the Proposed *Olmstead* Plan that is now before the Court. (Doc. No. 326-1.) In response to the Proposed *Olmstead* Plan, the Plaintiff Class submitted a letter to the Court on July 24, 2014, "reiterat[ing] the Settlement Class positions . . . in [its] prior letters to the Court and Court Monitor concerning the Olmstead Plan" (Doc. No. 332 at 11) and observing that "issues [] remain, including a necessary recommitment and focus needed to complete and implement an *Olmstead* Plan using measurable goals" (*id.* at 10). Specifically, the Plaintiff Class referenced a February 25, 2014 letter to the Court in which the Plaintiff Class expressed concerns that "the Olmstead Plan be strategic, measurable, and clearly state who is responsible, with a

example of a measurable goal: "By July 1, 2015, no fewer than an additional 100 people with disabilities will receive dental services."

Second, with respect to employment, the Proposed *Olmstead* Plan states a goal of "[e]xpanding opportunities for adults with disabilities." (*Id.* at 42.) According to the Proposed *Olmstead* Plan, State agencies will "identify consistent baseline measures to assess progress on increased competitive employment of adults with disabilities (including but not limited to people with mental illness and intellectual/developmental disabilities)" by June 30, 2014, and "establish a baseline for the measures and establish measurable goals to demonstrate progress in increasing competitive employment for adults with disabilities" by September 30, 2014. (*Id.*) Once again, no concrete, measurable goals are articulated. An example of such a measurable goal is the following: "By June 30, 2015, no fewer than an additional 300 people (above the baseline) with disabilities will be competitively employed."

II. Accurate Reporting

Second, and relatedly, the State must ensure accurate progress reporting. Reports to the Court must be accurate, complete, and verifiable. The Court requires the State to report on the following: (1) the number of people who have moved from segregated settings into more integrated settings; (2) the number of people who are no longer on the waiting list; and (3) the quality of life measures. With respect to the first inquiry, any calculation must consider admissions, readmissions, discharges, and transfers—reflecting the dynamic movement of individuals through segregated settings—to determine the net number of people who have moved into more integrated settings. Regarding the second

inquiry, the State must evaluate whether the movement is at a reasonable pace. Finally, with respect to the third inquiry, the State must summarize and submit to the Court any available data and highlight any gaps in information.

Although the Court identifies only two of the most glaring flaws in the Proposed *Olmstead* Plan, the Court reminds the State of its comprehensive responsibilities under the Settlement Agreement and the *Olmstead* decision. The Court urges the State to apply the same passion, care, and concern for individuals with developmental disabilities that the State proclaimed at the time of the Settlement Agreement. When the State assured the Court at the time of the Settlement Agreement that the "important settlement" would "make a huge difference for people in a positive manner" (Doc. No. 146 at 27), the Court did not question the sincerity of the State's declarations. However, nearly three years have passed since the Court approved the Settlement Agreement, and yet the record before the Court indicates that the "new and improved" *Olmstead* Plan heralded by the State has yet to be realized.

Whether the Settlement Agreement and revised *Olmstead* Plan ultimately will improve the lives of individuals with disabilities remains to be seen. The Court is committed to ensure that the Settlement Agreement is not an empty promise or a meaningless gesture to placate individuals with disabilities. As the Court has stated in prior opinions, many individuals with developmental disabilities and their families have lost faith in the improvements promised in the Settlement Agreement. Meaningful progress must be realized across the State. Justice requires no less.

ORDER

Based on the entire record of this case, **IT IS HEREBY ORDERED THAT:**

1. The Court **DECLINES TO ADOPT** the State's Proposed *Olmstead* Plan (Doc. No. [326-1]) at this time.

2. The parties shall submit a revised *Olmstead* Plan to the Court Monitor by November 10, 2014.

Dated: September 18, 2014

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge