

**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,

Civil No. 09-1775 (DWF/BRT)

Plaintiffs,

v.

ORDER

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.

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

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

On March 24, 2017, the Court held a Biannual Status Conference in this matter to receive updates on the status of the *Olmstead* Plan. (Doc. No. 620.)¹ Prior to the Status Conference, the Court received multiple submissions relating to the *Olmstead* Plan. In particular, the Court received the Annual Report on *Olmstead* Plan Implementation (Doc. No. 609), and a revised version of Minnesota's *Olmstead* Plan (Doc. No. 616). The Court commends the *Olmstead* Subcabinet for its continuing efforts to meet the ambitious goals established in the *Olmstead* Plan and for working diligently to update the *Olmstead* Plan in response to public input on its implementation.

During the March 24, 2017 Biannual Status Conference, representatives from the *Olmstead* Subcabinet presented to the Court. Plaintiffs' Class Counsel also provided comments in addition to the Ombudsman for Mental Health and Developmental Disabilities and the Executive Director of the Minnesota Governor's Council on Developmental Disabilities. In addition, *Olmstead* Subcabinet Chair Commissioner Mary Tingerthal sought the Court's approval on two administrative issues relating to the reporting schedule and *Olmstead* Plan Workplans.

Also at the Status Conference, Defendants' Counsel raised an objection to the Court's continuing jurisdiction over this matter. Defendants' Counsel argued that this Court presently lacks jurisdiction in light of the terms of the parties' Settlement

¹ The Court's agenda for this status conference was provided to the parties and invited attendees in advance and may be reviewed at Docket Number 619.

Agreement. Plaintiffs' Class Counsel responded, arguing that the Court has jurisdiction and pointing to the procedural history of this case since the Settlement Agreement was approved.

The Court took the presentations under advisement and has reviewed the submissions addressed at the March 24, 2017 Biannual Status Conference. The Court now issues the following order.

ORDER

Based upon the presentations and submissions before the Court, and the Court being otherwise duly advised in the premises, **IT IS HEREBY ORDERED** that:

1. At the March 24, 2017 Biannual Status Conference, Commissioner Mary Tingerthal, the Chair of the *Olmstead* Subcabinet, presented two administrative proposals for the Court's approval. First, Commissioner Tingerthal proposed an adjustment to the current reporting schedule to move the deadline for reporting *Olmstead* Plan amendments to March 31.² Second, Commissioner Tingerthal proposed that *Olmstead* Plan Workplans no longer be submitted to the Court for review or approval. The Court appreciates Commissioner Tingerthal's attentiveness to ensuring the accuracy of

² The Court's Order for Reporting on *Olmstead* Plan currently provides the following:

DHS shall report to the Court on the implementation of the annual *Olmstead* Plan amendment process. Potential Plan amendments shall be identified and included in each annual report due on or before December 31. Plan amendments adopted by the Subcabinet shall be reported to the Court on or before February 28, or, in the case of a leap year, February 29.

(Doc. No. 544 at 6.)

Olmstead Plan reporting and the efficiency of the *Olmstead* Subcabinet's efforts.

Consistent with these aims, the Court **APPROVES** Commissioner Tingerthal's proposals. To the extent prior Orders of the Court are inconsistent with these proposals, they are hereby superseded.

2. In light of Defendants' objection to the Court's jurisdiction, the Court directs the parties to submit briefing on this issue, addressing whether the Court presently has jurisdiction over this case. The parties shall meet and confer to establish a briefing schedule and submit a proposal to the Court for approval no later than Friday, April 14, 2017. If the parties cannot agree on a briefing schedule, the Court will impose a schedule. The Court reserves the right to hold a hearing on Defendants' jurisdictional objection or direct further briefing from the parties.

Date: April 5, 2017

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