

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Patricia Welsch, et al.,
Plaintiffs,
v.
Arthur E. Noot, et al.,
Defendants.

Following a careful review of the entire record in this matter, I herewith adopt in total the Findings of Fact and Recommendations submitted on July 28, 1982 by Frank J. Madden, Hearing Officer, regarding the above matter.

Respectfully submitted,

Lyle D. Wray
Lyle D. Wray, Ph.D.
Court Monitor

Dated this 28th day
of July, 1982

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Patricia Welsch, et al,

Plaintiffs,

vs.

Arthur E. Noot, et al,

Defendants.

FINDINGS OF FACT AND
RECOMMENDATIONS

No. 4-72 Civil 451

On May 25, 1982, the Court Monitor made an Initial Determination of noncompliance in accordance with paragraph 95(e) of the Consent Decree approved by the Court on September 5, 1980. A subsequent conference with the Court Monitor was scheduled and convened on June 14, 1982 between counsel for the parties. A resolution was not reached at this formal conference, and counsel for the parties agreed that evidence and arguments would be submitted by affidavits and exhibits in lieu of a paragraph 95(g) evidentiary hearing.

Luther A. Granquist, 222 Grain Exchange Building, 323 Fourth Avenue South, Minneapolis, Minnesota, submitted evidence and arguments on behalf of the plaintiffs, and P. Kenneth Kohnstamm, Special Assistant Attorney General, 515 Transportation Building, St. Paul, Minnesota, submitted evidence and arguments on behalf of the defendants.

STATEMENT OF ISSUE

The issue for determination is as follows:

Whether a reduction in the developmental achievement center (DAC) services for Ruth K. from five (5) days a week to three (3) days a week constitutes a violation of paragraph 26 of the Consent Decree.

FINDINGS OF FACT

1. Ruth K. was born on February 18, 1950. Soon after her birth she was diagnosed as being a Down's Syndrome child. She was committed as mentally deficient by the Ramsey County Probate Court on March 20, 1950. In October, 1951, she was placed at

the Sauk Centre Children's Home. In May of 1954 she was transferred to Faribault State Hospital. In May, 1959 she was transferred to Cambridge State Hospital. For the period from 1968 through 1972 she resided at Lake Owasso Children's Home. She returned to Cambridge State Hospital in March, 1972. Exhibit K-3, Appendix C.

2. In her program plans at Cambridge State Hospital prepared in 1980 and in 1981, Ruth K. was diagnosed as being profoundly mentally retarded with Down's Syndrome, having a congenital heart defect, and having moderate hyperopia in both eyes. Exhibit K-3, Appendix D, page 3, and Appendix E, page 6.

3. A referral for community placement was prepared for Ruth K. at Cambridge State Hospital dated February 13, 1979.

That referral stated as follows:

The UNIT V Interdisciplinary Team recommends placement of Ruth in a group home for the retarded and an accompanying DAC. Group Home placement would provide Ruth with a more home-like atmosphere than she has presently experienced. Ruth has the capacity to be stimulated by a wider range of social and recreational activities.

Exhibit K-3, Appendix C, page 3. The annual program plan for Ruth K. at Cambridge State Hospital dated February 19, 1980 states that a placement would continue to be sought for Ruth in the community. Exhibit K-3, Appendix D, page 4. A year later, the annual program plan noted that Ruth had visited the Shire Group Home in July, 1980 and was on their active referral list. Exhibit K-3, Appendix E, page 7.

4. Ruth K. was discharged from Cambridge State Hospital and admitted to the Shire Dunganvin IV Group Home in Elk River, Minnesota, on April 3, 1981. Exhibit K-4, paragraph 5. The discharge plan was prepared by Cambridge State Hospital dated April 3, 1981. That discharge plan provided, in part as follows:

All residents attend either public school or the Sherburne County DAC. Ruth will be attending that DAC, which is located in Big Lake, 9 miles away.

Exhibit K-4, Appendix A. The Shire Group Home admission report and 30 day plan dated April 3, 1981 provided that Ruth would

begin classes at the Sherburne County DAC on April 6, 1981. The DAC program was to include a work activity program five afternoons a week. Exhibit K-4, Appendix B. Ruth K. started attending that DAC on a full-time basis immediately after her admission to the Shire Home. Exhibit K-4, paragraph 5.

5. The Shire Home, which is formally known as Shire Dunganwin IV, is a residential facility for 12 mentally retarded persons licensed pursuant to DPW Rule 34. The Shire Home is located in Sherburne County approximately four miles northeast of Elk River, Minnesota. The Sherburne County DAC is operated by the Sherburne County Developmental Achievement Center, Inc., a non-profit corporation established to provide DAC services for mentally retarded persons in that county. At the present time, the Sherburne County DAC has 13 persons enrolled in an adult program, eight persons in the pre-school program, and four persons in an infant stimulation program. Ruth K. is one of the 13 persons in the adult program. Exhibit K-5.

6. Thirty days after Ruth K.'s discharge from Cambridge State Hospital, the Cambridge State Hospital social worker assigned to her case prepared a 30-day evaluation. That evaluation included the following statement: "Doing well in DAC and group home. Ruth has a lot of potential for growth."

7. Ruth K. has been a participant in the Sherburne County DAC continuously since April, 1981. Ramsey County, the county of financial responsibility, paid for her DAC services at that DAC for the time she was there in 1981 at the per diem rate of \$23.12. Exhibit K-5, paragraphs 8-9.

8. During calendar year 1981, the Sherburne County DAC was financed in part by a grant of \$40,000 to the DAC for that year from Sherburne County and, in addition, by per diem charges for adults of \$11.34 for Sherburne County residents and \$23.12 for persons who were not the financial responsibility of Sherburne County.

9. On January 5, 1982, the Ramsey County Board of Commissioners adopted a resolution which provided, in part, that the Ramsey County Human Services Department was authorized to implement reduction of services in out-of-county developmental achievement centers by negotiating contracts paying "host" counties .85 percent of the current level.

10. By letter dated January 11, 1982 the Sherburne County DAC was informed by the Director of the Ramsey County Community Human Services Department that a maximum dollar amount would be determined for each Ramsey County participant receiving DAC services in another county. Exhibit K-5, Appendix A. The maximum amount allowable for services in the Sherburne County DAC for Ruth K. was \$4,088. Exhibit K-5, paragraph 10 and Appendix B.

11. The Sherburne County DAC offers 205 days of service to participants each year. Exhibit K-5, paragraph 15. The \$4,088 indicated as the maximum payment by Ramsey County is approximately 85 percent of the amount which would have been paid for a full year of service in 1981 at a per diem rate of \$23.12.

12. In 1982, there was some question whether Sherburne County would continue to provide a portion of the support for the Sherburne County DAC in grant form as had been done in 1981. Because of this uncertainty, the per diem rate to be established for adults receiving services at the Sherburne County DAC was up in the air for a while. Ultimately, a per diem rate of \$32.69 was established. Exhibit K-5, paragraphs 7, 10.

13. Once the per diem rate was established for the Sherburne County DAC for 1982, it became apparent that the cost per client per year for 1982 for an adult participant would total \$5,696.23. Since this amount was in excess of the maximum payment offered in the contract submitted to the Sherburne County DAC by the Ramsey County Human Services Department, the Sher-

burne County DAC by letter dated April 15, 1982 rejected the placement agreement offered by Ramsey County and submitted its own placement agreement. Exhibit K-5, Appendix B. This letter was followed by a letter dated April 27, 1982 from the Sherburne County DAC to the Ramsey County Community Human Services Department which provided for payment at the annual amount established by Ramsey County but stipulated that full time services would be provided until July 19, 1982. Exhibit K-5, Appendix C.

14. By letter dated May 3, 1982 the Ramsey County Community Human Services Department accepted the placement agreement offered by the Sherburne County DAC which provided for full time services within the stated limitation of \$4,088. Exhibit K-5, Appendix D. This agreement provided for services from January 1, 1982 through July 19, 1982. Exhibit K-5, Appendix E.

15. By letter dated May 14, 1982, Ardo M. Wrobel, the Director of the Mental Retardation Division of the Minnesota Department of Public Welfare, informed the Sherburne County DAC that a refusal to contract with a county threatened with budget deficits for less than a full five days per week program would constitute a violation of the Department's Rule 31. That letter also contained the following statement:

Residential facilities will be expected to take up the slack and share in the deficit burden by doing the best that they can to provide alternative services, such as recreational activities, while the client is not in the DAC.

Exhibit K-5, Appendix F. The Shire Group Home was not contacted by anybody from the Department of Public Welfare with regard to the program and activities which could be provided at the Shire Home if Ruth K. were not in attendance at the DAC two days a week. Exhibit K-4, paragraph 11. It was not until June 15, 1982 that the Program Facility Director at the Shire Group Home saw a copy of the letter from Mr. Wrobel dated May 14, 1982. Id.

16. A number of the statements in Mr. Wrobel's letter of May 14, 1982 (Exhibit K-5, Appendix F) are similar to statements by the defendant Noot in a letter to the Director of the Ramsey County Community Human Services Department dated March 17, 1982. Exhibit K-9. A similar position by the Department of Public Welfare is expressed in the letter from defendant Noot to the Director of the Ramsey County Community Human Services Department dated May 18, 1982. Exhibit K-12.

17. Mr. Wrobel's directives in his letter to the Sherburne County DAC of May 14, 1982 were referred by the DAC to the Sherburne County Social Services Agency. Exhibit K-5, Appendix G. Mr. Wrobel discussed the questions raised in his May 14 letter with Donald B. Strei, the Director of Sherburne County Social Services on June 4, 1982. Exhibit K-3, Exhibit G; Exhibit K-5, Appendix H. Mr. Strei agreed that:

To maintain the DAC license, a flexible admission in scheduling policy within the limits of five days or three full days weekly, minimum to a maximum of five full days weekly will be adhered to.

Exhibit K-3, Appendix G. Mr. Wrobel acknowledged this reduction was approved "reluctantly" because Mr. Strei "fully supports his case worker's plan for a full program." Exhibit K-5, Appendix H.

18. By letter dated June 9, 1982 Mr. Wrobel wrote to David Perrizo, the Contract Manager for Purchase of Services of the Ramsey County Community Human Services Department, and enclosed a copy of Mr. Strei's letter of June 7. Exhibit K-7.

19. At a conference of counsel for the parties and Mr. Wrobel with the Court Monitor on June 14, 1982 Mr. Wrobel reported that Ramsey County would enter into a revised purchase of service contract which would provide for a minimum of three day service at the Sherburne County DAC for Ruth K. for the rest of 1982, even if the \$4,088 maximum payment set earlier in the year by the Ramsey County Community Human Services Department were exceeded. In a telephone conversation on June

17, 1982 between the Sherburne County Social Worker responsible for development of Ruth K.'s program plan and Mr. Perrizo, indicated that Ramsey County payment would still be limited to the total annual amount of \$4,088. Exhibit K-3, paragraph 22.

20. Subsequently, by letter to Sherburne County Social Services dated June 23, 1982, Mr. Perrizo indicated that Ramsey County would provide additional funding for DAC services for Ruth K. beyond the allocated funding of \$4,088. That letter stated that Ramsey County "will provide funding for three days of services per week beginning September 1, 1982 and ending December 31, 1982 at the current per diem of \$32.60." Exhibit K-14. According to a memorandum from Mr. Wrobel to Ken Kohnstamm dated June 22, 1982, this action was taken in response to a personal request from Commissioner Noot. Exhibit K-15.

21. The net effect is that for a portion of calendar year 1982, Ramsey County, the county of financial responsibility for Ruth K., will provide funding for only three days of the five days a week DAC program provided at the Sherburne County DAC.

22. The Sherburne County DAC received no payment whatsoever from Ramsey County for DAC services provided Ruth K. during calendar year 1982 from the beginning of the year until June 21, 1982. Exhibit K-5, paragraph 12. On June 22, 1982, the Sherburne County DAC received payment from Ramsey County for the services provided for Ruth K. from January 1, 1982, through May 31, 1982.

23. The documents submitted to the Court Monitor demonstrate that the decision to reduce the DAC program provided for Ruth K. was not a result of an individual determination of her needs made by appropriate Ramsey County officials, but was rather based upon an across-the-board cut in services as a result of reported fiscal problems by Ramsey County. No claim to the contrary is made by the defendant Noot. Indeed, in Mr. Wrobel's memorandum of June 22, 1982 (Exhibit K-15) he

stated that when a revised purchase of service contract for three day service for the rest of the year was received, "Ramsey [County] will be 'on line' with Department policy on cutbacks due to financial constraint."

24. No representative of either Ramsey County or Sherburne County social services departments was present at the discharge planning meeting for Ruth K. at Cambridge State Hospital on April 3, 1981. Exhibit K-4, Appendix A; Exhibit K-3, Paragraph 11. No arrangements were made at that time by the Ramsey County Community Human Services Department to have Sherburne County provide social services for Ruth K. Exhibit K-3, paragraph 11. A formal request was not made until May 20, 1982 in a letter to Sherburne County Social Services. Exhibit K-3, Appendix B. In his letter to Mr. Wrobel dated June 7, 1982, Mr. Strei, the Director of Sherburne County Social Services, indicated that in the 13 months which followed the placement at the Shire Home of Ruth K., there was "no direct contact with the group home nor the client ... by Ramsey [County] staff." Exhibit K-3, Appendix G.

25. All of the residents of the Shire Group Home attend either public school or the Sherburne County DAC. Exhibit K-4, Appendix A. Except in those instances in which a resident is ill and must stay home from the DAC or from public school, there is no consistent staff coverage available for Shire residents during the period from 9:30 a.m. until 3:30 p.m. on days when the DAC and the public school are in session. Exhibit K-4, paragraph 16. The budget for the Shire Home has been developed by taking into consideration the necessity for additional day time staff coverage during the holiday periods and during those periods when the DAC and the public school are not in session. Exhibit K-4, paragraph 14.

26. The Shire Home, because all of the residents are gone during the day to the DAC or the public school, has scheduled

prime programming time in the residential facility from 4:30 p.m. to 9:30 p.m. on weekdays. During that period of time three direct care staff are on duty. Two staff persons are normally on duty from 3:30 p.m. when the residents return until 4:30 p.m. and during the later evening hours from 9:30 p.m. to 11:00 p.m. Exhibit K-4, paragraph 15.

27. There are three staff persons from the Shire Group Home who normally work during the daytime hours when the residents are away at the DAC or at the public school. A cook-housekeeper starts work at 12:30 p.m. She is not considered a part of the direct care staff and would not be assigned resident care and supervision responsibilities. The services coordinator for the Shire Home has been assigned to work from 9:30 a.m. to 6:00 p.m. two days a week. On those days that person has the responsibility to do office work, take residents to medical appointments, attend team meetings on residents, and similar activities. Exhibit K-4, paragraph 16. The program facility director of the Shire Home has responsibility for supervision and administration both at the Shire Group Home and at a camp operated by Dungarvin. Exhibit K-4, paragraph 3. This person allocates three days a week to Shire-related work. That person is not available on a regular basis to provide supervision to residents during those days that are involved with Shire-related matters. Exhibit K-4, paragraph 16.

28. The present Shire budget will not permit employment of additional staffing to provide care and supervision for Ruth K. or any other resident on a regular two-days-a-week basis. Exhibit K-4, paragraph 17. The program facility director of the Shire Home concluded that the only way in which regular coverage could be provided for Ruth K. at the Shire Home on an ongoing basis for two days a week would be by assigning the services coordinator that responsibility or taking a staff person who would otherwise be assigned to work during the prime programming hours from 4:30 p.m. to 9:30 p.m. and having that

person work in the day time hours. It is the judgment of the Shire Program Facility Director that the other responsibilities already assigned to the Services Coordinator render that person unavailable to provide supervision on a regular basis for two days a week for Ruth K. Exhibit K-4, paragraph 16. The Program Facility Coordinator also indicated that a change in the assignment of one of the late afternoon and early evening staff would diminish the quality of service Shire could provide for all of its residents. Exhibit K-4, paragraph 19. That judgment was shared by the Sherburne County Social Worker. Exhibit K-3, paragraph 28.

29. As of June 17, 1982, the Program Facility Director at the Shire Group Home had not decided whether or not to demit Ruth K. if DAC programming is available only three days a week. She stated as follows:

For the reasons I have discussed above, assignment of a Shire staff person to her two days each week harms the Shire Program as a whole with minimal, if any, benefit to her [Ruth K.]. On the other hand, I do not want to make the decision which could lead to her return to Cambridge State Hospital.

Exhibit K-4, paragraph 24.

30. Only Sherburne County Social Services staff have had direct contact with the Sherburne County DAC and the Shire Home with regard to the program provided for Ruth K. Exhibit K-3, Appendix G. Once a formal request for service was made by Ramsey County, Exhibit K-3, Appendix B, Sherburne County indicated that case management would formally be provided for Ruth K. Exhibit K-3, Appendix I. It was the position of the Sherburne County Social Services Department that "Ruth needs full-time developmental services and continuous 24-hour supervision to remain a viable and appropriate community resident." Exhibit K-3, Appendix 1. Sherburne County recognized that, according to the Department of Public Welfare policy, her DAC services could be limited. However, it is the opinion of the Sherburne

County Social Worker that such a reduced program would be detrimental to Ruth K. Exhibit K-3, paragraph 27. That Social Worker did not base his opinion on the assumption that full-time DAC services are required for all adult mentally retarded persons who are not capable of sheltered work or competitive employment. Exhibit K-3, paragraph 24. His opinion was based on his assessment of individual needs of Ruth K. Exhibit K-3, paragraphs 24 through 30. For similar reasons, the Director of the Sherburne County DAC and the Program Facility Director at the Shire Group Home also determined that a full-week program was required to meet the individual needs of Ruth K. Exhibit K-4, paragraphs 21 through 23; Exhibit K-5, paragraphs 17 through 20. The Shire Home Program Facility Director also indicated that no programming appropriate to meet Ruth K.'s individual needs could be provided at the Shire Home if Ruth K. were the only one left behind of the residents of that residential facility. Exhibit K-4, paragraphs 21 through 23.

31. The record does not show what final plans have been developed by Ramsey County for provision of DAC services in calendar year 1983 for persons for whom it is the county of financial responsibility. However, Ramsey County has submitted to the defendant Noot a proposal for delivery of DAC services in 1983 which provides for half-time service for all adult clients beginning by January 1, 1983. Exhibit K-10, pages 2-3. With regard to persons in out-of-county placements such as Ruth K., that proposal states as follows:

For out-of-county placements we will establish an annual per client limit which is based on each individual client and recommend the same half time services listed above.

Exhibit K-10, page 3.

32. By letter dated June 4, 1982, the defendant Noot responded as follows to the proposal from Ramsey County:

I have received your plan for meeting the day service needs of retarded persons who are or will be residing in the community. It does not conflict with this Department's policies concerning DAC cutbacks when a county is faced with budget deficits. You may proceed to implement the plan with Department support.

Exhibit K-13.

33. The inference seems inescapable that continued cutbacks in DAC services for calendar year 1983 are likely for Ruth K., whether she resides at the Shire Home or elsewhere.

DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

In a Memorandum dated June 24, 1982 from Ardo Wrobel to P. Kenneth Kohnstamm and again in a letter dated July 12, 1982 from P. Kenneth Kohnstamm to the Court Monitor, the defendant raised the defense that the two issues stated in the Court Monitor's Notice of Initial Determination have been resolved, and, therefore, there is no basis for continuing with these proceedings. Specifically, in his Notice the Court Monitor stated the following:

"Provision has not been made for the next year to provide plaintiff class member Ruth Ann Kaufman (discharged April 3, 1981 from Cambridge State Hospital) with developmental day program (Consent Decree, paragraph 26). As a result of this circumstance her residential placement may be terminated (Consent Decree, paragraph 24)."

The defendant alleges that since steps have been taken to insure that Ruth K. will be provided services next year and since there is no evidence that her residential placement will be terminated, the issues as specifically stated in the Initial Notice have been resolved.

In response, the plaintiffs contend that such a narrow and technical reading of the issues is inappropriate since it subverts the intended effect of the Consent Decree and would serve only to cause the plaintiff to initiate the review process and invoke the compliance procedures all over again regarding the services provided to Ruth K. Moreover, plaintiffs allege that the full range of issues, including whether a reduction in DAC services for Ruth K. is appropriate, have been recog-

nized from the outset and have been addressed both in the formal conference convened by the Court Monitor and in the evidence and exhibits submitted by the parties.

This issue raised by the defendant can be resolved based upon the provisions of the Consent Decree setting forth the Court Monitor's responsibilities and power. These provisions, contained in Part VIII, paragraphs 91-98 of the Consent Decree, impose upon the Court Monitor the duty to "receive and investigate reports of alleged noncompliance with the provisions of this Decree." Consent Decree, paragraph 95(d). Paragraph 95(e) of the Consent Decree requires that if the Monitor believes a provision of the Decree is not being complied with, the Monitor must provide notice to counsel for the parties stating the factual basis for his belief. The Court Monitor's Initial Notice complied with these requirements. Exhibit K-1. Specifically, as the factual basis for the initial determination of noncompliance, the Monitor stated that provision had not been made for a developmental day program services for Ruth K. and that as a result her residential placement might be terminated.

Nothing in the Consent Decree restricts the Monitor's investigation to only those facts which are available at the time the initial determination is made. Likewise, nothing in the Consent Decree requires that a new proceeding with a new statement of facts be initiated when the investigation already in process has disclosed additional facts which give rise to a broader range of issues related to the initial statement of issues as set forth in the Monitor's Notice. To conclude otherwise would be to interfere with the procedures agreed upon by both parties for the investigation and resolution of issues relating to alleged noncompliance with the provisions of the Consent Decree, and to require the plaintiffs to submit a new statement of facts and issues regarding the services provided to Ruth K. would be costly, inefficient and time-consuming.

The Consent Decree should not be construed in such a narrow and restrictive manner. Rather, the provisions of the Consent Decree must be read as a whole in order to effectuate its purpose and the intent of the parties. It is clear from a reading of all the provisions relating to the responsibilities and duties of the Court Monitor that broad authority has been conferred upon him to thoroughly investigate all issues relating to an allegation of non-compliance.

Finally, it must be noted that from the outset the issues in the present matter were not narrowly defined and stated. Rather, as is evident from the May 3, 1982 letter from Luther Granquist to the Court Monitor, concerns were raised regarding not only the fact that no provision had yet been made for services for Ruth K. for next year, but also a much broader concern regarding possible changes in Ruth K.'s program. In addition, while certain specific facts were stated by the Monitor as the basis for his initial determination, the Monitor also referenced paragraphs 24 and 26 of the Consent Decree, thereby making these provisions and alleged noncompliance therewith a proper basis for investigation of all facts and issues related to those stated initially in the Monitor's Notice. Similarly, it is clear from a review of the affidavits and exhibits submitted into evidence that beginning at least with the formal conference conducted by the Monitor on June 14, 1982, a broad range of issues were presented and discussed by the parties relative to the Ruth K. matter.

On the basis of the foregoing, the hearing officer concludes that the issues are broader than the statement of issues relied upon by the defendant, and the Ruth K. matter was not resolved by the fact that the Department of Public Welfare acted to insure that DAC services will be provided to Ruth K.

next year.

The defendant has also reiterated its jurisdictional objection made in the Bruce L. matter. In the Bruce L. matter the defendant contended that the Court Monitor was without jurisdiction to consider the merits of the paragraph 26 compliance issues with respect to plaintiff Bruce L. In support of its position, the defendant cited Lindstrom v. State of Minnesota and Kittson County Welfare Board, No. 9273 (Minn. Dist. Ct., 9th Judicial Dist., December 10, 1981), appeal filed sub nom., Swenson v. State, No. 82-34 (Minn. January 11, 1982), and Minn. Stat. §§252.21 and 252.24, subd. 1. This jurisdictional issue was thoroughly discussed in the hearing officer's April 7, 1982 Findings of Fact and Recommendations in the Bruce L. matter, and the hearing officer concluded that the Consent Decree conferred upon the Court Monitor the authority to make recommendations regarding the merits of the paragraph 26 compliance issues presented in the Bruce L. matter.

In his Memorandum Order filed July 14, 1982 in an appeal of the Bruce L. matter, United States District Judge Earl R. Larson concurred in this conclusion by stating the following:

The Court Monitor found, and the Court concurs, that paragraph 27, insofar as it invokes section 256.045, only comes into play when a resident objects to a proposed placement. By contrast, the present proceeding is concerned with the issue of compliance with a discharge plan that has been agreed to by all concerned.

Based on the Court's above noted decision, the hearing officer concludes that the Court Monitor has authority pursuant to the Consent Decree to make recommendations regarding the merits of the paragraph 26 compliance issues raised in the present proceedings.

The plaintiff asserts that the defendant has failed to comply with the Consent Decree by failing to assure that appropriate DAC services will be provided to Ruth K. pursuant

to paragraph 26 of the Consent Decree. Specifically, it is the contention of the plaintiff that based on the discharge plan prepared by Cambridge State Hospital staff, the "appropriate" program for Ruth K. includes placement in the Shire Dungarvin IV Group Home in Elk River and a DAC program to include a work activity program five afternoons a week. Exhibit K-4, Appendixes A and B. Based on financial constraints, Ramsey County, the County financially responsible for Ruth K., has allocated funding which will reduce DAC services for Ruth K. from five days to three days a week for the period September 1, 1982 through December 31, 1982. Exhibit K-14. In addition, Ramsey County has submitted a proposal for DAC services in 1983 which provides for half time services for all adult clients beginning January 1, 1983. The plaintiffs submit that since this reduction is based solely upon financial considerations rather than upon an individualized determination of Ruth K.'s needs, the reduction to three days DAC services is not appropriate and is therefore in violation of paragraph 26 of the Consent Decree.

The defendant has relied upon the Lindstrom decision in support of its position that the reduction in DAC services for Ruth K. was permissible and appropriate since it resulted because of the budget deficit in Ramsey County. The defendant further contends that the provision of DAC services three days a week is "appropriate" pursuant to paragraph 26 of the Consent Decree.

A review of the evidence and arguments submitted by the parties indicates that the issue regarding compliance with paragraph 26 presented in the present proceeding is virtually indistinguishable from the issue argued in the Bruce L. matter. Therefore, the paragraph 26 compliance issue raised here must be resolved in light of the July 14, 1982 Memorandum Order of

the United States District Court. Specifically, the Court concurred with the April 7, 1982 Findings of Fact and Recommendations in the Bruce L. matter, that the word "appropriate" in paragraph 26 "envisions an individualized determination of the services to be provided to each discharged person." The rationale for this conclusion was stated by the court as follows:

The propriety of this interpretation is established by reference to a number of allied provisions of the Decree. Paragraph 21 requires an annual individual assessment of the needs each resident will have for community services after discharge. The focus of this assessment is to be on the needs of the resident rather than the services that may already be available. Paragraph 22 requires the preparation of an individualized discharge plan which is to specify the developmental programs that will be made available to each discharged class member. After discharge into the community, the county social worker is required to visit the class member, both to ascertain that he or she is receiving the services required by the discharge plan and to review the 'appropriateness' of the placement. Paragraph 24 provides that '[p]ersons discharged from state institutions shall be placed in community programs which appropriately meet their individual needs.' In sum, the Decree contemplates a system of individually designed and executed community programs."

The court further found that in determining what constitutes an appropriate level of DAC services under paragraph 26, the first consideration should be the discharge plan because it is "the product of the persons who have the most knowledge of the resident's individual needs." While the court found that changes may be made in a resident's discharge plan, the court explicitly stated that such changes must be based upon the individualized needs of the class member.

In ruling on the appropriateness of the reduction in DAC services for Bruce L., the court established a more stringent standard than that set forth in the April 7, 1982 Findings of Fact and Recommendations submitted by the hearing officer. Specifically, whereas the hearing officer stated that "the defendant must insure that the county responsible for community placement is using all available funding appropriated for

purposes of providing DAC services and that the individual class member is continuing to receive DAC services which are 'appropriate' as mandated by paragraph 26 of the Consent Decree," the court placed the burden on the defendant to show that three days per week of DAC services would be "more appropriate" than five days per week in Bruce L.'s individual case. Moreover, the court stated that the defendant's duty to assure the provision of appropriate DAC services is not satisfied by mere acquiescence in the actions of the counties.

In summary, the court analyzed the issue by first looking to whether a reduction in DAC services is appropriate and secondly, by looking to whether the Commissioner has carried out his responsibility of assuring that appropriate DAC services are provided to the individual class member. With respect to the second issue, the court noted that the defendant failed to address the possibility of alternative funding mechanisms for DAC services and the potential of these alternatives for assuring the provision of services to Bruce L. The court concluded by incorporating the following directive to the Commissioner:

The defendant Commissioner of Public Welfare, his successors in office, and all persons in active concert or participation with him, shall forthwith take whatever action or actions may be necessary to assure that Bruce L. is provided developmental achievement services at the Nobles County DAC on a full day, full time basis until such time as a modification of his DAC programming is made in accordance with the provisions of the Consent Decree on the basis that such modification is necessitated and justified to meet his individual need.

Applying the court's two-pronged analysis to the present matter, it is necessary to first look to whether a reduction in DAC services for Ruth K. is appropriate. The plaintiffs have submitted extensive affidavits and evidence regarding the necessity of five-day-a-week DAC services to meet Ruth K.'s individual needs. Specifically, the interdisciplinary team with responsi-

bility to develop and annually assess Ruth K.'s discharge program determined that provision for DAC services five days a week was necessary to meet Ruth K.'s individual needs. Exhibit K-4, Appendix B. Evidence was likewise presented that based on an assessment of Ruth K.'s individual needs, the Sherburne County Social Worker concluded that a reduced program would be detrimental to Ruth K. Exhibit K-3, paragraph 27. This same conclusion was reached by the Sherburne County Social Services Department, the Director of the Sherburne County DAC, and the program facility director at the Shire Group Home. Exhibit K-3, Appendix 1; Exhibit K-4, paragraphs 21-23; Exhibit K-5, paragraphs 17-20.

The defendant has presented no evidence to rebut the evidence submitted by the plaintiffs regarding Ruth K.'s individual needs. Instead, the defendant has merely alleged that it believes that the standard set forth in paragraph 26 has been met. In addition, it is clear that the reduction in Ruth K.'s DAC services was a result of a budget deficit faced by Ramsey County, the county financially responsible for Ruth K. Exhibit K-8 and Exhibit K-15. Therefore, based on a review of the entire record and the absence of any evidence to the contrary, the hearing officer concludes that the appropriate level of DAC services to meet the individual needs of Ruth K. is five days a week, and that the reduction in DAC services to three days a week does not meet the criterion of paragraph 26 of the Consent Decree.

Secondly, it is necessary to determine whether the Commissioner has carried out his responsibility of assuring that appropriate DAC services are provided to Ruth K. The record establishes that steps have been taken to assure that Ramsey County will allocate funding for three days of DAC services per week for Ruth K. for the period September 1 through December 31, 1982, and that this action was taken in response to a personal request from the Commissioner. Exhibit

K-14 and Exhibit K-15. However, because of staffing and budgetary limitations, regular full time supervision of Ruth K. for two days a week cannot be provided at the Shire Group Home. Specifically, the plaintiffs submitted evidence that the present Shire budget will not permit employment of additional staff to provide care and supervision for Ruth K. on a regular two days a week basis. Exhibit K-4, paragraph 17. In addition, plaintiffs submitted evidence that changes in assignments of staff in an attempt to provide such care and supervision would diminish the quality of service which could be provided for all residents of the Shire Group Home. Exhibit K-4, paragraph 19. Therefore, if DAC services are provided to Ruth K. only three days a week, the possibility exists that the Program Facility Director at the Shire Group Home may decide to demit Ruth K. Exhibit K-4, paragraph 24.

There is no evidence to indicate, as noted by the court in the Bruce L. matter, that the Commissioner has explored other options such as alternative funding mechanisms which might potentially assure the provision of services to Ruth K. On the contrary, the evidence establishes that the Commissioner has acquiesced in Ramsey County's proposal to provide half time DAC services for all adult clients in 1983. Exhibits K-10 and K-13. As stated by the court, the duty of the Commissioner to assure the provision of appropriate DAC services for Ruth K. is not fulfilled by mere acquiescence in the action of the counties. Based on the foregoing, the hearing officer concludes that the Commissioner has not done everything he can to assure compliance with paragraphs 24 and 26 of the Consent Decree.

On the basis of the above noted Findings of Fact, Discussion and Conclusions, the hearing officer makes the following specific recommendations:

1. That the Commissioner of Public Welfare, his successors in office, and all persons in active concert or participation with him, shall forthwith take whatever action or actions may be

necessary to assure that Ruth K. is provided developmental achievement center services at the Sherburne County DAC on a five day a week basis until such time as a modification of her DAC programming is made in accordance with the provisions of the Consent Decree on the basis that such modification is necessitated and justified to meet her individual needs.

2. That the Commissioner of Public Welfare, his successors in office, and all persons in active concert or participation with him, shall forthwith take whatever action or actions may be necessary to assure that appropriate community placement is provided to meet Ruth K.'s individual needs in accordance with the Consent Decree.

Respectfully submitted,



Frank J. Madden
Hearing Officer
Suite 200 Tallmadge Building
1219 Marquette Avenue South
Minneapolis, Minnesota 55403
612/333-3160

Dated this 28th day
of July, 1982.