

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Civil No. 03-CV-2438 (JRT/FLN)

The Association of Residential Resources in  
Minnesota (ARRM),  
a Minnesota nonprofit corporation,  
*on behalf of its members,*

and

Mary Rodenberg-Roberts,  
as Guardian and Parent of  
Amari Roberts,

Plaintiffs,

**SETTLEMENT AGREEMENT**

vs.

Minnesota Commissioner of Human Services,  
Kevin Goodno, *in his official capacity,*

and

Shirley Patterson York,  
*in her official capacity as*  
Disability Services Division Director of the  
Minnesota Department of Human Services,

Defendants.

WHEREAS, this Settlement Agreement is entered into between The Association of Residential Resources in Minnesota (ARRM), a Minnesota nonprofit corporation, on behalf of its members, Mary Rodenberg-Roberts, as Guardian and Parent of Amari Roberts (collectively known as "Plaintiffs"), Kevin Goodno, in his official capacity as Commissioner of the Minnesota Department of Human Services, and Shirley Patterson York, in her official capacity as Disability Services Division Director of the Minnesota Department of Human Services (referred to below as "Defendants" or "DHS"); and

WHEREAS, DHS oversees the counties in their administration of the Home and Community-Based Service Waiver for People with Mental Retardation or Related Conditions ("MR/RC waiver"), including assuring the federal government that the waiver meets the relevant requirements of the federal Medicaid Act, and its implementing regulations; and

WHEREAS, in 2003, DHS sought and received approval from the federal government to amend the method of establishing overall allocation limits within which the counties authorize services to recipients of waived services, also referred to as the rebasing amendment; and

WHEREAS, this amendment is intended only to manage the rate of growth in expenditures to reasonable levels, so that the waiver remains within the amounts appropriated by the legislature for these services and within the overall budget neutral formula required by the federal government; and

WHEREAS, after receiving their new waiver allocations under the rebasing amendment, certain counties proposed and, in some cases, implemented procedures for establishing waiver budgets of in home waiver recipients and announced across-the-board payment rate reductions that would have resulted or did result in reductions in authorized funding for waiver group home providers and in home waiver recipients. Dakota County, Sherburne County, Anoka County and Carver County initially announced or considered provider payment rate reductions between 7% and 23%, and Ramsey County and Hennepin County initially amended their respective procedures for approving changes to service agreements; and

WHEREAS, on March 11, 2003, Plaintiffs filed a lawsuit against DHS officials Goodno and York, and then filed an Amended Verified Complaint on July 25, 2003, alleging that DHS officials violated certain provisions of the federal Medicaid Act and certain constitutional

provisions including the Due Process and Supremacy Clauses of the United States Constitution when DHS began to implement the federally approved amendment; and

WHEREAS, the federal district court issued a temporary restraining order in *ARRM v. Goodno et al.* on March 14, 2003, prohibiting reductions in payments on behalf of individual beneficiaries. Dakota and Ramsey County implemented reductions to provider rates before that restraining order took effect. On August 29, 2003, the Court dissolved the order and denied Plaintiffs' first motion for a preliminary injunction. The Court issued a second temporary restraining order on May 20, 2004, prohibiting provider rate negotiations in Sherburne County, but ultimately denied Plaintiff ARRM's motion for a preliminary injunction and dissolved that temporary restraining order on August 18, 2004; and

WHEREAS, in denying Plaintiff ARRM's second motion for a preliminary injunction, the federal district court noted that ARRM members are not precluded from recovering in state court under contract theories from counties that attempt to impose unilateral contract changes; and

WHEREAS, the federal district court, after dissolving the first *ARRM* TRO, issued a temporary restraining order in a related case, *Masterman, et al. v. Goodno*, on September 16, 2003, similarly prohibiting reductions in payments on behalf of individual beneficiaries; and

WHEREAS, the federal district court subsequently denied Plaintiffs' motion for a writ of mandamus compelling the federal government to review the impact of the rebasing amendment on Minnesota's MR/RC waiver program. In addition, the Court granted in part and denied in part Defendants' motion for judgment on the pleadings. The Court dismissed Plaintiffs' Medicaid Act claims concerning retroactive approval and validity of the waiver, as well as Plaintiffs' Contract Clause claim. The Court further found that Plaintiffs' First Amended

Complaint stated causes of action under the equal access provision of the Medicaid Act, 42 U.S.C. § 1396a(a)(30)(A), the substantive and procedural due process provisions of the U.S. Constitution, and the Supremacy Clause of the U.S. Constitution. The federal court further held that Plaintiff Rodenberg-Roberts could pursue a cause of action under 42 U.S.C. § 1396n(c)(2)(A) on whether DHS provided adequate assurances to the Secretary of the Centers for Medicare and Medicaid Services ("CMS") that necessary safeguards protect the health and welfare of individuals receiving services under the waiver; and

WHEREAS, in the related case *Masterman et. al v. Goodno*, the federal district court subsequently granted in part and denied in part Defendant's motion to dismiss Plaintiffs' Medicaid claims and Americans with Disabilities Act claim. The Court dismissed Plaintiffs' claims against Defendant under 42 U.S.C. § 1396a(a)(1), but denied dismissal as to the remaining claims under 42 U.S.C. §§ 1396n(c)(2)(A), 1396a(2)(A), 1396a(a)(10)(B), 1396n(c)(2)(C), 1396n(c)(4)(B) and 12132. The Court further granted a preliminary injunction to the individual Plaintiffs to preserve their current level of benefits for the duration of that litigation, but denied Plaintiffs' injunctive relief on a program-wide basis; and

WHEREAS, Defendant Goodno and the Masterman Plaintiffs entered into a Settlement Agreement effective June 30, 2004, and a Stipulation of Dismissal with Prejudice on that same date; and

WHEREAS, Defendant Goodno, and through him, DHS, is the single state agency responsible for overseeing the proper administration of Minnesota's Medical Assistance program; and

WHEREAS, beginning in June 2003, DHS made four adjustments to county budgets in 2003 totaling almost thirty-nine million dollars (\$39,000,000) based upon updated information

available to DHS through its Medicaid Management Information System. DHS asserts that these adjustments were in compliance with the approved federal amendment that has provisions to ensure that the established allocations to counties fully reflect actual costs plus inflators and does not act as an unintended budget cut to recipients or to providers; and

WHEREAS, after the commencement of this litigation, the Minnesota Legislature enacted an express provision in state law obligating counties to ensure that reductions in authorized services for an individual do not jeopardize the health, safety and welfare of the waiver beneficiary; and

WHEREAS, since the commencement of this litigation, DHS has also taken several steps to administer the waiver in a responsible manner, including the following steps that pertain to modifying the waiver budget methodology:

- Established 2004 budgets by using the 2003 budgets — including the upward adjustment of about \$39 million dollars statewide — as the base amount, and added money for acuity (1%) and amounts to cover the full annual costs of persons added to the waiver through "conversion slots" during the year.
- Committed to using the same budget methodology in calendar year 2005 as it used to establish the 2004 budgets, thus giving the system greater stability and predictability, and obtained federal approval for such change.
- Issued a Request for Proposal to seek a consultant who will make recommendations as to how to modify the MR/RC allocation methodology to increase stability and predictability of the allocation amounts available to the counties. DHS plans to develop a new funding method with an anticipated rollout date during calendar year 2006, with full implementation on January 1, 2007. Among the factors reviewed by the consultant for application in the new formula will be an age/growth factor.

WHEREAS, DHS has taken additional steps to safeguard the health, safety and welfare of waiver recipients, including but not limited to these items:

DHS has increased supervision of counties by establishing a county review team. This team will systematically review county practices related to administering waiver programs and its findings will be made public. The new team will evaluate county compliance with the state's federal waiver plans, and will report its findings, including any need for a county to take corrective action.

DHS has requested and is receiving technical assistance through two contractors with CMS, MedStat and Human Services Research Institute ("HSRI"). DHS is exploring with these two contractors the characteristics of a successful "system" to deal with quality assurance for individual consumers. The goal of this effort is to develop priorities for improvements to the system and structures that will meet federal requirements for home and community based services.

To ensure better county consistency in management practices, DHS has developed on line manuals for waived services (all disability waivers); home care; and assessment/screening of individuals for eligibility to waived services. The manual provides detailed instructions regarding required actions in each program. The manual also provides access to all forms that are required and checklists to provide guidance to counties in completing some tasks.

DHS has updated the county budget management software package to enable counties to better administer the waiver. This software provides the county with access to the following: up-to-date fiscal information regarding the county's budget; client specific information regarding costs and services; and an application for simulating county budget impact (counties need only to input the scenario and the application will simulate for them the annualized impact upon the county's budget).

DHS has notified counties that, regarding MR/RC waiver provider payment rates authorized by counties under the Home and Community Based Services Waiver, counties may not unilaterally change a contract term, including provider payment rates, without obtaining the prior written agreement of the parties to the contract.

CMS has notified DHS that an on-going review of Minnesota's Home and Community Based waiver program is warranted and that CMS is expected to gather data from DHS on specified indicators for the years before and after the re-base amendment took effect.

DHS has received federal approval to implement the same MR/RC waiver budget methodology in calendar years 2005 and 2006 as used to establish

the 2004 budgets, using allocations from the 2004 year as a base for 2005 allocations, and allocations from 2005 as a base for 2006 allocations, which include annualization for new recipients entering the waiver in the previous budget year through conversions or diversions and a one percent acuity increase.

WHEREAS, the parties desire to resolve the issues raised in the litigation without incurring the expense, delays and uncertainties caused by further litigation.

NOW, THEREFORE, in consideration of the mutual terms, conditions and promises contained here, the Plaintiffs and Defendants agree to the following terms of settlement:

1. DHS agrees that it will create a training module to be inserted into its on-line manual that addresses the following three areas. First, DHS will set forth the steps, based upon current waiver provisions, statutes and rules, that a county must undertake before reducing an individual's waiver budget. Second, DHS will advise the counties that, while they may have guidelines in place about levels of services to be accorded recipients, they may not place across the board caps on service levels and must comply with the provisions of their contracts with providers until the contracts are amended pursuant to the terms of the contracts by written agreement of the parties or renegotiated at the end of the contract term. (The new statewide caps that will come into effect on or before April 1, 2006, for those selecting the Consumer Directed Community Support ("CDCS") option, are not affected by this prohibition.) Third, DHS will set forth guidelines for a county to consider when deciding whether to add new recipients to the MR/RC waiver and how to balance that decision with the need to assure that the health, safety, and welfare needs of current recipients are being and will be met. DHS will forward a copy of the memoranda sent to the counties to Plaintiffs' counsel no later than one week following the signing of this Agreement. The training module will be available to county agencies via the

on-line learning system by July 1, 2005. In the interim, DHS has posted guidelines for county agencies, incorporating the above guidance, on its website.

2. DHS has hired an independent consultant, pursuant to a formal request for proposals, to develop a new waiver funding method with an anticipated rollout date during calendar year 2006, with full implementation beginning on January 1, 2007. Among the factors to be reviewed by the consultant for application in the new formula will be an age/growth factor to account for the particular needs of each county's waiver population.

3. DHS has requested legal advice from the Attorney General's Office to determine the extent to which an individual may be denied access to waiver services pursuant to the affirmative county defense set out in Minn. R. 9525.1930, subp. 5B and Minn. Stat. § 256B.092, subd. 4(c) without consideration of the individual's health, safety and welfare needs. The Attorney General's Office will consider whether such a defense is superseded or otherwise limited by other relevant waiver provisions, statutes, rules, and case law, including but not limited to Minn. Stat. § 256B.092, subd. 5(c) and 42 U.S.C. §§ 1396n(c)(2)(A), 1396a(a)(10)(B), 1396 n(c)(1), and 1396n(c)(4)(B) and 42 C.F.R. § 440.230(b) and the January 8, 2004 decision in *Masterman v. Goodno*, Civil No. 03-CTV2939, 2004 WL 51271 (D. Minn. Jan. 8, 2004). DHS will forward a copy of DHS's request to the Attorney General's Office to Plaintiffs' counsel no later than one week following the signing of this Agreement. DHS will provide the Attorney General's response to Plaintiffs' counsel and to the counties.

4. Upon signing this agreement, DHS will send letters to all counties informing them that this litigation has been settled and advising them that they must comply with the provisions of their contracts with providers until the contracts are amended pursuant to the terms of the contracts by written agreement of the parties or renegotiated at the end of the contract term.



5. DHS, through its contractor, will seek the input of ARRM during the formulation of the 2006 budget methodology. Such input will be considered by DHS but is not binding upon the agency.

6. The MR/RC waiver service types and unit amounts authorized for Amari Roberts as of the date of this Agreement may not be reduced solely for budget-related reasons. Nothing in this provision restricts or limits Amari Roberts' right to request and receive additional necessary services if and when required by her condition. This provision remains applicable if Amari Roberts moves from Dakota County to another Minnesota county.

7. The parties agree that any disputes regarding implementation of the terms of this Settlement Agreement will be discussed between Bruce Nelson, Executive Director of ARRM, and Shirley York or other designee of the Department of Human Services as an informal preliminary step before a breach of contract action is contemplated in court.

8. This agreement fully resolves all issues of this pending action and also each and every cause of action relating to the DHS rebasing amendment that could have been set forth by the named Plaintiffs in this civil action. This Agreement does not waive or release future claims that could not have been asserted in this lawsuit.

9. This agreement does not constitute in any way any admission by DHS, ARRM or Mary Rodenberg-Roberts of any claim or defense, fact or interpretation of law or rule, or of any noncompliance with same. This agreement does not vacate any of the orders or decisions entered by the federal district court prior to the Settlement of this matter,

10. This agreement constitutes the entire settlement agreement between the parties and supersedes any prior written or oral settlement discussions or agreements.


11. No party shall retaliate, intimidate, threaten, coerce, or discriminate against any person or organization who is a party to this agreement or anyone who has participated in any manner in this pending lawsuit.

12. Plaintiffs and Defendants agree that each party shall be responsible for its or her own attorney fees and costs relating to this rebasing amendment lawsuit and will not seek to recover these fees and costs from any other party.


13. Upon the full execution of this Settlement Agreement, Plaintiffs will file a Stipulation of Dismissal with Prejudice of this lawsuit in the United States District Court for the District of Minnesota. The Stipulation shall provide that the parties agree the federal court may enter an order releasing and returning the \$5,000 temporary restraining order bond to ARRM.

**PLAINTIFFS:**

THE ASSOCIATION OF RESIDENTIAL  
RESOURCES IN MINNESOTA

By:   
Bruce H. Nelson, Executive Director

Dated: 11/9/04

  
MARY RODENBERG-ROBERTS, as  
Guardian and Parent of Amari Roberts  
Dated: 11-10-04

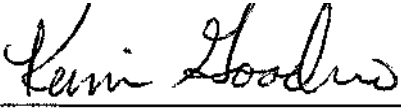
ORBOVICH & GARTNER CHARTERED

By:   
Samuel D. Orbovich  
Attorney for Plaintiffs

Dated: Nov. 9, 2004

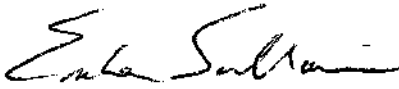
**DEFENDANTS:**

MINNESOTA DEPARTMENT OF HUMAN  
SERVICES

By:   
Kevin Goodno, Commissioner


Dated: 11-17-2004

OFFICE OF THE ATTORNEY GENERAL

By:   
Margaret H. Chutich  
Erika S. Sullivan  
Assistant Attorneys General  
Attorneys for Defendants

Dated: 11/17/2004

MINNESOTA DEPARTMENT OF HUMAN  
SERVICES

By:   
Shirley Patterson York, Disability  
Services Division Director

Dated: 11.17.2004