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FEDERAL DISTRICT COURT APPROVES CLASS ACTION SETTLEMENT AGREEMENT TO RESOLVE LAWSUIT INVOLVING RESIDENTS WITH DEVELOPMENTAL DISABILITIES AT STATE FACILITY

SAINT PAUL – June 23, 2011 – Federal District Court Judge Donovan Frank has signed an Order this morning approving a comprehensive \$3 Million class action settlement agreement negotiated in a lawsuit brought by three families against the State of Minnesota and other defendants for restraining and secluding residents with developmental disabilities, prior to September, 2008, at Minnesota Extended Treatment Options (METO), a state operated facility. The settlement agreement was reached after several months of negotiations following a two day mediation of the case in September.

Today's preliminary approval of the settlement agreement appoints Shamus O'Meara, counsel for the families and partner with the law firm of Johnson & Condon, P.A., as Class counsel, who will be mailing notices to all persons who ever resided at METO, including class members (defined as all individuals who were subjected to the use of any aversive or deprivation procedures, including restraints or seclusion while a resident of METO from July 1, 1997 through May 1, 2011), of the settlement and their rights and obligations under it. The settlement agreement provides that the Court will apportion the settlement proceeds to the Class members and may take into account the documented number of times they were restrained and/or secluded under a schedule provided in the agreement. The settlement protocol also allows Class members the opportunity to submit additional information to the Court for consideration as a part of the apportionment of the settlement proceeds.

The Settlement Agreement contains numerous provisions that will improve conditions for people with developmental disabilities placed in METO or its successor facility, including immediately and permanently discontinuing the use of mechanical restraints (including metal law enforcement-type handcuffs and leg hobbles, cable tie cuffs, PlastiCuffs, FlexiCuffs, soft cuffs, posey cuffs, and any other mechanical means to restrain), manual restraint, prone restraint, chemical restraint, seclusion, and the use of painful techniques to induce changes in behavior through punishment of residents with developmental disabilities. The agreement also includes a revised DHS policy providing

that in the event of an emergency which poses an imminent risk of physical harm to self or others and less restrictive strategies would not achieve safety, certain manual and Velcro strap mechanical restraint may *only* be used on residents of METO and its successor facilities. In order to help assure that the limitations on the use of restraints are observed, the settlement mandates that a third party expert will be consulted in connection with each use of restraint, an employee of the State Health Department will serve as an external reviewer, and the Court will receive quarterly reports from the external reviewer as to whether the facility is in substantial compliance with the Settlement Agreement.

The State has also agreed to increase staffing and training requirements for the care of people with developmental disabilities, and has agreed that people with developmental disabilities will not be transferred to Minnesota Security Hospital and Anoka Metro Regional Treatment Center solely for reasons of their disability. Moreover, the State and the families jointly agreed to develop effective policies and practices for the treatment and care of people with developmental disabilities, including those who are sent to state operated facilities. The agreement provides that the State will form key committees to include stakeholders within the developmental disabilities community to study, review and modernize the DHS rule (Rule 40), which governs and protects people with developmental disabilities, to reflect current best practices, including the use of positive and social behavioral supports, and the development of placement plans consistent with the principle of the “most integrated setting” and “person centered planning, and development of an “Olmstead Plan” consistent with the 1999 U.S. Supreme Court’s decision in *Olmstead v. L.C.*, 527 U.S. 582 (1999).

Shamus O’Meara, commenting on the settlement, stated:

“This settlement agreement is the result of near constant negotiation by the parties over the past several months. It establishes lasting, positive change for the families who have been through so very much in this difficult, emotional situation. We are very proud of the efforts of all parties, their consultants, counsel, and the Federal Court in working together to develop lasting and meaningful changes that will improve the lives of people with developmental disabilities and their families. This settlement is truly a defining moment for the families of people with developmental disabilities in Minnesota.”

The three Plaintiff families named in the lawsuit, who will serve as class representatives, include Jim Brinker/Daren Allen, Elizabeth Jacobs, and Jim and Lorie Jensen, on behalf of their sons, Thomas, Jason, and Bradley, who were METO residents.

Commissioner Lucinda Jesson of the Minnesota Department of Human Services, which oversees the METO program, said the department is pleased to reach a settlement and noted the practices described in the lawsuit had ended.

“This settlement provides for more protections for the vulnerable clients we serve,” Jesson said. “It also commits DHS to treat our clients closer to their homes and communities. These are steps we need to take.”

The lawsuit, originally filed in July 2009, contended METO staff routinely restrained residents in a prone face down position and placed them in metal handcuffs and leg hobbles, placed residents in seclusion and isolation rooms for extended time periods, and deprived them of visits from family members, among other claims. The lawsuit sought damages for violations of the federal civil and constitutional rights of residents with developmental disabilities, and asked the Court to enter an injunction against the State to prohibit its restraint and seclusion practices, and to declare them unconstitutional.

In the settlement, the defendants have denied liability for all of the claims.

For more information, please contact:

For Plaintiffs/Class:
Shamus P. O’Meara
Johnson & Condon, P.A.
7401 Metro Boulevard, Suite 600
Minneapolis, MN 55439-3034
952.806.0438
SPO@Johnson-Condon.com

For State/DHS:
Terry Gunderson
DHS Communications Director
(651) 431-2912
Terry.gunderson@state.mn.us