



City of Cambridge

O-4.

IN CITY COUNCIL

May 7, 2001

COUNCILLOR SULLIVAN
COUNCILLOR BORN
COUNCILLOR BRAUDE
COUNCILLOR DAVIS
COUNCILLOR DECKER
MAYOR GALLUCCIO
VICE MAYOR MAHER
COUNCILLOR REEVES
COUNCILLOR TOOMEY

ORDERED: That the City Manager be and hereby is requested to consult with the Assistant City Manager for Community Development to report to the City Council as to what opportunities exist in the settlement of the Boulet vs. Cellucci case (attached) for construction of housing for the disabled in Cambridge.

In City Council May 7, 2001.

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:- *D. Margaret Drury*

D. Margaret Drury
City Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Edmund Boulet, et al.,

Plaintiffs,

v.

Argeo Paul Cellucci, et al.,

Defendants.

Civil Action
NO. 99-CV-10617-DPW

IMPORTANT NOTICE OF SETTLEMENT AGREEMENT

You are receiving this notice because you or a member of your family has been identified as having interests that may be affected by the settlement of a class action lawsuit involving the Department of Mental Retardation ("DMR").

A. The Case

In March 1999, several individuals, including Edmund Boulet (the "plaintiffs"), filed a lawsuit in the Federal District Court in Boston, Massachusetts, on behalf of people who have mental retardation and other developmental disabilities and are on the Department of Mental Retardation ("DMR") Wait List for day-services and/or residential placements. The plaintiffs brought this lawsuit against the Governor and various state agencies including DMR (the "defendants"), alleging that the Commonwealth violated federal law by failing to provide services with "reasonable promptness." The case is called Boulet v. Cellucci, Civil Action No. 99-CV-10617-DPW. The defendants' answer to the plaintiffs' complaint raised various defenses to plaintiffs' claims.

The Court determined that the lawsuit should proceed as a class action. Therefore, events in the lawsuit may affect all "class members," namely people with mental retardation and other developmental disabilities who were on the DMR Wait List for day services and/or residential placements as of July 14, 2000. The Court also ruled on July 14, 2000, that "the defendants shall provide within 90 days...all those on the waiting list eligible for services pursuant to the waiver plan with such waiver plan services - including, but not limited to, residential habilitation services in a group home setting - no later than 90 days after their placement on that waiting list." The Court gave the defendants the opportunity to "show cause...why on a transitional basis 90 days is an insufficient period to provide such services and propose an alternative transitional schedule."

Under this proposed settlement agreement, defendants will provide or arrange for services and supports to the plaintiffs in settlement of this class action.

B. The Settlement

On December 19, 2000, after negotiation, the plaintiffs and the defendants entered into a proposed Settlement Agreement. Under this Settlement Agreement, if you or a member of your family was on the DMR Waiting List as of July 14, 2000 to receive day services and/or a residential placement, you will receive those services at some time between now and June 30, 2006, as explained in more detail below.

Subject to review and approval by the Court, the proposed settlement provides the following benefits to the Class Members:

1. For the period beginning July 1, 2001, and ending June 30, 2006, the Governor agrees to seek additional appropriations from the Massachusetts Legislature for DMR in the total amount of \$85 million. DMR will use these funds, plus an additional \$ 29 million from DMR's base budget, to provide, purchase, or arrange for 1925 residential placements over the period beginning July 1, 2001, and ending June 30, 2006.
2. With the funds appropriated by the Legislature for Fiscal Year 2002 through Fiscal Year 2006, DMR has agreed to purchase, provide, or arrange for the following services for the following class members.
 - a. For class members who were on the DMR Wait List as of July 14, 2000, for either residential supports or for residential supports and day services, DMR will purchase, provide, or arrange for residential placements and/or interim services. Interim services (which are defined as respite care; child care; specialized diagnosis, evaluation and treatment; specialized equipment and supplies; homemaker services; specialized nutrition and clothing; recreation and social activities; short-term emergency services; therapeutic services and supports; transportation; specialized utility costs; vehicle modifications up to \$3,000 per individual plaintiff; and housing supports and modifications up to \$5,000 per individual plaintiff) will be provided to individual class members who need such services until the individual class member enters a residential placement, subject to the availability of funds under the appropriations described in paragraph 1 above.
 - b. For class members who were on the DMR Wait List for non-residential services (day services and supports, supported employment services, and transportation), DMR will purchase, provide, or arrange for such services.

3. DMR has also agreed to periodically report its progress to the lawyers for the plaintiff class and to meet with the plaintiffs' lawyers.

C. The Fairness Hearing

At a hearing on December 20, 2000, after reviewing the proposed Settlement Agreement and hearing from the lawyers for the plaintiffs and the defendants, the Court made a preliminary ruling that the proposed settlement is fair, adequate and reasonable under the circumstances. The Court also found, as a preliminary matter, that the interests of the class as a whole would be better served if the litigation were resolved through the proposed settlement, after a fairness hearing, rather than pursued through a transitional remedial order and further litigation. The Court has set a fairness hearing for **January 29, 2001, at 2:30 p.m.**, in Courtroom 1 on the third floor of the Federal Courthouse on Fan Pier in Boston. At that hearing, the Court will consider any objections or comments by class members to the proposed settlement. The Court has also approved of the form of this Notice.

If you have any objection to or comment about the proposed settlement, you may send it in writing to the Court, c/o the Clerk, U.S. District Court, One Courthouse Way, Boston, MA 02110. The Court must receive all comments by January 19, 2001, and you must provide a copy of your comment or objection to Neil V. McKittrick, Hill & Barlow, A Professional Corporation, One International Place, Boston, MA 02110; and to Ginny Sinkel, Assistant Attorney General, One Ashburton Place, Boston, MA 02108.

D. Questions

If you have questions about this Notice or the proposed settlement, or if you would like to receive a copy of the Settlement Agreement, you may contact David S. Friedman, one of plaintiffs' attorneys, at Hill & Barlow, at (617) 428-3158, or Kathleen Gallagher at DMR at (617) 624-7707. Please do not call the Court directly about this Notice.

Arc Massachusetts Advocate

A publication of Arc Massachusetts
(781) 891-6270
Fax: (781) 891-6271

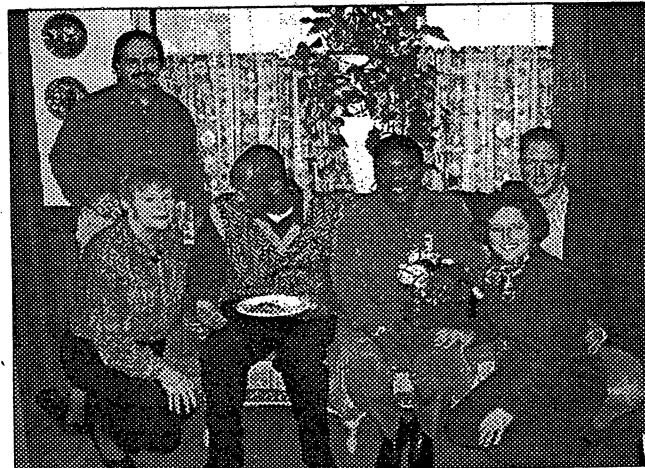
217 South Street, Waltham, MA 02453
web: www.arcmass.org
e-mail: arcmass@gis.net

Spring 2001

Planning and Action begin on heels of Waiting List Settlement

On January 29, 2001, Judge Douglas Woodlock approved the settlement between plaintiffs represented by Hill & Barlow and the Commonwealth. The agreement addresses the service needs of more than 2400 individuals who are on the waiting list at the Department of Mental Retardation (DMR). Residential supports or services will be made available to 2,225 persons over a five-year period. The agreement resolves a federal class action lawsuit related to the DMR Waiting List. A total of \$114 Million (\$85 Million in new appropriations) will be devoted to address the wait list over a five-year period beginning on July 1, 2001. This year (FY'2001) existing plans to serve 300 individuals will proceed as scheduled with an \$8 million appropriation. In addition, 400 persons will be offered employment support, day or other non-residential services during this fiscal year ending June 30, 2001.

Judge Woodlock's order of July 14, 2000 and his impending transitional order provided the impetus for a settlement. Neil McKittrick, of Hill & Barlow, along with associates David Friedman and Carol Rose, brought the case forward on behalf of those on



Leo Sarkissian, Mary Lou Maloney, Reggie and Evelyn Milorin, Cindy Haddad and John Thomas.

the waiting list. Without their expertise and hard work, this major step would not have been possible. Arc Mass President Theresa Varnet thanked Governor Paul Cellucci and other Administration officials for agreeing to the settlement. It provided a positive

outcome to a legal battle that began...

This year's budget (House One) includes \$22 Million in new monies as outlined in the settlement. Approximately 375 individuals will receive residential services through these and base funds. In addition, individuals in need of 'Interim Services' will receive funding similar to family support allocations as they wait for their turn in the five-year plan. The Plaintiffs can return to court if the Commonwealth refuses to comply with the agreement. A number of policy issues need to be finalized. The settlement provides a framework and it is hoped that DMR will involve a range of stakeholders in planning a five year plan that builds capacity within the service system.

The settlement will offer two important things to individuals and families: choice and predictability. Arc Massachusetts is concerned that DMR will need supplement funding to meet the requirements of the 2001 goals, but the five year plan seems to be adequately funded to meet the goal of serving the 1925 individuals identified.

Some quick facts:

1. Language in the agreement requires DMR to substitute other individuals if any of the 2,225 people presently on the wait list refuse residential services.

Continued on page 5

2. DMR is required to complete a residential planning form at least 120 days prior to an individual receiving an out of home placement (approximately 4 months.) Included is a residential planning form.
3. Timelines for staff training have been agreed to and DMR will have up to 3 months after such training to determine the "Interim Service Needs" of all individuals on the wait list (sometime in June-July 2001).
4. A formal notice to individuals on the waiting list will be sent regarding the determination of need.
5. All individuals have a right to appeal and judicial review consistent with ISP regardless of whether they have an Interim or full ISP.
6. The state will report quarterly on progress. These reports will include client-specific information that is confidential in nature and will not be released by class counsel or its consultants. Arc Massachusetts will be working with Hill & Barlow in the monitoring of the agreement. Aggregate information also will be shared which will allow us to track progress on the waiting list. Meetings will take place every six months.

Individuals who have been identified as recipients of the Wait List Plan should begin 'future planning' as early as possible. This includes working on legal considerations, special needs trust and related areas. It also includes thinking about what the best residential option is and helping the individual on the waiting list to express his/her preferences. Think of who in your family or network will be involved long-term and involve them in the planning process. Sometimes parental vision of the future might not be what the individual has in mind. Involve other family members and friends to sort that out. Make sure you are on the Family to Family and Arc Mass mailing lists so you can get future fact sheets and updates.

Individuals not on the Waiting List

Prior to the January 29th hearing we discovered



Lucie Chansky, Maureen Sullivan and Don Stewart

Two related programs are important in connection with the Wait List Agreement. Turning 22 funding will avoid a major wait list for work, day and family support services. In addition approximately 150 individuals are served with residential supports through this program.

The Family Support program is also essential. Not only will it provide needed resources for families with children but it can provide support for adults who are outside of the wait list settlement.

One important step for anyone in need of services is to make sure that the need is clearly documented in an Individual Support Plan (ISP). If you don't have an ISP



Audrey Morgenbesser, Bart Smith and Deb Wood

5/11

Order

MS

the settlement of the
Bmlet vs. Calhoun case

D-4

CM has to be requested as to
what opportunities for Cambridge
disabled services and for the funds for
construction of housing for the disabled in
Cambridge

to consult w/ the Asst CM for C-D-
to report to the C-C.

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Edmund Boulet, et al.,

Plaintiffs,

v.

Argeo Paul Cellucci, et al.,

Defendants.

Civil Action

NO. 99-CV-10617-DPW

IMPORTANT NOTICE OF SETTLEMENT AGREEMENT

You are receiving this notice because you or a member of your family has been identified as having interests that may be affected by the settlement of a class action lawsuit involving the Department of Mental Retardation ("DMR").

A. The Case

In March 1999, several individuals, including Edmund Boulet (the "plaintiffs"), filed a lawsuit in the Federal District Court in Boston, Massachusetts, on behalf of people who have mental retardation and other developmental disabilities and are on the Department of Mental Retardation ("DMR") Wait List for day-services and/or residential placements. The plaintiffs brought this lawsuit against the Governor and various state agencies including DMR (the "defendants"), alleging that the Commonwealth violated federal law by failing to provide services with "reasonable promptness." The case is called Boulet v. Cellucci, Civil Action No. 99-CV-10617-DPW. The defendants' answer to the plaintiffs' complaint raised various defenses to plaintiffs' claims.

The Court determined that the lawsuit should proceed as a class action. Therefore, events in the lawsuit may affect all "class members," namely people with mental retardation and other developmental disabilities who were on the DMR Wait List for day services and/or residential placements as of July 14, 2000. The Court also ruled on July 14, 2000, that "the defendants shall provide within 90 days...all those on the waiting list eligible for services pursuant to the waiver plan with such waiver plan services - including, but not limited to, residential habilitation services in a group home setting - no later than 90 days after their placement on that waiting list." The Court gave the defendants the opportunity to "show cause...why on a transitional basis 90 days is an insufficient period to provide such services and propose an alternative transitional schedule."

Under this proposed settlement agreement, defendants will provide or arrange for services and supports to the plaintiffs in settlement of this class action.

B. The Settlement

On December 19, 2000, after negotiation, the plaintiffs and the defendants entered into a proposed Settlement Agreement. Under this Settlement Agreement, if you or a member of your family was on the DMR Waiting List as of July 14, 2000 to receive day services and/or a residential placement, you will receive those services at some time between now and June 30, 2006, as explained in more detail below.

Subject to review and approval by the Court, the proposed settlement provides the following benefits to the Class Members:

1. For the period beginning July 1, 2001, and ending June 30, 2006, the Governor agrees to seek additional appropriations from the Massachusetts Legislature for DMR in the total amount of \$85 million. DMR will use these funds, plus an additional \$ 29 million from DMR's base budget, to provide, purchase, or arrange for 1925 residential placements over the period beginning July 1, 2001, and ending June 30, 2006.
2. With the funds appropriated by the Legislature for Fiscal Year 2002 through Fiscal Year 2006, DMR has agreed to purchase, provide, or arrange for the following services for the following class members.
 - a. For class members who were on the DMR Wait List as of July 14, 2000, for either residential supports or for residential supports and day services, DMR will purchase, provide, or arrange for residential placements and/or interim services. Interim services (which are defined as respite care; child care; specialized diagnosis, evaluation and treatment; specialized equipment and supplies; homemaker services; specialized nutrition and clothing; recreation and social activities; short term emergency services; therapeutic services and supports; transportation; specialized utility costs; vehicle modifications up to \$3,000 per individual plaintiff; and housing supports and modifications up to \$5,000 per individual plaintiff) will be provided to individual class members who need such services until the individual class member enters a residential placement, subject to the availability of funds under the appropriations described in paragraph 1 above.
 - b. For class members who were on the DMR Wait List for non-residential services (day services and supports, supported employment services, and transportation), DMR will purchase, provide, or arrange for such services.

3. DMR has also agreed to periodically report its progress to the lawyers for the plaintiff class and to meet with the plaintiffs' lawyers.

C. The Fairness Hearing

At a hearing on December 20, 2000, after reviewing the proposed Settlement Agreement and hearing from the lawyers for the plaintiffs and the defendants, the Court made a preliminary ruling that the proposed settlement is fair, adequate and reasonable under the circumstances. The Court also found, as a preliminary matter, that the interests of the class as a whole would be better served if the litigation were resolved through the proposed settlement, after a fairness hearing, rather than pursued through a transitional remedial order and further litigation. The Court has set a fairness hearing for **January 29, 2001, at 2:30 p.m.**, in Courtroom 1 on the third floor of the Federal Courthouse on Fan Pier in Boston. At that hearing, the Court will consider any objections or comments by class members to the proposed settlement. The Court has also approved of the form of this Notice.

If you have any objection to or comment about the proposed settlement, you may send it in writing to the Court, c/o the Clerk, U.S. District Court, One Courthouse Way, Boston, MA 02110. The Court must receive all comments by January 19, 2001, and you must provide a copy of your comment or objection to Neil V. McKittrick, Hill & Barlow, A Professional Corporation, One International Place, Boston, MA 02110; and to Ginny Sinkel, Assistant Attorney General, One Ashburton Place, Boston, MA 02108.

D. Questions

If you have questions about this Notice or the proposed settlement, or if you would like to receive a copy of the Settlement Agreement, you may contact David S. Friedman, one of plaintiffs' attorneys, at Hill & Barlow, at (617) 428-3158, or Kathleen Gallagher at DMR at (617) 624-7707. Please do not call the Court directly about this Notice.

Non-Profit Organization
U.S. Postage

*****AUTO**3-DIGIT 021

Arc Massachusetts
217 South Street, Waltham, MA 02453-2769

Arc Massachusetts Advocate

A publication of Arc Massachusetts
(781) 891-6270
Fax: (781) 891-6271

web: www.arcmass.org

217 South Street, Waltham, MA 02453
e-mail: arcmass@gis.net

Spring 2001

A Party to...

Mary Lou Maloney and Bill Allan opened up their house for a special Waiting List brunch on February 4. The gathering included individuals involved in Arc Massachusetts, Family to Family, Hill & Barlow and elsewhere to celebrate the Wait List Settlement. Now local celebrities, Anita Sullivan and husband Richard were there. (They not only support their daughter and son at home but Anita continues to make time for Family to Family and the local DMR advisory activities!) Mary Ann and Gerald Boulet who will continue to be identified with the settlement for perpetuity were

there too. John, Susan and James Nadworny, Allen Crocker, former Governor's Commission director, Betsy Closs, David Friedman, Don and Elizabeth Stewart, Evelyn and Reggie Milorin and so on attended. It was great to see the diversity of individuals and ages gathered together. The vitality of the individuals and the movement registered strongly that day! We have a solid foundation to work anew on behalf of individuals who yearn for meaningful choices for their future and to shape a system of services that is responsive to the human dimension!

Continued on page 5

is anxiously awaiting word from colleges. She enjoys various extra-curricular activities. For example in January she participated in a national "United Nations" session at the University of Pennsylvania as a representative from the Dominican Republic. She is vice president for social action in the youth group at her synagogue. Emily also is a younger sibling of an individual with special needs, Jonathan. Jonathan is 21 years old and he is living on the cape as part of transition education to get him prepared for his own home. He is able to get around his community independently. Jonathan is looking forward to moving into his own place in the summer. Emily and Jonathan's mother, Jo Ann Simons talked with us too. She's
Continued on page 8

Planning and Action begin on heels of Waiting List Settlement

On January 29, 2001, Judge Douglas Woodlock approved the settlement between plaintiffs represented by Hill & Barlow and the Commonwealth. The agreement addresses the service needs of more than 2400 individuals who are on the waiting list at the Department of Mental Retardation (DMR). Residential supports or services will be made available to 2,225 persons over a five-year period. The agreement resolves a federal class action lawsuit related to the DMR Waiting List. A total of \$114 Million (\$85 Million in new appropriations) will be devoted to address the wait list over a five-year period beginning on July 1, 2001. This year (FY'2001) existing plans to serve 300 individuals will proceed as scheduled with an \$8 million appropriation. In addition, 400 persons will be offered employment support, day or other non-residential services during this fiscal year ending June 30, 2001.

Judge Woodlock's order of July 14, 2000 and his impending transitional order provided the impetus for a settlement. Neil McKittrick, of Hill & Barlow, along with associates David Friedman and Carol Rose, brought the case forward on behalf of those on



Leo Sarkissian, Mary Lou Maloney, Reggie and Evelyn Milorin, Cindy Haddad and John Thomas.

the waiting list. Without their expertise and hard work, this major step would not have been possible. Arc Mass President Theresa Varnet thanked Governor Paul Cellucci and other Administration officials for agreeing to the settlement. It provided a positive

outcome to a legal battle that began in March 1999.

This year's budget (House One) includes \$22 Million in new monies as outlined in the settlement. Approximately 375 individuals will receive residential services through these and base funds. In addition, individuals in need of 'Interim Services' will receive funding similar to family support allocations as they wait for their turn in the five-year plan. The Plaintiffs can return to court if the Commonwealth refuses to comply with the agreement. A number of policy issues need to be finalized. The settlement provides a framework and it is hoped that DMR will involve a range of stakeholders in planning a five year plan that builds capacity within the service system.

The settlement will offer two important things to individuals and families: choice and predictability. Arc Massachusetts is concerned that DMR will need supplement funding to meet the requirements of the 2001 goals, but the five year plan seems to be adequately funded to meet the goal of serving the 1925 individuals identified.

Some quick facts:

1. Language in the agreement requires DMR to substitute other individuals if any of the 2,225 people presently on the wait list refuse residential services.

Continued on page 5

2. DMR is required to complete a residential planning form at least 120 days prior to an individual receiving an out of home placement (approximately 4 months.) Included is a residential planning form.
3. Timelines for staff training have been agreed to and DMR will have up to 3 months after such training to determine the "Interim Service Needs" of all individuals on the wait list (some-time in June-July 2001).
4. A formal notice to individuals on the waiting list will be sent regarding the determination of need.
5. All individuals have a right to appeal and judicial review consistent with ISP regardless of whether they have an Interim or full ISP.
6. The state will report quarterly on progress. These reports will include client-specific information that is confidential in nature and will not be released by class counsel or its consultants. Arc Massachusetts will be working with Hill & Barlow in the monitoring of the agreement. Aggregate information also will be shared which will allow us to track progress on the waiting list. Meetings will take place every six months.

Individuals who have been identified as recipients of the Wait List Plan should begin 'future planning' as early as possible. This includes working on legal considerations, special needs trust and related areas. It also includes thinking about what the best residential option is and helping the individual on the waiting list to express his/her preferences. Think of who in your family or network will be involved long-term and involve them in the planning process. Sometimes parental vision of the future might not be what the individual has in mind. Involve other family members and friends to sort that out. Make sure you are on the Family to Family and Arc Mass mailing lists so you can get future fact sheets and updates.

Individuals not on the Waiting List

Prior to the January 29th hearing we discovered



Lucie Chansky, Maureen Sullivan and Don Stewart

Two related programs are important in connection with the Wait List Agreement. Turning 22 funding will avoid a major wait list for work, day and family support services. In addition approximately 150 individuals are served with residential supports through this program.

The Family Support program is also essential. Not only will it provide needed resources for families with children but it can provide support for adults who are outside of the wait list settlement.

One important step for anyone in need of services is to make sure that the need is clearly documented in an Individual Support Plan (ISP). If you don't have an ISP



Audrey Morgenbesser, Bart Smith and Deb Wood



City of Cambridge

O-4.

IN CITY COUNCIL

May 7, 2001

COUNCILLOR SULLIVAN

ORDERED: That the City Manager be and hereby is requested to consult with the Assistant City Manager for Community Development to report to the City Council as to what opportunities exist in the settlement of the Boulet vs. Cellucci case (attached) for construction of housing for the disabled in Cambridge.

112cm

Order #4

Report to the City Council as to what opportunities exist in the settlement of the Boulet vs. Cellucci case for construction of housing for the disabled in Cambridge.

Councillor Sullivan

In City Council May 7, 2001

ORDER ADOPTED