

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Stanley Ligas, et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 05 C 4331
v.	)	
	)	Judge Sharon Johnson Coleman
Felicia Norwood, et al.,	)	
	)	
Defendants.	)	

**DEFENDANTS’ RESPONSE TO FIFTH ANNUAL REPORT OF THE MONITOR**

The following is the Defendants’ Response to the Fifth Annual Report of the Monitor (“Report”) (Doc. No. 646), in which a finding of non-compliance was made in the area of Resources and Capacity. As the Defendants were found to be in substantial compliance with all other aspects of the Decree, this Response focuses solely on the issues pertaining to Resources and Capacity.

**Consent Decree Requirements: Resources and Capacity**

The Consent Decree has multiple paragraphs that identify the Defendants’ obligations when it comes to the resources necessary for compliance. Paragraph 4, “Development of Resource Capacity,” states in part:

Funding for services for each Individual with Developmental Disabilities will be based on the Individual’s needs using federally approved objective criteria regardless of whether the Individual chooses to receive services in an ICF-DD or in a Community-Based Setting; provided, however, nothing in this Decree shall require Defendants to change their current method for establishing funding or from adopting new methods based upon federally approved criteria.

Paragraph 5, “Resources and Budget Requests,” states in part:

Annual budgets submitted by the Defendants on behalf of their agencies shall request sufficient funds necessary to develop and maintain the services, supports and structures described in the Decree, consistent with the choices of Individuals with Developmental Disabilities, including Class Members. Defendants shall take steps sufficient to implement funding mechanisms that facilitate transition among service settings...

In addition to the above, the Decree sets specific measurable benchmarks to demonstrate compliance in both transitioning individuals into community-based settings and the development of the resources necessary to ensure such transitions (Decree, Paragraphs 17-19 and 20-23). By June 30, 2017, 3,000 individuals on the PUNS (Priority Utilization of Needs and Services) list are required to have been served in community settings, as well as all individuals residing in ICF/DDs on June 15, 2011 who wish to transition to the community (1,482 individuals as of February 1, 2017) are to have transitioned to a community-based setting.

#### **Findings in the Fifth Annual Report**

In her Report, the Monitor again found the Defendants out of compliance in the areas of resources and capacity. The Monitor determined there was “limited availability of small CILAs in some geographic areas as well as for individuals with more intense medical, behavioral or physical needs.” (Report, p. 5) In addition, the Monitor pointed to the rate structure and wages for Direct Service Providers (“DSPs”), stating “new CILA development is being delayed due to a lack of availability of DSPs willing to accept current wages and that some existing small CILAs are at risk of either closing or being consolidated into larger homes due to staff turnover rates of up to 70%.” (Report, p. 5.) The Monitor also questioned the sufficiency of rates for Intermediate Care Facilities for the Developmentally Disabled (“ICF/DDs”). Defendants respectfully disagree with these statements as well as the finding of non-compliance and suggest

that, while these matters are certainly of concern to all involved, they again do not yet rise to the level of non-compliance for the reasons set forth below.

### **State Budget**

With respect to the current budget impasse, the Monitor noted in her Report that the Defendants continue to make timely payments at levels no less than those paid in FY15. The Defendants provide updates to the Monitor on a monthly basis demonstrating compliance with the court orders regarding payment. As in FY16, payments are currently being paid at a much faster rate than in FY15, when the State was operating with a fully functioning budget. Any assumption that this will not continue is premature at best, and disregards the current payment situation, which again, has resulted in faster payments to providers over the past eighteen months despite the lack of a budget. The Defendants remain in compliance with respect to the requirements of Paragraph 5 of the Decree as sufficient funds continue to be both available and timely paid.

Furthermore, the Defendants continue to request sufficient budgetary resources to provide services as required by Paragraph 5 of the Decree. Specifically, the projected budget for FY18 for *Ligas* PUNS placements is \$115,657,474, an increase of over \$20M from FY17. The projected budget for ICF/DD *Ligas* transitions is \$30,662,412, an increase of nearly \$5M over FY17. The total projected *Ligas* budget for FY18 is \$152,890,351, an increase of \$26.6M over FY17. (See *Ligas* 6 Month Data Report, dated February 15, 2017).

### **Rates for CILA and ICF Providers**

The Monitor also based the finding of non-compliance on the funding rates for CILAs and ICF/DDs, describing an “unprecedented staffing shortage” in both CILAs and ICF/DDs, and further stated “it cannot be assumed that the entitlements of those protected by the Consent

Decree are being guaranteed or that the expectations of the beneficiaries of the Decree and their families are being met.” (Report, p. 23) It remains the Defendants’ position that, based on the information currently available, there is not, in fact, a lack of development in the community or a systemic staffing crisis or decrease in service quality for either CILA or ICF/DD providers.

As with the Fourth Annual Report, the claims regarding a staffing “crisis” due to DSP wages are supported only by anecdotal evidence – statements from unidentified providers regarding unidentified CILA homes and staffing issues. (See Report, p. 14-20). Once again, there is scant, if any, information that would permit the Defendants to examine these claims relied upon to claim an “unprecedented staffing shortage.” (Report, p. 14). The fact remains that any time a staffing issue (or other service issue) is brought to the Defendants’ attention, staff from the Division of Developmental Disabilities make every effort to resolve the matter to ensure Class Members are provided for in accordance with their Individual Service Plans.

### **ICF-DD Rates**

With respect to ICF-DD rates, much of the basis of the finding of non-compliance derives from testimony at a Senate Hearing from Intervenors’ Counsel, Scott Mendel, claiming “residents are not receiving the care they require as a result of low reimbursement rates leading to increased DSP turnover...” (Report, p. 22) However, again, there are no specifics identified such that the Defendants can adequately address the claims. Rather, the Report identifies only general anecdotal evidence, without any additional specific facts to demonstrate worsening conditions for the ICF/DD providers and which the Defendants are unable to refute with any specificity. (The Defendants will, however, continue to look into and attempt to resolve any specific matters that are brought to their attention.) Further, claims about rates have persisted for

years, and as discussed in the State's Response to the Fourth Annual Report, the Decree does not require an increase in rates.

In addition, the standard applied during an in-depth analysis of ICF/DD rates by the former Monitor, Tony Records, was whether or not ICF/DD placement remained a viable choice for individuals. Mr. Records provided his interpretation of the Decree as it applies to ICF/DDs, finding the "overarching intent of Paragraph 4 is to preserve real choices and options...to ensure that the ICF/DD option remains as a viable choice." (8/1/14 Report, p. 5) Again, as with the Fourth Annual Report, there is no evidence that individuals who choose to remain in an ICF/DD are unable to do so due to the current rate structure, or that ICF/DD placements are not available for those entering the system. There are, once again, no specific identified instances of individuals who are unable to choose an ICF/DD level of care due to a systemic rate issue.

As of June 30, 2016, there were 221 ICF/DDs. During FY16, only two ICF/DDs downsized to CILAs. ICF/DDs clearly remain a viable choice.

### **CILA Resources and Capacity**

The Report again finds non-compliance not just with ICF/DD rates, but with resources and capacity for the overall system, including CILAs. As with the Fourth Annual Report, this Report also relies on anecdotal statements to which it is impossible for the Defendants to respond with any specificity. As with the statements provided to support the ICF/DD concerns, the Defendants will of course look into any specific matters brought to their attention and attempt to find a resolution.

However, with respect to CILA resources and capacity, the capacity of the system can largely be determined by the ability to move individuals out of ICF/DDs or from the PUNS list into community settings. The Defendants again met or exceeded all transition goals during the

past year, as recognized in the Report. (Report, p. 9) With respect to transitions from the PUNS list, the Defendants were to have transitioned a total of 2,500 individuals by June 30, 2016. A total of 2,651 individuals from the PUNS list were receiving community-based services by June 30, 2016. Likewise, the Defendants were to have transitioned 923 ICF/DD residents by June 15, 2016 (this figure was set on December 31, 2015), and actually transitioned 1,311 individuals by the target date. The Defendants exceeded the PUNS benchmark by 6% and the ICF/DD benchmark by 42%.

Furthermore, there is no evidence that there is a systemic issue as to CILA development or capacity. The Division of Developmental Disabilities has analyzed the circumstances regarding individuals who have been selected from PUNS but have not yet initiated services. An analysis of the primary impediment to initiation of services does not support a finding of systemic issues or lack of CILA development. (See attached Exhibit A, “*Ligas Pending Services Chart*”). Similarly, the analysis does not show any notable lack of development in any particular geographic areas. (See attached Exhibit B, “*Geographic Preferences Chart*”) Rather, the data reflects that there are between one and five individuals in a number of counties waiting for development (the largest number, five, is in Cook County). The fact that certain individuals selected for services have waited more than one year to initiate services does not equate to a finding that the resources and capacity of the community system is out of compliance with the Decree. As the two charts referenced above demonstrate, there are numerous factors that serve as impediments to the receipt of services, many of which do not point to a deficiency in the system. For example, the fact that a handful of individuals have a geographic preference for a particular area is not evidence of a systemic lack of development – there simply may not be sufficient interest to justify a new CILA. A provider will not generally develop a new home to

serve only one or two individuals, and the Defendants do not have the ability to force new, private development.

As to the Report's conclusions about quality of services, the Defendants continue to assert that, with the exception of one provider whose license was revoked in 2016, there are not sufficient documented quality issues to conclude that the services provided to Class Members are not in compliance with the Decree. Again, anecdotal evidence should not be the basis for such a finding, especially when the Defendants have no way to investigate, validate or attempt to resolve any such issues. Further, as the Monitor noted, various improvements in reporting and monitoring of CILA providers are being considered for implementation as a result of the one provider revocation during 2016.

#### **Defendants' Recommendations**

While the Defendants once again dispute the findings of non-compliance, they continue to look for ways in which the system can be improved. The Defendants have agreed to continue to provide information to the Monitor on quality issues that may arise. In addition, the Defendants have agreed to review the process governing Independent Service Coordination entities' visits to Class Members, to ensure the visits and resulting documentation contain all of the required information to ensure quality services are being delivered to Class Members.

In addition, the Defendants are currently reviewing crisis service requirements as well as "safety plans" for those determined to be in crisis. The Defendants have agreed to report to the Monitor and Parties on their findings and will assess the adequacy of the safety plans and implement changes where needed.

Dated: February 24, 2017

Respectfully submitted,

By: /s/ Brent D. Stratton

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ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned, an attorney of record, hereby certifies that, on February 24, 2017, he caused to be filed through the Court's CM/ECF system a copy of **Defendants' Response to Fifth Annual Report of Monitor**. Parties of record may obtain a copy of this filing through the Court's CM/ECF system.

/s/ Brent D. Stratton  
Brent D. Stratton

# **EXHIBIT**

# **A**

## LIGAS PENDING SERVICES LIST

<b>116 - Ligas ICFDD Class Members Pending Services</b>	
Desire to Stay in ICFDD - 1238 needed to close	3
Hold Category	34
Awards Issued	9
Agency Preparing Funding Packet	2
Visiting (Agency working on details of transition)	1
New Class Members Confirmed January 2017	2
Geographic Preference	28
Individual/Guardian/Family wants a specific provider (Potential Hold category)	18
Undecided about receiving services (Potential Hold Category)	7
Guardian not actively pursuing /waiting for appropriate CILA	2
Communication issues between ISC and individual/guardian/family (Potential Hold Category)	5
Search recently expanded	2
Behavioral Needs	2
Needs Health Stabilization (Potential Hold)	1

Report Date: 1/31/17

# **EXHIBIT**

# **B**

## GEOGRAPHIC PREFERENCES

	<b>County</b>	<b>Grand Total</b>
1	<b>Bond</b>	<b>1</b>
2	<b>Cook</b>	<b>5</b>
3	<b>DuPage</b>	<b>3</b>
4	<b>Fulton</b>	<b>2</b>
5	<b>Lee or Whiteside</b>	<b>1</b>
6	<b>McHenry</b>	<b>4</b>
7	<b>McHenry/Cook</b>	<b>1</b>
8	<b>Northern Cook</b>	<b>2</b>
9	<b>Northern Suburbs-Cook Co.</b>	<b>1</b>
10	<b>NW Cook</b>	<b>2</b>
11	<b>Peoria/Tazewell</b>	<b>1</b>
12	<b>Sangamon</b>	<b>1</b>
13	<b>Southern Cook</b>	<b>3</b>
14	<b>Will</b>	<b>1</b>
	<b>Grand Total</b>	<b>28</b>