

IN THE UNITED STATES DISTRICT COURT

isolation, multiple placements, and severed connections, making even more challenging the task of helping these children overcome their difficulties. The failure to provide children with intensive mental health services in a home or community based setting denies children medically

necessary services and results in needless institutionalization, in violation of federal law. Mississippi's taxpayers are thus forced to shoulder the burden of an expensive and ineffective

mental health system that greatly diminishes the quality of life and human potential of thousands

of children across the State. Providing children with medically necessary home and

U.S. Supreme Court's 1999 holding in *Olmstead v. L.C., ex rel. Zimring*, 527 U.S. 581 (1999) will require the State to move toward providing more community-based services in the near future. *Id.* at 33.

with behavioral and emotional disorders cycle through hospitals, emergency rooms, acute care

facilities and residential treatment centers without obtaining any long-term relief. These

441.55. Despite widespread agreement among mental health experts that children with significant emotional or behavioral problems need intensive home- and community-based

7. L.P. is a seventeen year old girl who has experienced a number of psychiatric hospitalizations. L.P. is from the Jackson metropolitan area and is currently committed to the Specialized Treatment Facility in Gulfport, MS. She brings this action through her next friend, Mary Troupe.

8. L.M. is a sixteen year old boy who has experienced six psychiatric hospitalizations and one long-term placement in a psychiatric treatment facility. L.M. resides in the Mississippi

Delta. He brings this action through his mother and next friend, Trasie Howard.

9. L.S. is a thirteen year old boy who has been placed in long-term psychiatric residential treatment facilities on three separate occasions. He is from Southwest Mississippi and currently resides at the CARES Center in Jackson, Mississippi. He brings this action through his legal guardian and next friend, Sheila Davis.

10. All Plaintiffs need but are currently being denied intensive home- and community-based mental health services. All are currently institutionalized or at imminent risk of being

institutionalized as a result of being denied the intensive home- and community-based mental health services they need.

#### **Defendants**

11. Defendant Haley Barbour is the Governor of Mississippi, a public entity covered by Title II of the ADA, 42 U.S.C. § 12131(1) and a participant in the federal Medicaid program. Defendant Barbour, as supreme executive officer of the state, is responsible for ensuring that all Mississippi agencies comply with applicable federal law. Miss. Code Ann. § 7-1-5 (a)(c).

State Board of Mental Health, Miss. Code Ann. § 41-4-3(1); appoints the Executive Director of the Division of Medicaid, which is a division of the Governor's Office, Miss. Code Ann. § 43-



community-based services" includes: a comprehensive assessment, intensive case management



adolescents in federal court. Counsel have the legal knowledge and the resources to fairly and

~~represented~~ ~~the~~ ~~interests~~ ~~of~~ ~~all~~ ~~class~~ ~~members~~ ~~in~~ ~~this~~ ~~action.~~ Fed. R. Civ. P. 22(c)(4)

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and mental health conditions and illness. 42 U.S.C. § 1396d(r)(1). States must also provide needed diagnostic and treatment services to correct or ameliorate health or mental health

conditions. 42 U.S.C. § 1396a(a)(12)(C); 42 U.S.C. § 1396d(r)(5). Needed services must be

not provide therapeutic foster care services.<sup>1</sup> Currently, 180 youth are enrolled in the program. During the last fiscal year, fewer than 200 children received services through MYPAC. In

the last fiscal year: 557 children were committed to a state hospital, 888 were placed in a psychiatric residential treatment facility, 476 were placed in a therapeutic group home, and

hundreds more cycled through emergency rooms and other acute care facilities for crisis care and treatment.

34. The Defendants discriminate against the named Plaintiffs and the Plaintiff class by failing to provide them services in the most integrated setting appropriate to their needs. An integrated

setting is one that allows individuals to live in their home or a home like setting with natural

[REDACTED]

... services, home therapy, behavioral support services, family education and training, and

therapeutic foster care.

37. The evidence is equally clear that institutional care not only fails to meet children's

emotional disorders can expect to make the rounds of at least two state-run facilities, two to three

~~Children have had a history of emergency room visits, acute care facilities, and therapeutic groups~~

44. DHS attempted to reunify J.B. with his mother in 2009; however, he was removed and placed in a group home after he contacted the police to break up a fight between his mother and

49. Plaintiff L.P. is a seventeen year old girl from the Jackson metropolitan area, and was placed in DHS custody in August 2009 when it was discovered that she had been sexually



54. Plaintiff L.M. is a sixteen year old boy with bipolar disorder and a history of sexual trauma. L.M. has been hospitalized four times and placed in long-term residential treatment. He is currently living with his mother in the Delta, and is not receiving intensive mental health services.

55. L.M. experienced a succession of traumatic events before his thirteenth birthday. L.M.

home and school. When L.M. was ten, his father died unexpectedly; and the next year L.M.

two weeks and committed to the state's juvenile training school less than two months later

64. In violation of the EPSDT provisions of the Medicaid Act, Defendants, while acting under the color of law, have failed to provide Plaintiffs with medically necessary intensive home- and community-based mental health services when such services are medically necessary

~~to treat or ameliorate their conditions.~~ 42 U.S.C. § 1396a(a)(12) & 1396d(e)

and embrace the reforms sought by Plaintiffs in this case. The relief sought would further the

~~Defendant's stated goal to convert to a community-based system of mental health care~~

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CERTIFICATE OF SERVICE

Thereby certify that a true and correct copy of the foregoing document has been

served

by hand delivery on:

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This 10 day of March, 2010.

