

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STANLEY LIGAS, by his sister and next friend, Gina)	
Foster; et al., on behalf of themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	Case No. 05-4331
)	
vs.)	CLASS ACTION
)	
BARRY S. MARAM, in his official capacity as Director)	
of the Illinois Department of Healthcare and Family)	
Services, and CAROL L. ADAMS, in her official)	
capacity as Secretary of the Illinois Department of)	
Human Services,)	
)	
Defendants.)	

**NOTICE OF FILING PLAINTIFFS' SECOND AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Stanley Ligas, David Cicarelli, Isaiah Fair, Jamie McElroy, and Jennifer Wilson,¹ with the written consent of the Defendants, provide this notice of the filing of their Second Amended Complaint for Declaratory and Injunctive Relief (“Second Amended Complaint”) (CM/ECF Doc. No. 436). In conjunction with this filing, Plaintiffs state as follows:

1. On August 28, 2009, Defendants provided written consent to the filing of the Second Amended Complaint and, accordingly, Plaintiffs have amended their complaint pursuant to Fed. R. Civ. Proc. Rule 15(a)(2).

2. This action, as originally filed and as the Second Amended Complaint continues to set forth, seeks to prevent the unnecessary segregation of persons with developmental disabilities in institutions (known in Illinois as Intermediate Care Facilities for individuals with

¹ Adam Kulig and Lorene Bierman are not named as plaintiffs in the Second Amended Complaint. These individuals were named as plaintiffs in the prior, First Amended Complaint, but their residency circumstances have since changed. Accordingly, they are not named as plaintiffs in the Second Amended Complaint.

Developmental Disabilities (“ICF-DDs”)), in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), the Supreme Court’s integration mandate in *Olmstead v. L.C.*, 527 U.S. 591 (1999), and Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v.

3. The class originally certified by the Court (in connection with Plaintiffs’ First Amended Complaint) included developmentally disabled adults who either reside in ICF-DDs with nine or more beds or are at risk of institutionalization, and who did not oppose community placement. (CM/ECF Doc. Nos. 85 and 86.) After a proposed Consent Decree (“Decree”) was agreed to by the parties, and there was a date set for a fairness hearing on the proposed Decree, various objectors expressed their concern that some individuals (even those not included in the class definition set forth in the Decree) might be affected by the broadly applicable provisions of the Decree -- most particularly, the Decree’s provision that the State evaluate ICF-DD residents for the possibility and/or opportunity of living in the community. As a result, on July 7, 2009, the Court entered an Order denying approval of the Decree and vacating its prior Order certifying the class. (CM/ECF Doc. No. 420.)

4. In its decertification Order, the Court explained that “the class definition fails to restrict the class to developmentally disabled individuals that are eligible for, and desire, community placement.” (*Id.* at p. 2.) Plaintiffs respectfully submit that the very significantly revised putative class described in the Second Amended Complaint squarely addresses the Court’s concerns.

5. First and foremost, with respect to the “desire” or “choice” of individuals with developmental disabilities: the putative class in the Second Amended is expressly defined to include only those individuals who actually “requested community placements.” (Second

Amended Complaint, ¶¶ 86-88). To that end, the Second Amended Complaint seeks to require Defendants to identify those individuals with developmental disabilities for whom “they have a record reflecting that the individual has affirmatively indicated that he or she seeks to receive services in a community setting.” (*Id.*) The relief sought in the Second Amended Complaint is limited strictly to those individuals who have affirmatively requested community placement. There can be no question that the revised class definition only includes those individuals who desire the relief sought in the Second Amended Complaint. This relief will not – and cannot in any way – even touch upon, much less impact, the interests of individuals: who wish to remain in an ICF-DD, who oppose community placement, who do not want to be considered for community placement, who do not want to be evaluated for community placement, who do not want to be spoken to about community placement, or who do not even want to learn about community placement options. By definition, such persons are all outside the Second Amended Complaint’s class definition.

6. Second, with respect to “eligibility,” as a matter of law, all individuals who are “eligible” to receive services in an ICF-DD are, as a matter of law, “eligible” to be considered for community services because the eligibility criteria for community services under both Illinois and federal law are virtually identical to the criteria for placement in an ICF-DD. *Biekert v. Maram*, 388 Ill. App. 3d 1114, 1121, 905 N.E.2d 357, 364 (Ill. App. Ct. 2009) (“Pursuant to federal and state law and its own documentation, the [Home and Community-Based Services for the Developmentally Disabled] waiver program is available only to recipients who, in the absence of the waiver services, would require the Medicaid-covered level of care provided in an ICF/MR,² in that the waiver services are an alternative to an ICF/MR placement.”); 59 Ill. Adm.

² ICF/MR is the federal term for the facilities that Illinois refers to as ICF-DDs.

Code §120.50 (“The target population to be served under [Illinois’ Waiver Program] is Medicaid-eligible Illinois adults with developmental disabilities who otherwise would require services in a State-operated developmental center or a community ICF/MR.”). Thus, the members of the class proposed in the Second Amended Complaint -- those individuals who currently live in ICF-DDs, or who otherwise are eligible to live in ICF-DDs, and have expressly requested community placement -- are all indisputably “eligible” to be considered and evaluated for community placement by the State of Illinois.

7. As set forth above, the Second Amended Complaint squarely addresses the concerns raised by the Court in its decertification Order.

Respectfully submitted:

Dated: August 31, 2009

By: /s/ Kendra K. Hartman
One of the attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned, an attorney for the plaintiffs, certifies that on August 31, 2009, she electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel of record.

s/ Kendra K. Hartman