

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

ETHEL WILLIAMS, JAN WRIGHTSELL, DONELL HALL)
and EDWARD BRANDON, on behalf of themselves and all)
others similarly situated,)

Plaintiffs.)

v.)

ROD BLAGOJEVICH, in his official capacity as)
Governor of the State of Illinois, CAROL L. ADAMS,)
in her official capacity as Secretary of the Illinois)
Department of Human Services, LORRIE STONE,)
in her official capacity as Director of the Division)
of Mental Health of the Illinois Department of)
of Human Services, ERIC E. WHITAKER, in his)
official capacity as Director of the Illinois Department)
of Public Health, and BARRY S. MARAM, in his)
official capacity as Director of the Illinois Department)
of Healthcare and Family Services,)

Defendants.)

No. 05 C 4673
Judge Hart

MOTION FOR CERTIFICATION OF CLASS

Plaintiffs Ethel Williams and Jan Wrightsell, by their attorneys, respectfully move this Court to enter an Order for class certification pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. Plaintiffs propose a class of all persons who:

- (1) have a mental illness;
- (2) with appropriate supports and service, could live in the community; and
- (3) are institutionalized in privately-owned Institutions for Mental Diseases ("IMDs").

In support of this motion, Plaintiffs state as follows:

1. Plaintiffs seek declaratory and injunctive relief on their own behalf and on behalf of all others similarly situated. Plaintiffs allege that Defendants' have systematically failed to

inform IMD residents of their right to community services, to provide them with services in the most integrated setting appropriate to their needs, and to provide services with reasonable promptness. Defendants have failed to enact a policy or practice that assures that their services are administered to Plaintiffs in the most integrated setting appropriate to their needs, in violation of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 and 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

2. The defined class is so numerous that joinder of all plaintiffs is impracticable. More than five thousand individuals with psychiatric disabilities live in IMDs in the state of Illinois, and it is believed that thousands of these individuals could live in a more integrated setting with appropriate supports and services.

3. There are questions of law and fact common to the class. Those questions predominate over questions affecting individual class members. The claims of the named plaintiffs are typical of those of the class. Specifically, the named plaintiffs reside in IMDs and continue to languish in the segregated settings of those IMDs because Defendants have denied or failed to assure that the state's mental health programs provide services in the most integrated settings appropriate to their needs.

4. The named plaintiffs will fairly and adequately represent the interests of the class. They have no interests that conflict with or are antagonistic to the class and seek relief that will benefit all members of the class. Plaintiffs' counsel are competent and experienced in class-action civil rights cases of this nature.

5. Defendants, by failing to administer services in the most integrated settings appropriate to Plaintiffs' needs, have acted on grounds generally applicable to the class. Therefore, declaratory and injunctive relief with respect to the entire class is appropriate.

6. Plaintiffs have prepared a Memorandum, attached hereto and filed concurrently with this Motion, articulating in greater detail the grounds for class certification.

WHEREFORE, Plaintiffs respectfully request this Court enter an Order certifying this case as a class action for the class of persons described above.

Dated: April 26, 2006

Respectfully submitted,

By: /s/ Joseph M. Russell

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of PLAINTIFFS' MOTION FOR CERTIFICATION OF CLASS AND MEMORANDUM OF LAW was served the 26th day of April, 2006 via the Court's Electronic Case Filing System and via First Class Mail on the following counsel for Defendants:

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of Healthcare and Family Services,)

Defendants.)

No. 05 C 4673
Judge Hart

**MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR CERTIFICATION OF CLASS**

Plaintiffs, on behalf of themselves and others similarly situated, have brought this action seeking declaratory and injunctive relief requiring Defendants to cease needlessly segregating and institutionalizing Plaintiffs and those similarly situated in intermediate care nursing homes for people with mental illness. Pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, Plaintiffs respectfully move this Court for class certification. The proposed class consists of all persons in Illinois who have a mental illness, could live in the community with appropriate supports and services, and are institutionalized in privately-owned Institutions for

Mental Diseases (“IMDs”). Plaintiffs hereby submit this memorandum in support of their motion for class certification.

LEGAL STANDARD

The district court may certify a class action if the potential class satisfies the prerequisites set forth in Rule 23 of the Federal Rules of Civil Procedure. *See Gen. Telephone Co. of the Southwest v. Falcon*, 457 U.S. 147, 161 (1982). Specifically, the potential class must satisfy the following criteria: (1) numerosity; (2) commonality of facts and law; (3) typicality between the class claims and those of the named parties; and (4) adequacy of the representation by the names parties and class counsel. Fed. R. Civ. P. 23(a). Because Plaintiffs seek to certify a class under Rule 23(b)(2), they must also show that “the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final and injunctive relief or corresponding declaratory relief with respect to the class as a whole.” Fed. R. Civ. P. 23(b)(2). “In determining the propriety of a class action, the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974) (internal quotation omitted).

ARGUMENT

I. CLASS CERTIFICATION IS APPROPRIATE BECAUSE PLAINTIFFS MEET THE REQUIREMENTS OF RULE 23(A)

When certifying a class under Rule 23(a), the Court may not consider the merits of the Plaintiffs’ claims and must take all factual allegations in the complaint as true. *Eisen*, 417 U.S. at 177; *Gomez v. Illinois State Bd. of Educ.*, 117 F.R.D. 394, 398 (N.D. Ill. 1987). Additionally, civil rights cases alleging discriminatory policies or practices are “by definition” class actions, provided that they meet the other requirements of Rule 23(a). *Gen. Telephone Co.*, 457 U.S. at

157; *see also Robert E. v. Lane*, 530 F. Supp. 930, 944 (N.D. Ill. 1980) (stating that a case alleging civil rights violations in an institutional setting represents a “prototypical candidate” for class certification).

Courts may certify a class under Rule 23(a) when: (1) its members are so numerous that joinder of claims is impracticable; (2) there are questions of law or fact common to the class; (3) the claims of the representative parties are typical of the class claims; and (4) the representative parties and their counsel will fairly and adequately protect the interests of the class. Fed. R. Civ. Proc. 23(a); *Alliance to End Repression v. Rockford*, 565 F.2d 975, 977 (7th Cir. 1977). Courts have further recognized two implied requirements under Rule 23(a): (1) the class must be readily identifiable, and (2) the named plaintiffs must be part of the class. *Id.* at 977-78; *Gomez*, 117 F.R.D. at 397-98. As shown below, the proposed class here easily meets these requirements under Rule 23(a).

A. Joinder Would Be Impracticable

Although commonly referred to as the “numerosity” requirement, “the crux of the numerosity requirement is not the number of interested persons per se, but the practicality of their joinder into a single suit.” *Arenson v. Whitehall Convalescent & Nursing Home*, 164 F.R.D. 659, 663 (N.D. Ill. 1996) (citing *Small v. Sullivan*, 820 F. Supp. 1098, 1109 (S.D. Ill. 1992)). “‘Impracticable’ does not mean ‘impossible,’ but rather, extremely difficult and inconvenient.” *Danis v. USN Communs., Inc.*, 189 F.R.D. 391, 399 (N.D. Ill. 1999). While the number of class members is an important factor, other significant factors include “judicial economy, geographic diversity of class members, and the ability of individual class members to institute individual lawsuits. . .” *Id.*; *see also Riordan v. Smith Barney*, 113 F.R.D. 60, 61 (N.D. Ill. 1986) (“[T]he test for impracticability of joinder is not simply a test for the number of class members.”). Under these guidelines, courts in this District have certified classes with as few as

29 members. *See Riordan*, 113 F.R.D. at 61; *see also Swanson v. American Consumer Industries*, 415 F.2d 1326, 1333 (7th Cir. 1969) (finding 40 members sufficient for class certification).

Here, there is no question that joinder is impracticable. Plaintiffs and those similarly situated are currently housed in intermediate care nursing homes classified by the Illinois Department of Healthcare and Family Services (“DHFS”) (formerly the Illinois Department of Public Aid) as “IMDs.”¹ More than five thousand individuals with psychiatric disabilities live in IMDs in the state of Illinois. *See Amended Complaint* at ¶ 5. While the exact number of these individuals who could live in a more integrated setting with appropriate supports and services is not known to the Plaintiffs, it is believed to be in the thousands. *See id.* at ¶ 23. Accordingly, based on their sheer number alone, joinder of these residents’ claims is impracticable.

Other factors further point to the impracticability of joinder. As residents of nursing homes, the class members live in restrictive facilities which offer little independence, privacy, or control over their lives. *See id.* at ¶ 5.

Moreover, virtually all IMD residents receive Supplemental Security Income (“SSI”), and class members are required to contribute all but thirty dollars (\$30) of their monthly SSI directly to the IMD operators for their shelter and board.² Thus, class members do not have the independence or means to bring individual lawsuits. *See Arenson*, 164 F.R.D. at 663 (“Class

¹ Institutions for Mental Diseases (“IMDs”) are defined by Title XIX of the Social Security Act, which prohibits federal Medicaid funding for IMD residents between 22 and 64 years old. This classification is based on the fact that these are institutions with more than sixteen beds that are primarily engaged in providing diagnosis, treatment or care of persons with mental disabilities. 42 U.S.C. § 1396d(i).

² Federal law prohibits Defendants from receiving any federal Medicaid reimbursement for the care of IMD residents, aged 22 to 64, and Defendants must therefore pay for Plaintiffs’ IMD placements solely out of state funds. DHFS funds the remaining expenses associated with Plaintiffs’ shelter and board at the IMD. *See Amended Complaint* at ¶ 15.

members who are residents of a nursing home may also lack the ability to pursue their claims individually.”)

Also impracticable is the ability to join claims of future class members, who by their very nature cannot be readily identified. *Gomez*, 117 F.R.D. at 399 (“The Court also notes that numerosity is met where, as here, the class includes individuals who will become members *in the future*.”) (emphasis in original); *Weaver v. Reagan*, 701 F. Supp. 717, 721 (W.D. Mo. 1988) (“Since joinder of . . . unknown persons is impracticable, then the numerosity requirement is satisfied.”). Because the Defendants have failed to develop and fund community alternatives to IMDs, individuals with mental illness will continue to be needlessly warehoused in IMDs without opportunities to move into more integrated settings. Finally, judicial economy would plainly be served by consolidating the actions of all similarly-situated IMD residents rather than having them litigate individually. *Arenson*, 164 F.R.D. at 663.

B. There are Questions of Law and Fact Common to the Class

Rule 23(a) requires there “need be only a single issue common to all members of the class.” *Ligas ex rel. Foster v. Maram*, No. 05 C 4331, 2004 U.S. Dist. LEXIS 10856, * 11-12 (N.D. Ill. March 7, 2006), *Fields v. Maram*, No. 05 C 0174, 2006 U.S. Dist. LEXIS 16291, * 19-20 (N.D. Ill. Aug. 16, 2004); *Edmondson v. Simon*, 86 F.R.D. 375, 380 (N.D. Ill. 1980); *Hispanics United v. Village of Addison*, 160 F.R.D. 681, 688 (N.D. Ill. 1995). Thus, “[a] common nucleus of operative fact is usually enough to satisfy the commonality requirement of Rule 23(a)(2).” *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992). *See also Lightbourn v. County of El Paso*, 118 F.3d 421, 425 (5th Cir. 1997) (“The commonality test is met when there is at least one issue, the resolution of which will affect all or a significant number of the putative class members.”) (citations omitted); *Marisol A. v. Guiliani*, 126 F.3d 372, 375 (2nd Cir. 1997) (class must “share a common question of law or fact”); *Baby Neal v. Casey*, 43 F.3d 48, 55 (3rd

Cir. 1994) (commonality met where “named plaintiffs share at least one question of fact or law with the grievances of the prospective class.”).

An allegation that the defendant’s discriminatory policy or practice affects the class as a whole will suffice to prove commonality of claims, even when the factual situation of each class member differs. *Rosario*, 963 F.2d at 1017 (“The fact that there is some factual variation among class grievances will not defeat a class action.”) (citing *Patterson v. General Motors Corp.*, 631 F.2d 476, 481 (7th Cir.), *cert. denied*, 451 U.S. 914 (1980)); *see also Marisol A.*, 126 F.3d at 376 (in class action involving foster children, “[t]he unique circumstances of each child do not compromise the common question of whether, as plaintiffs allege, defendants have failed to meet their federal and state law obligations.”). In other words, a defendant’s standardized conduct toward class members, such as a generalized policy that affects all class members in the same way, is sufficient to satisfy commonality. *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998); *see Gen. Tele. Co. of the Southwest*, 457 U.S. 147, 159 n. 15 (1982).

In this action, Plaintiffs have challenged the Defendants’ systematic failure to inform IMD residents of their right to community services, to evaluate their readiness for community placement and to provide them with services in the most integrated setting appropriate to their needs. Class members are residents of IMDs who could live in the community with appropriate supports and services but who have been denied the opportunity to live in more integrated settings. *See Amended Complaint at ¶ 6.* This is, therefore, a “common nucleus of operative fact” that affects all members of the class. *See Ligas*, 2006 U.S. Dist. LEXIS 10856, * 11-12 (finding common questions of law and fact where the proposed class challenged the defendants’ standardized conduct and failure to enact policies regarding community placement); *Fields*, 2004 U.S. Dist. LEXIS 16291, * 19-23 (finding commonality where plaintiffs alleged and presented

evidence that the class was subjected to defendant's broad policy and practice of not providing required motorized wheelchairs to disabled nursing home residents receiving Medicaid).

Additionally, the class members' claims share common questions of law, including whether the Defendants' conduct violates the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Class actions are routinely certified in civil rights cases presenting common questions of this nature. As Judge Castillo has recognized, "[w]here 'broad discriminatory policies and practices constitute the gravamen of a class suit, common questions of law or fact are necessarily presumed.'" *Hispanics United*, 160 F.R.D. at 688 (citing *Midwest Cmty. Council v. Chicago Park Dist.*, 87 F.R.D. 457, 460 (N.D. Ill. 1980)).

C. The Named Plaintiffs' Claims are Typical of Those of the Class

The "typicality" requirement is met when the named plaintiffs' claims "arise[] from the same event or practice or course of conduct that gives rise to the claims of other class members and ... are based on the same legal theory." *De La Fuente v. Stokely-Van Camp*, 713 F.2d 225, 232 (7th Cir. 1983). This question is "closely related to the preceding question of commonality." *Rosario*, 963 F.2d at 1018; *see also Falcon*, 457 U.S. at 157 n. 13 ("the commonality and typicality requirements of Rule 23(a) tend to merge. . ."). As with commonality, typicality does not require that all class members suffer the same injury as the named plaintiffs. *See Rosario*, 963 F.2d at 1018 (7th Cir. 1992) (finding that Rule 23(a)(3) does not require all class members to suffer the same injury). "Instead, we look to the defendant's conduct and the plaintiffs' legal theory to satisfy Rule 23(a)(3)." *Id.*; *see also De La Fuente*, 713 F.2d at 232 (finding that typicality requirement was satisfied regardless of whether "there are factual distinctions between the claims of the named plaintiffs and those of other class members. Thus, similarity of legal theory may control even in the face of differences of fact."); *Ligas*, 2006 U.S. Dist. LEXIS

10856, * 13 (citations omitted) (noting that the typicality requirement may be satisfied where the plaintiffs share the same essential characteristics though factual differences may still exist).

Here, the named Plaintiffs are residents of nursing homes designated as IMDs who could live in the community with the appropriate supports and services but have been denied the opportunity to live in more integrated settings.. Their claims are therefore identical to those of the putative class, which consists of all other IMD residents who could live in the community with the appropriate supports and services but have also been denied the opportunity to live in more integrated settings. Because the named Plaintiffs and the class share the same deprivations of federal rights, typicality is easily met here. *See Ligas*, 2006 U.S. Dist. LEXIS 10856, * 13-14 (finding typicality requirement satisfied where the plaintiffs sought relief requiring defendants to establish a policy for community placement and evaluation thereof); *Fields*, 2004 U.S. Dist. LEXIS 16291, * 31-32 (finding typicality requirement satisfied where plaintiffs' claims arose from defendants' alleged policy of refusing to provide certain services to nursing home residents, and plaintiffs' and class members' claims are all based on the same legal theory).

D. The Named Plaintiffs and their Counsel Will Fairly and Adequately Protect the Interests of the Class

The question of whether the named plaintiffs will adequately protect the interests of the class is twofold. First, the inquiry focuses on the adequacy of the named plaintiffs' representation of the interests of the class. *Hispanics United*, 160 F.R.D. at 689. Second, the inquiry looks at the adequacy of the named plaintiffs' counsel. *Id.* As shown below, Plaintiffs meet both requirements here.

1. The Named Plaintiffs' Interests are not Antagonistic to Those of the Class

