

**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.)

No. 05 C 4673)

Judge Hart)

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 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.)

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

Defendants' opposition to class certification not only fails to address the well-defined prerequisites of Rule 23(a),¹ it also fails to address the core issue under Rule 23(b)(2): whether Defendants' conduct (*i.e.*, segregating persons with mental illness in institutions for mental diseases ("IMD"s)) is generally applicable to the proposed class (*i.e.*, persons segregated in those IMDs). *See* Fed. R. Civ. P. 23(b)(2). Instead, Defendants attempt to shoehorn improper, merits-

¹ Plaintiffs' opening brief argued that Rule 23(a)'s express prerequisites of numerosity, commonality, typicality and adequacy have been fulfilled. (*See* Pls.' Mem. Supp. Mot. Class Certif. at 2-12). Defendants do not respond to these arguments and any challenges to those arguments are therefore waived. *See, e.g., Commodity Futures Trading Comm'n v. Collins*, 997 F.2d 1230, 1233 (7th Cir. 1993) (holding argument not mentioned in brief waived).

based arguments into the Rule 23 analysis. Specifically, Defendants engage in extensive non-expert interpretation of the named Plaintiffs' psychiatric records and putative "analysis" of whether those individuals' psychiatric treatment has been adequate. This purported analysis is not relevant to a determination of whether there are systemic barriers to providing treatment in an integrated setting, and it is inappropriate in determining class certification under Rule 23.

The gravamen of Plaintiffs' First Amended Complaint and Motion for Certification of Class is Defendants' systemic failure to offer adequate services for all class members, defined as 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 IMDs. Plaintiffs challenge Defendants' failure (i) to identify IMD residents who could live in more integrated settings; (ii) to ensure that these residents are afforded an opportunity to live in more integrated settings; (iii) to ensure that sufficient community-based services are available to enable these residents to live in more integrating settings; and (iv) to move these residents into more integrated community settings. *See* Am. Compl. ¶¶ 27, 83, 90-91, 94-96. This is a paradigmatic case for certification pursuant to Rule 23(b)(2).

ARGUMENT

I. CLASS CERTIFICATION IS APPROPRIATE BECAUSE PLAINTIFFS MEET THE REQUIREMENTS OF RULE 23(A) AND 23(B)(2)

Defendants do not contest Plaintiffs' arguments that they meet each of the requirements of Rule 23(b)(2), but instead focus exclusively on the merits of Plaintiffs' claims. Defendants expressly acknowledge that "[i]n 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." Defs.' Mem. Supp. Resp. at 3, citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974). Indeed, the Seventh Circuit continues to

