

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

STANLEY LIGAS, et al.,)	
)	
Plaintiffs,)	
)	Case No. 05 cv 4331
v.)	
)	Judge Sharon Johnson Coleman
FELICIA NORWOOD, et al.,)	
)	
Defendants.)	

ORDER

Coming before the Court for hearing is plaintiffs’ and intervenors’ Joint Motion to Enforce the Consent Decree [666-1]. The instant motion stems from a Consent Decree entered into by the parties on June 15, 2011, after the Court certified a class and approved the Consent Decree. Defendants, officials of Illinois Department of Healthcare and Family Services and the Illinois Department of Human Services, assert that the State is in substantial compliance with the Consent Decree. For the reasons stated herein, this Court grants the motion.

Statement

Plaintiffs are individuals with developmental disabilities living at home or in intermediate care facilities for the developmentally disabled (“ICF-DD”) who want to live in community integrated living arrangements (“CILAs) or other community settings. The intervenors are individuals with developmental disabilities living in ICF-DDs and want to remain in those facilities. Plaintiffs and intervenors assert that the State is in violation of the Consent Decree by failing to provide resources of sufficient quality, scope, and variety to provide developmentally disabled individuals with community-integrated care to the highest degree possible. The plaintiffs and intervenors must demonstrate a violation of the court order by clear and convincing evidence. *See Bailey v. Roob*, 567 F.3d 930, 934 (7th Cir. 2009).

Since the United States Supreme Court’s decision in *Olmstead v. L.C. ex rel. Zimring*, “[s]tates are required to provide community-based treatment for persons with mental disabilities when the State’s treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into

account the resources available to the State and the needs of others with mental disabilities.” 527 U.S. 581, 607 (1999). In Section 4 of the 2011 Consent Decree at issue here, Illinois committed to providing these services.

Plaintiffs and intervenors presented evidence in the form of a report by economist, Elizabeth T. Powers, declarations from ICF-DD and CILA providers, and representatives of developmentally disabled individuals impacted by the Consent Decree. The State pays private organizations with state and federal money to provide CILA and ICF-DD services. In Illinois, approximately 11,000 individuals with developmental disabilities live in CILAs and 5,000 in ICF-DDs. The evidence presented demonstrates that the actual costs of operating CILA and ICF-DD facilities has increased substantially since the entry of the Consent Decree and wages for Direct Support Professionals (“DSPs”) has stagnated causing a staffing crisis that is inhibiting care and negatively impacting the individuals protected by the Consent Decree.

Defendants assert that the provision of services has not been reduced by the State and thus the State contends that it remains in substantial compliance. Further, defendants assert that the FY 2018 budget allocates an additional \$53.4 million to these services. Plaintiffs’ economist, Powers, advises that a 25% wage increase for DSPs would reduce turnover by a third. Defendants contend that such an increase is not financially feasible considering the State is facing \$14 billion in bills that are in arrears after the two year budget impasse.

Relying on *O.B. v. Normood*, 838 F.3d 837 (7th Cir. 2016), defendants argue that this Court is does not have the authority to order an increase in wages. This Court agrees. In that case, the Seventh Circuit Court of Appeals stated that “if the shortage is of nurses willing to work at the reimbursement rates set by HFS, we could not order the agency to eliminate the shortage by raising those rates.” *O.B.*, 838 F.3d at 842. Plaintiffs and intervenors seemed to recognize this limitation, albeit reluctantly, asserting instead that the relief they are seeking is a plan from defendants to bring the State into compliance with the Consent Decree.

At the hearing, the Court also heard from the Court Monitor, who reports that defendants are not in substantial compliance with the Consent Decree. The Monitor reports that budget impasse of the preceding two years has resulted in a tangible reduction of services to plaintiffs and intervenors due to the rising costs and frozen funding. Moreover, the State has not presented any plan for compliance beyond a \$0.75 hourly wage increase for DSPs for FY2018 (from the allocation of \$53.4 million in the new budget).

The Monitor referred to a State working group that had been established in 2014 to address this very issue. This Court believes that reaching a mutually agreeable long-term plan accounting for both the resources of the State and the needs of those with developmental disabilities would benefit from a revival of a State working group to devise creative solutions to the issue of compliance with the Consent Decree.

Accordingly, this Court finds that defendants are not in compliance with the Consent Decree by failing to provide the resources of sufficient quality, scope, and variety based on the ample evidence presented to the Court that individuals protected by the decree have experienced a reduction of services and have suffered substantially as a result. The dire financial situation of the State of Illinois and the attendant competing demands for resources are not lost on the Court. The Court directs that State to devise a plan to address the issues causing the reduction in services and to bring the State into substantial compliance.

IT IS SO ORDERED.

ENTERED:

Dated: August 11, 2017



SHARON JOHNSON COLEMAN
United States District Judge