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 **DEMAND FOR DECLARATORY AND INJUNCTIVE RELIEF**

First Amended Complaint for Relief

Plaintiffs, residents of intermediate care nursing homes for people with mental illness, bring this action against the above named Illinois state officials (collectively, "Defendants"), who have allowed Plaintiffs to be needlessly segregated and inappropriately warehoused in restrictive institutions for people with mental illness and who have failed to ensure that Plaintiffs are provided with services in the most integrated setting appropriate to their needs—in violation of their rights under federal statutes and regulations—and allege as follows:

Preliminary Statement

1. Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131, 12132, prohibits discrimination against individuals with disabilities. The United States

Department of Justice has promulgated regulations under Title II stating that "a public entity shall administer services, programs, and activities *in the most integrated setting appropriate to the needs* of qualified individuals with disabilities." *See* 28 C.F.R. § 35.130(d) (emphasis added). Similarly, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, provides that no person with a disability shall "solely by reason of his or her disability, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

2. In *Olmstead v. L.C.*, 527 U.S. 581 (1999) ("*Olmstead*"), the U.S. Supreme Court held that disability-based discrimination includes placing people with mental illness in "unjustified isolation."

3. This action is brought to compel Defendants to comply with these mandates with regard to Plaintiffs and those similarly situated. Plaintiffs are currently housed in private, intermediate care nursing homes classified as Institutions for Mental Diseases ("IMDs"), which are designed to warehouse—often for private profit—large numbers of people with mental illness in a segregated setting.[1]

4. Defendants have failed to assure that Plaintiffs, and those similarly situated, are placed in a more integrated setting where they could lead more independent and more productive lives within the community.

5. More than five thousand individuals with psychiatric disabilities live in privately-owned IMDs in Illinois. These IMDs house dozens and often hundreds of people into the same building. They needlessly warehouse large numbers of people who could be served at the same

[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. *See infra* ¶ 15.

or less cost to the State in far more integrated settings in their communities. The nursing home structure of the IMDs deprives residents of countless liberties and choices most citizens take for granted, such as the opportunity to read a book in private, to choose what to have for dinner, to decide when to wake up in the morning, and to come and go when desired. The IMDs range from cold and institutional to chaotic, unclean and unsafe. Few provide adequate staffing, psychiatric treatment, therapeutic activities or social rehabilitation. People frequently stay in IMDs only because they have nowhere else to go, a result of the Defendants' longstanding neglect of its basic obligations under the ADA.

6. Plaintiffs, and those similarly situated, continue to languish in the segregated setting of the IMDs, despite the fact that equally affordable and more integrated residential settings exist and/or could be made available. Such residential settings would more appropriately meet Plaintiffs' needs.

7. Defendants have violated Title II of the ADA and Section 504 of the Rehabilitation Act by failing to assure that their services are administered to Plaintiffs in the most integrated setting appropriate to their needs. Instead, they have isolated and institutionalized Plaintiffs, and those similarly situated, in IMDs.

Nature and Statutory Basis of Action

8. This action includes claims for violation of Title II of the ADA, 42 U.S.C. §§ 12131, 12132, which prohibits state and local government entities from discriminating against individuals with disabilities.

9. This action also includes claims for violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, which prohibits recipients of federal funding from discriminating against individuals with disabilities.

Parties

10. Named Plaintiff Ethel Williams has been a resident of an Illinois IMD (Monroe Pavilion) for approximately thirteen years. Ms. Williams has been diagnosed with bipolar disorder. She is alert, active, and attends an occupational day program five days a week. Ms. Williams maintains close contact with her children and grandchildren. She also spends her weekends with her brother and sister-in-law, where she takes her medication independent of supervision.

11. Named Plaintiff Jan Wrightsell has been a resident of an Illinois IMD (Monroe Pavilion) since early 2002. Ms. Wrightsell has been diagnosed with schizophrenia and has a history of major recurrent depression. She is alert and active; in fact, she currently cooks for staff and fellow members of an occupational day program, which she attends five days a week. Ms. Wrightsell maintains close contact with her family, and has substantial prior work experience as a sales clerk. She is well-educated and enjoys reading, writing short stories and composing poetry. Interacting with animals and pets is one of her favorite leisure activities.

12. Named Plaintiff Donell Hall has been a resident of an Illinois IMD (Greenwood Care) for approximately twelve years. Mr. Hall has been diagnosed with bipolar disorder and schizophrenia. Mr. Hall is alert and active; in fact, he formerly served in the United States Army, from which he received an honorable discharge. He currently works at Anixter Center, a day program which he attends five days a week.

13. Named Plaintiff Edward Brandon has been a resident of an Illinois IMD (Wilson Care) for approximately two years. Mr. Brandon has been diagnosed with schizophrenia. Mr. Brandon is alert and active. Mr. Brandon currently works five days a week at the Anixter

Center, his day program, where he buses tables. He maintains close contact with his grandmother and a cousin.

14. Plaintiffs, and those similarly situated, are Illinois residents who have mental illnesses that substantially limit their ability to perform major life activities. They also have a record of such mental illnesses, and are regarded by Defendants as having such mental illnesses. They are therefore individuals with disabilities for purposes of the ADA and the Rehabilitation Act. 42 U.S.C. § 12102, 29 U.S.C. § 705(20).

15. 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." 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). 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 their IMD placements solely out of state funds. Virtually all IMD residents receive Supplemental Security Income ("SSI"). SSI recipients must contribute all but thirty dollars ($30) of their monthly SSI checks directly to the IMD operators. DHFS funds the remaining expenses associated with Plaintiffs' shelter and board at the IMD.

16. Defendant Rod Blagojevich is the Governor of the State of Illinois, a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1). Governor Blagojevich is ultimately responsible for ensuring that Illinois operates its service systems in conformity with the ADA and the Rehabilitation Act. 20 ILL. COMP. STAT. 2407/20(c). He is sued in his official capacity.

17. Defendant Carol L. Adams is the Secretary of the Illinois Department of Human Services ("DHS"), the state agency responsible for assisting Illinois residents in achieving self-sufficiency, independence and health to the maximum extent possible by providing integrated family-oriented services, promoting prevention and establishing measurable outcomes in partnership with communities. DHS advertises itself as Illinois' largest agency, employing more than 15,000 people. It has an annual budget of nearly five billion dollars. DHS is a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1). DHS is the recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Carol L. Adams is responsible for the operation and administration of DHS and is ultimately responsible for ensuring that DHS provides services in conformity with the ADA and the Rehabilitation Act. 20 ILL. COMP. STAT. 2407/20(c). She is being sued in her official capacity.

18. Defendant Lorrie Stone is the Director of the Division of Mental Health ("DMH"), the division of DHS responsible for helping to maximize community supports and develop skills for persons with serious mental illness. DMH is responsible for administering mental health screening and assessment of individuals with mental disabilities considered for placement in nursing homes. DMH is responsible for the placement of individuals with mental illness in an appropriate facility or program. DMH is the recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. DMH is a public entity subject to the requirements of Title II of the ADA, 42 U.S.C. § 12131. Dr. Stone is responsible for the operation and administration of DMH and for ensuring that DMH, as the division of DHS responsible for providing residential and mental health services to people with mental illness, operates in conformity with the ADA and the Rehabilitation Act. She is being sued in her official capacity.

19. Defendant Eric E. Whitaker, M.D., is the Director of the Illinois Department of Public Health ("DPH"), the state agency responsible for licensing, regulating and inspecting all nursing homes, including IMDs, in the state of Illinois. DPH is responsible for certifying these facilities for participation in federal payment reimbursement programs. DPH is also responsible for ensuring that persons with mental illness are appropriately screened and placed in nursing homes, and receive discharge planning. 77 Ill Admin. Code §§300.4010, 300.4060; 210 ILL. COMP. STAT. 45/3-202.2. DPH is a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1). DPH is the recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. DPH's regulations permit the placement of an individual with mental illness in a nursing home, including an IMD, "for a medical reason directly related to the person's diagnosis of serious mental illness, such as medication management." 77 Ill. Admin. Code § 300.4000(c). Dr. Whitaker is being sued in his official capacity.

20. Defendant Barry S. Maram is the Director of the Illinois Department of Healthcare and Family Services ("DHFS"), the state agency responsible for providing health care coverage for the citizens of Illinois and for administering medical assistance programs and other fiscal programs. DHFS funds IMDs for resident services, including assessment, care planning, discharge planning, and treatment. 89 Ill. Admin. Code §145.20, subchapter d; 305 ILL. COMP. STAT. 5/5-5.5. DHFS is a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1). DHFS is the recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Barry S. Maram is responsible for operation and administration of DHFS and for ensuring that DHFS operates in conformity with the ADA and the Rehabilitation Act. He is being sued in his official capacity.

Class Action Allegations

21. The named Plaintiffs bring this action as a class action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

22. The class of individuals that the named Plaintiffs seek to represent consist of those persons in Illinois who (1) have a mental illness; (2) with appropriate supports and services, could live in the community; and (3) are institutionalized in privately-owned IMDs.

23. The class is so numerous that joinder of all Plaintiffs is impracticable. The exact number of individuals in the class is not known to Plaintiffs, but is believed to be in the thousands.

24. The claims of the named Plaintiffs are common to those of the class and raise common issues of fact and law, including, among others: whether Defendants adequately determine whether class members are eligible for community services; whether Defendants adequately inform IMD residents of their right to community services; whether Defendants are providing services to mentally ill individuals in the most integrated setting appropriate to their needs; whether Defendants have a comprehensive, effectively working plan for achieving that goal; whether Defendants efficiently administer a waiting list for community services that allows individuals to move out of IMDs and into more integrated settings at a reasonable pace; and whether Defendants violate the Americans with Disabilities Act and Section 504 of the Rehabilitation Act by failing to provide community-based services to qualified individuals.

25. Plaintiffs' claims that Defendants have failed to administer the state's mental health programs so as to provide services in the most integrated setting appropriate to their needs are typical of the claims of the class.

26. Plaintiffs will fairly and adequately protect the interests of the class because they suffer from deprivations identical to those of the class members and have been denied the same federal rights that they seek to enforce on behalf of the other class members, many of whom are unable to pursue claims on their own behalf as a result of their disabilities, their limited financial resources, and/or the actions of the Defendants to deprive them of their rights. Plaintiffs' interests in obtaining injunctive relief for the violations of their legal rights and privileges are consistent with and not antagonistic to those of any person within the class. Furthermore, Plaintiffs' counsel has extensive experience in the areas of class action litigation and civil rights laws concerning people with disabilities.

27. Defendants have acted or refused to act on grounds generally applicable to all members of the class by unnecessarily segregating class members. For example, Defendants have failed to inform class members of their right to community services, failed to provide them with services in the most integrated setting appropriate to their needs, and failed to provide services with reasonable promptness. Therefore, declaratory and injunctive relief with respect to the entire class is appropriate.

Jurisdiction and Venue

28. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 for civil actions arising under the laws of the United States and 28 U.S.C. § 1343 for actions arising under laws providing for the protection of civil rights.

29. Venue in the Northern District of Illinois is proper under 28 U.S.C. § 1391, as it is the judicial district in which a substantial portion of the events or omissions giving rise to these claims occurred.

30. Declaratory and injunctive relief are sought under 28 U.S.C. § 2201 *et seq.*

Background

31. Beginning in the late 1960s the State of Illinois began releasing thousands of individuals with mental illness from its psychiatric institutions. As this "de-institutionalization" progressed, however, the state failed to create and develop adequate community housing and community services for large numbers of "de-institutionalized" individuals. Instead, the state funneled funds to nursing home operators who profited from the large numbers of mentally ill individuals recently de-institutionalized. Throughout the 1970s and 1980s, nursing home operators opened up large facilities ("IMDs") designed — often for profit — to house these individuals, oftentimes in settings nearly as segregated and restrictive as the state psychiatric institutions they had just exited. Today, individuals with mental illness continue to be discharged from psychiatric hospitals into these restrictive facilities, where they continue to be needlessly segregated from society-at-large. This segregation occurs under the supervision of state agencies which, rather than helping re-integrate these individuals back into their communities by funding community-based programming, endorse and fund the IMDs. These IMDs do not prepare their residents to live independently and deny residents privacy and control over their lives. In many cases, the choice for persons with mental illness is between residence in an IMD—and compliance with its restrictive and controlling environment—or homelessness.

32. Some fortunate individuals are discharged from psychiatric hospitals and placed in residential programs that are designed to help them achieve independence and manage their illness. Many others, however, like Plaintiffs and those similarly situated, are instead discharged to nursing homes, many of which are IMDs. In most Illinois nursing homes designated as IMDs, virtually all IMD residents have been diagnosed with mental illness.

33. Federal law prohibits Medicaid reimbursement to any individual who is older than 21 years of age and under 65 years of age and who is a resident of an IMD (42 U.S.C. § 1396d(a)(1), (2), (4)). Plaintiffs and class members who receive SSI are required to contribute all but thirty dollars ($30) of their monthly SSI check directly to the IMD operators to be used for their shelter and board. DHFS funds the remaining expenses associated with Plaintiffs' support and housing at the IMD.

34. Thus, the State of Illinois is not reimbursed by the federal government for serving residents between the ages of 22 and 64 in IMDs. However, the State of Illinois would receive significant federal reimbursement for serving these same individuals in the community. If the current system were altered, the savings to the State of Illinois would be immense.

35. Defendants have failed to integrate the state's mental health system by failing to develop and fund community alternatives. Many IMD residents could be served in community-integrated settings; however, as a practical matter, the choice most residents face is either an IMD or homelessness. Because most of their money — including money earned by those working at jobs outside the IMDs — goes into the IMD operators' pockets, IMD residents have little to no hope to save enough money to move to any other place. Most residents of IMDs remain there for years, because they are provided few opportunities to obtain services in more integrated settings and because they are provided few rehabilitation services to enable them to become more independent within the surrounding community.

36. Instead of serving individuals with mental illness in more integrated settings, Defendants continue to fund and operate a mental health system that segregates these individuals and, in many cases, restricts their access to the outside world.

Facts

37. Illinois has historically provided, and currently provides, inpatient hospitalization to individuals with mental illness in public and private psychiatric hospitals.

38. Some individuals discharged from psychiatric hospitals return home to family or friends. Others are discharged to various community residential programs for individuals with mental illness.

39. In many of these residential programs, individuals live in their own apartments with greater privacy and with a greater choice of activities than now found in the IMDs. Individuals in community programs sometimes live in integrated buildings with individuals who do not have mental illnesses. They usually are able to receive and entertain visitors and communicate by phone in privacy. Individuals in community programs go to stores to shop for food and other necessities. Most of these individuals may go to doctors of their choice, as well as engage in social activities of their choice. They tend to these and other daily needs to the degree they are able, with supportive services provided by case managers. These programs are designed to foster independence and to enable individuals to become as self-sufficient as possible. Such programs are generally known as "supported housing." Unlike IMDs, they are not institutional in character.

40. When state agencies fail to develop or fund community services, individuals with serious mental illness are discharged to nursing homes, including IMDs.

Institutions for Mental Diseases ("IMDs")

41. The Named Plaintiffs and class members are currently housed in intermediate-care nursing homes classified as "IMDs." Most Illinois IMDs — of which there are approximately twenty seven — house over one hundred residents each. Virtually all IMD residents have been diagnosed with mental illness. Common diagnoses include bipolar disorder, schizophrenia and major recurrent depression.

42. There is insufficient capacity and long waiting periods for admission into community residential programs, including supported housing, so people with serious mental illness are inappropriately discharged from psychiatric hospitals to IMDs. The decision to discharge individuals such as Plaintiffs and those similarly situated to an IMD, as opposed to supported housing, is not based on any relevant treatment criteria or diagnosis, but simply on the lack of availability of appropriate alternatives.

43. Once individuals, such as Plaintiffs, are placed in an IMD, opportunities for discharge to supported housing are rare.

44. Most IMDs provide only beds, meals, and spartan rehabilitative services. For Plaintiffs and virtually all class members, the services provided by the IMDs could be better provided in a more integrated, community residential program.

45. IMDs place many limitations on residents' autonomy and privacy. Residents are subjected to a highly regimented lifestyle in which most daily activities are conducted in one place in the company of large numbers of other individuals with mental illness, and which is characterized by restrictive rules and policies. In contrast, the more integrated community residential programs for individuals with mental illness afford residents much more choice, freedom and privacy, as well as the opportunity to maintain family relationships and to interact with and form friendships with people who do not have mental illness.

46. Meals at IMDs are provided with little choice. Typically, well over one hundred individuals share access to a single common area. Residents must line up for meals and for medication, which is only dispensed at specific times in the common areas.

47. IMDs provide very few recreational or other activities geared toward helping residents gain independence. Residents spend hours watching television in a common room or

smoking cigarettes in a smoking room during the winter or outside on the sidewalk—beside the facility —when the weather allows. Residents wander aimlessly in and out of the common room and smoking room with nothing to do for the majority of the day. There are some activities on weekday afternoons that purportedly develop residents' practical skills; however, these activities are minimal, if not altogether ineffective. Some residents are able to attend day programs outside the facility, where they may learn skills to help them become more independent and more productive members of the community. However, at the end of the day, these residents must return to their IMDs.

48. IMD residents have almost no control over their personal space. Most IMD residents share a bedroom and bathroom with several other people. Residents generally have no control over when or by whom their rooms are cleaned or who has access to their rooms.

49. IMD residents have virtually no privacy. Payphones are located only in common areas, where anyone can overhear their conversation. Typically, IMD residents can receive calls only through the IMD switchboard, and are usually paged over a loudspeaker to come to a phone that is not in a private space.

50. The lack of privacy makes it very difficult for residents to exercise their rights. Since it is difficult for residents to make phone calls without IMD staff knowing they are doing so, residents may be reluctant to call advocates when they have a problem. This serves as a further disincentive to residents exercising any kind of independence.

51. Residents have little contact with members of the community outside the facility. Outsiders' visits are generally limited and most visitors may not be received in privacy.

52. Typically, no food, liquids or medicines can be brought into the facility without permission of the IMD Administrator or nurse in charge.

53. The depersonalization and lack of mental stimulation in the facility erodes residents' ability to live independently.

54. Moreover, IMDs have policies and practices that prevent residents from moving out of the institution. Such policies inhibit the ability of residents to obtain appropriate services and supports that will provide them an opportunity to lead more fulfilling and more independent lives outside the IMD. Discharge planning is not regularly conducted. Furthermore, residents receive virtually no education or information about the limited alternatives to nursing homes.

55. IMD residents are typically not given a choice of which doctors and pharmacies to use. Residents' doctors and pharmacies are chosen by the facility.

56. IMD operators usually serve as the representative payee for residents and thus control the residents' finances. As the representative payees, the operators receive residents' Supplemental Security Income ("SSI") checks directly from the government and distribute to residents the small personal needs allowance the residents are permitted to retain from these checks. This "personal needs allowance" is usually $30.00 a month, or about $1.00 per day. The remaining amount is retained for use by the IMD. This renders residents completely dependent upon the IMD for all basic needs.

57. IMDs provide little or no rehabilitative treatment designed to promote recovery, independence and integration into the community. Some IMD residents are able to participate in work programs, where they hold "jobs" inside the facility; however, those who hold these positions are only allowed to work for short periods of time each day.

58. IMDs lack a sufficient number of trained staff necessary to provide adequate care to individuals with mental illness and to provide them with the opportunities to lead happy, independent, and productive lives.

59. Many IMD residents are subject to Behavior Management Programs ("BMPs"). These BMPs are similar to those behavior management systems used in psychiatric hospitals. A resident's freedom to leave the facility is restricted based on the staff's assessment of how the individual complies with institutional rules. In short, residents must meet the behavioral standards set by the institution in order to obtain greater freedom. Residents who fail to perform required activities or who violate the rules are punished by having their liberties restricted.

NAMED PLAINTIFFS

Ethel Williams

60. Plaintiff Ethel Williams has been a resident of Monroe for approximately thirteen years, or since she was discharged from the John J. Madden Mental Health Center. Ms. Williams maintains close contact with her children and grandchildren. In addition, Ms. Williams spends her weekends with her brother and sister-in-law; she takes her medication independently while staying with her family. Ms. Williams is alert, active, and attends a day program five days a week. In the past, Ms. Williams has worked within the retail industry.

61. Ms. Williams wishes to leave Monroe and to live in a more integrated community setting, in order to accelerate her rehabilitation and to lead a more independent life. Professionals familiar with Ms. Williams's circumstances have indicated that she is ready to live in the community and that continued institutionalization is unnecessary.

62. Defendants, however, have failed to provide Ms. Williams with community services. Defendants have also failed to provide meaningful, adequate, and periodic assessments of Ms. Williams's potential for placement in the most integrated community setting available. Ms. Williams has repeatedly told the staff of Monroe that she wishes to leave, and facility records indicate her desire to live more independently. Her medical records and progress notes indicate that she is a good candidate for placement in an integrated community setting.

However, Defendants fail to ensure that Ms. Williams receives adequate discharge planning and fail to provide opportunities for her to lead a more independent and more productive life.

63. Monroe has a Behavior Management Program that has four levels. Ms. Williams entered Monroe at "Level One"; however, she has complied with institutional rules to the point where she has been "awarded" a "Level Four" status. As a "Level Four" resident, Ms. Williams is permitted to be outside Monroe for most of the day in order to, for example, visit family members.

64. Ms. Williams has repeatedly expressed an interest in returning to the community. She does not require nursing care in an institutional setting. She could live in the community if she were provided with the types of home and community-based supports and services currently provided in Illinois. However, Defendants have failed to ensure adequate discharge planning for Ms. Williams, even though she has demonstrated skills (*e.g.*, working in the retail industry) that would enable her to succeed in more independent living.

65. Ms. Williams has no significant physical health needs being addressed by Monroe.

Jan Wrightsell

66. Plaintiff Jan Wrightsell, has been a resident of Monroe since early 2002, when she was discharged from the psychiatric unit of Chicago's St. Joseph's Hospital. Ms. Wrightsell attends a day program five days a week, and is responsible for cooking lunch for fellow residents and staff. She has been diagnosed with schizophrenia and has a history of major recurrent depression. Ms. Wrightsell maintains close contact with her family, and has substantial prior work experience as a sales clerk. She is college-educated, composes poetry and loves to care for animals.

67. Ms. Wrightsell wishes to leave Monroe in order to live in a more integrated community setting, in order to accelerate her rehabilitation and to lead a more independent life. Professionals familiar with her circumstances, and with whom Ms. Wrightsell has interacted in her day programs, have indicated that she is ready to live in a less restrictive program in the community and that continued institutionalization is unnecessary.

68. Defendants, however, have failed to provide Ms. Wrightsell with community services. Defendants have provided only formulaic assessments of Ms. Wrightsell that lack any individual plan or review. Ms. Wrightsell has repeatedly told the staff of Monroe that she wishes to leave; however, facility records fail to reflect her desire to live more independently. Defendants fail to ensure that Ms. Wrightsell receives adequate discharge planning and fail to provide opportunities for her to lead a more independent and more productive life. Instead, Defendants have consigned her to an institution that refuses to help her progress toward social independence.

69. Ms. Wrightsell entered Monroe at "Level One"; however, she has complied with institutional rules to the point where she has been "awarded" a "Level Three" status. As a "Level Three" resident, Ms. Wrightsell is only permitted to leave Monroe on her own for between two and six hours per day, depending on the length of the pass assigned to her at any given time. Although she has fulfilled "Level Four" requirements (*e.g.*, successfully graduating from several day programs), Monroe refuses to grant her "Level Four" privileges.

70. Ms. Wrightsell has repeatedly petitioned Monroe to move to "Level Four." However, her petitions have been regularly denied by Monroe staff with neither sound nor written reason. In fact, Ms. Wrightsell's privileges have often been suspended based on arbitrary reasons (*e.g.,* bringing her winter coat to the cafeteria).

71. Ms. Wrightsell has repeatedly expressed an interest in returning to the community. She does not require nursing care in an institutional setting. She could live in the community if she were provided with the types of home and community-based supports and services currently provided in Illinois. These supports and services provided in the community would cost the same or less than the amount currently spent on Ms. Wrightsell's care. However, Defendants fail to ensure adequate discharge planning for Ms. Wrightsell, even though she has demonstrated skills (*e.g.*, working as a cook in the day program she now attends) that would enable her to succeed in more independent living. Ms. Wrightsell has no significant physical health needs being addressed by Monroe.

Donell Hall

72. Plaintiff Donell Hall is 43 years old and has been a resident of Greenwood Care for approximately twelve years. He was placed in Greenwood Care after he was discharged from Chicago-Read Hospital. Mr. Hall is very physically active; in fact, he formerly served in the United States Army, from which he received an honorable discharge. Mr. Hall has been diagnosed with bipolar disorder and schizophrenia.

73. Mr. Hall wishes to leave Greenwood Care and to live in a more integrated community setting, in order to accelerate his rehabilitation and to lead a more independent life. Professionals familiar with Mr. Hall's circumstances have indicated that he is ready to live in the community and that continued institutionalization is unnecessary. Prior to living at Greenwood Care, he owned his own apartment and car. He is able to manage his money and cook for himself, as he had done prior to his institutionalization at Greenwood Care.

74. Defendants, however, have failed to provide Mr. Hall with community services. Defendants have also failed to provide meaningful, adequate, and periodic assessments of Mr. Hall's potential for placement in the most integrated community setting available. Mr. Hall has

repeatedly told the staff of Greenwood Care that he wishes to leave, and facility records indicate his desire to live more independently. His medical records and progress notes indicate that he is a good candidate for placement in an integrated community setting. However, Defendants fail to ensure that Mr. Hall receives adequate discharge planning and fail to provide opportunities for him to lead a more independent and more productive life.

75. Mr. Hall has expressed an interest in returning to the community. He does not require nursing care in an institutional setting. He could live in the community if he were provided with the types of home and community-based supports and services currently provided in Illinois. However, Defendants have failed to ensure adequate discharge planning for Mr. Hall, even though he has demonstrated skills that would enable him to succeed in more independent living. He currently works at the Anixter Center, his day program, five days a week.

76. Mr. Hall has no significant physical health needs being addressed by Greenwood Care.

Edward Brandon

77. Plaintiff Edward Brandon is 25 years old and has been a resident of Wilson Care for approximately two years. Mr. Brandon has been diagnosed with schizophrenia. He has formerly held several jobs in retail stores; currently, Mr. Brandon works, Monday through Friday, at the Anixter Center where he buses tables. He maintains close contact with his grandmother and cousins.

78. Mr. Brandon wishes to leave Wilson Care and to live in a more integrated community setting, in order to accelerate his rehabilitation and to lead a more independent life. Professionals familiar with Mr. Brandon's circumstances have indicated that—with appropriate supports and services—he is ready to live in the community and that continued

institutionalization is unnecessary. Every day he is subjected to second-hand smoke, as he has no control over whether his roommates can smoke in his room.

79. Defendants, however, have failed to provide Mr. Brandon with community services. Defendants have also failed to provide meaningful, adequate, and periodic assessments of Mr. Brandon's potential for placement in the most integrated community setting available. Facility records indicate his desire to live more independently. His medical records and progress notes indicate that he is a good candidate for placement in an integrated community setting. However, Defendants fail to ensure that Mr. Brandon receives adequate discharge planning and fail to provide opportunities for him to lead a more independent and more productive life.

80. Mr. Brandon has expressed an interest in returning to the community. He does not require nursing care in an institutional setting. He could live in the community if he were provided with the types of home and community-based supports and services currently provided in Illinois. However, Defendants have failed to ensure adequate discharge planning for Mr. Brandon, even though he has demonstrated skills (*e.g.*, working at Anixter Center) that would enable him to succeed in more independent living.

81. Mr. Brandon has no significant physical health needs being addressed by Wilson Care.

The Roles of Defendants

82. Defendants are all charged with administering and/or overseeing long-term care services for individuals with mental illness in both institutional and community settings.

83. In the more than six years since *Olmstead* was decided, Defendants have failed to develop a comprehensive and effective working plan for identifying people with mental illness unnecessarily institutionalized in nursing homes and IMDs and moving them into more

integrated settings. The Defendants are responsible for the operation and administration of their respective agencies and are ultimately responsible for ensuring that their agencies provide services in conformity with the ADA and the Rehabilitation Act. 20 ILL. COMP. STAT. 2407/20(c). However, no viable working plan has been produced nor have Defendants evidenced a commitment to action which would show "ongoing progress toward community placement." *See Penn. P.P.A., Inc. v. Penn. Dept. of Public Welfare*, 422 F.3d 151, 159 (3rd Cir. 2005).

84. DHS' duties also include monitoring the care given by nursing homes, including IMDs, and providing input into the licensing process on such matters as staffing and program content.

85. DHS is responsible for the screening of individuals such as Plaintiffs and those similarly situated, who are being considered for admission to nursing facilities and who are ages 18 through 59, and for individuals aged 60 and over who have a severe mental illness, in order to determine whether nursing facility care is appropriate. 77 Ill. Adm. Code § 300.615.

86. DPH, in conjunction with DHS, is required to develop minimum standards for licensing facilities for people with mental illness, including IMDs. 210 ILL. COMP. STAT. 45/3-203.

87. DPH is also responsible for regulating and inspecting all nursing facilities, including IMDs, in Illinois. DPH is required to develop a curriculum for training nursing assistants and habilitation aides. 210 ILL. COMP. STAT. 45/3-206.

88. DPH is responsible for promulgating rules governing the provision of services by nursing facilities to residents who have a serious mental illness, including assessment, care planning, treatment, and discharge planning. 210 ILL. COMP. STAT. 45/3-202.2.

89. DHFS classifies nursing homes as IMDs and administers funding to IMDs as appropriate. 89 Ill. Adm. Code §§145.20, 145.40, 140.500. DHFS is required to verify the need for group care for individuals with severe mental illness in accordance with 89 Ill. Adm. Code § 140.642. DHFS is also required to approve the placement in the nursing facility based upon a determination that a need for a nursing level of care exists and that the nursing facility meets state law requirements. DHFS authorizes payment to the nursing facility. 89 Ill. Adm. Code § 140.510.

90. Defendants do not consider the needs of Plaintiffs or other similarly situated IMD residents for more integrated housing when they plan for development of integrated supported housing programs.

91. Despite the fact that they are responsible for ensuring appropriate placement of individuals with mental illness and for establishing appropriate discharge procedures, Defendants have not provided Plaintiffs, and those similarly situated, with information that will enable them to seek services in a more integrated setting or to lead more independent and more productive lives in society.

92. In violation of their statutory duties, Defendants are administering their programs and providing services in a manner that supports and encourages the segregation of individuals with mental illness, by inappropriately relying on IMDs.

93. Defendants have developed and funded long-term residential programs that enable individuals to receive services in settings far more integrated than nursing homes.

94. However, Defendants have failed to develop and fund sufficient capacity in these residential programs, forcing into nursing homes thousands of individuals with mental illness who could, and would, prefer to be served in more integrated settings.