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Hawai'i Disability Rights Center

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HAWAII DISABILITY RIGHTS
CENTER, in a representative capacity
on behalf of its clients and all others
similarly situated,

Plaintiff,

vs.

STATE OF HAWAII, DEPARTMENT
OF HEALTH; CHIYOME L. FUKINO,
M.D., in her capacity as Director of

CIVIL NO. 10-1-1357-06 1005
(Declaratory Judgment)

**COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF, AND
DAMAGES; SUMMONS**

the State of Hawai'i, Department of
Health,

Defendants.

**COMPLAINT FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND DAMAGES**

The Hawai'i Disability Rights Center ("HDRC"), in a representative capacity on behalf of its clients and all others similarly situated, alleges against the State of Hawai'i and its Department of Health as follows:

INTRODUCTORY STATEMENT

1. Beginning in September 2008, the State of Hawai'i Department of Health's ("DOH") Adult Mental Health Division ("AMHD")—without notice or hearing—began making significant cuts to programs and services it had previously provided to mentally ill adults

2. In 2009, the DOH changed its rules regarding eligibility for adult mental health services and the types and quantity of services provided to mentally ill adults by AMHD. These new rules significantly reduced both the number of adults eligible for services and the quality and quantity of services provided to those who remained eligible for assistance. The cutbacks harmed thousands of mentally ill adults throughout the State of Hawai'i by depriving them of access to needed medication, treatment, and other services.

3. These rules were adopted by administrative fiat, without regard to the requirements of the Hawai'i Administrative Procedures Act ("HAPA"). Consequently, the new rules are void.

4. In this action, HDRC seeks—for the benefit of its mentally ill constituents and all others similarly situated—the following:

- a declaratory judgment that the DOH's current rules are void;
- injunctive relief requiring the DOH to (1) determine the eligibility of all persons who were entitled to service under its pre-existing rules; (2) provide the full array of services and medications that all such persons are entitled to receive; (3) provide remedial services to compensate for the wrongful denial of services under the DOH's invalid rules; and (4) refrain from withholding any permitted medication, treatment, and other services unless and until the DOH is duly authorized to do so based upon lawfully adopted rules; and
- damages to compensate for physical and psychological injuries caused by the wrongful denial of services and medication based upon invalid rules.

THE PARTIES

5. HDRC is a Hawai'i non-profit corporation based in Honolulu, Hawai'i. Its mission—defined by federal law (42 U.S.C. §10801 *et seq.*) and state law (H.R.S. § 333F-8.5)—is to defend and enforce the legal rights of people with disabilities. It serves mentally ill persons throughout the State.

6. HDRC brings this action in a representative capacity on behalf of its constituents who have been harmed by being deemed ineligible

under, and/or given only a lesser amount of medication, services, and/or treatment under the restrictive rules that AMHD began to follow in July 2009.

7. HDRC has the authority to pursue legal remedies to ensure the protection of individuals with mental illness who are receiving care or treatment from DOH pursuant to 42 U.S.C. § 10805.

8. HDRC is pursuing this action to protect and advocate for the rights and interests of "individuals with mental illness" as that term is defined in 42 U.S.C. § 10802. These individuals are HDRC's constituents.

9. These constituents have a significant mental illness or emotional impairment that substantially limits one or more major life activities, including personal care, working, and sleeping. They are therefore individuals with disabilities for purposes of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* and the Rehabilitation Act, 29 U.S.C. §501 *et seq.*

10. These constituents have each suffered injuries, or will suffer such injuries, that would allow them to bring suit against Defendants in their own right.

11. This action is properly brought as, and may be maintained as, a class action because (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of HDRC's clients are typical of the claims or defenses of the class, and (4) the representative party, HDRC, will fairly and adequately protect the interests of the class.

12. This action is properly maintainable as a class action because, in addition to the foregoing,
- a. individual actions would create the risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class;
 - b. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; and
 - c. questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

13. The State of Hawai'i is a sovereign entity, which has authorized this suit by waiving its immunity under Hawai'i Revised Statutes ("H.R.S.") §§ 91-7, 661-1, and 662-1.

14. DOH is an agency of the State of Hawai'i, which may be sued under H.R.S. § 91-7.

15. Dr. Chiyome Fukino is the Director of DOH and is sued in her representative capacity.

FACTUAL ALLEGATIONS

16. In September 2008, AMHD closed its Assertive Case Treatment program, which had provided 24-hour case management to seriously mentally ill adults.

17. In January 2009, AMHD reduced its case management hours from 3 per week to 3.5 per month.

18. In the Spring of 2009, AHMD eliminated case management hours provided to mentally ill individuals with private insurance.

19. Prior to July 2009, AMHD determined eligibility for its services under policies and procedures adopted in 2004 (the "2004 Rules").

20. In July 2009, DOH adopted new policies and procedures under which AMHD restricted the eligibility of mentally ill persons and reduced the medication, services, and treatment available to those who remained eligible for its services. These new policies and procedures are statements of general or particular applicability and future effect that implement, interpret, or prescribe law or policy in ways that affect the rights of, and procedures available to, the public. They do not affect only the internal management of the DOH.

21. Among other things, the new rules altered the eligibility criteria for AHMD's services, eliminating coverage for, among others, individuals with post traumatic stress disorder, obsessive compulsive disorder, borderline personality disorder, and most cases of depression.

22. The new rules eliminated, among others, the following services previously provided by AHMD:

- a. Shelter Plus Care for the homeless;
- b. Outpatient treatment;
- c. Assertive Community Treatment;
- d. Community-based intervention;
- e. Transportation;
- f. Supported education;
- g. Warm Line;
- h. Consumer Support Groups;
- i. Respite; and
- j. Family Education.

23. In addition, the new rules: (1) reduced staffing levels at residential facilities from 24 hours to 8-16 hours; (2) de-funded parent education and support groups; (3) eliminated psychological rehabilitation services; (4) significantly reduced staffing levels at AMHD facilities.

24. When it implemented the new rules, the DOH:

- a. Denied continuing benefits to some mentally ill adults who were theretofore entitled to—but had not yet received—services from the AMHD.
- b. Reduced the array and amount of services and medication provided to adults who remained eligible under the 2004 Rules for medication and treatment, and,

c. Refused medication and treatment to mentally ill adults who would have received services under the DOH's preexisting policies and procedures.

CLAIM FOR RELIEF

25. These new rules governing eligibility and services were adopted by the DOH without any effort to satisfy the notice and hearing requirements imposed by HAPA. These rules are, therefore, invalid under H.R.S. § 91-7.

26. By wrongfully denying medication and treatment to mentally ill adults who were eligible under pre-existing policies and procedures, the State of Hawai'i caused them irreparable injuries, which can only be remedied by injunctive relief determining their eligibility and requiring the DOH to provide both remedial care as well as restoring access to all pre-existing services and medication.

27. By wrongfully denying medication and treatment to mentally ill adults who were eligible under pre-existing policies and procedures, the State of Hawai'i caused them physical and psychological injuries for which the State is liable in damages in amounts to be proven at trial.

WHEREFORE, Plaintiff prays that the Court award the following relief to the class members:

1. Declaratory relief that the DOH's current rules governing eligibility for adult mental health services and the array of services and medications provided are invalid.

2. Injunctive relief providing all services and medication to persons entitled thereto on or after July 1, 2009 and requiring appropriate remedial services to compensate for the wrongful denial of services and medication.

3. Remedial services commensurate with the evidence at trial.

4. Attorneys' fees and costs. And

5. Such other and further relief as may be justified, in equity or at law, based upon the evidence before the Court.

DATED: Honolulu, Hawai'i, JUN 21 2010.



PAUL ALSTON
J. BLAINE ROGERS
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Hawai'i Disability Rights Center

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HAWAII DISABILITY RIGHTS
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STATE OF HAWAII, DEPARTMENT
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M.D., in her capacity as Director of
the State of Hawaii, Department of
Health,

Defendants.

CIVIL NO. _____
(Declaratory Judgment)

SUMMONS

SUMMONS

STATE OF HAWAII

To the above-named Defendant(s):

You are hereby summoned and required to serve upon ALSTON
HUNT FLOYD & ING, attorneys for Plaintiff, whose address is 18th Floor, 1001
Bishop Street, Honolulu, Hawaii 96813, an answer to the Complaint which is
herewith served upon you, within twenty (20) days after service of this
Summons upon you, exclusive of the day of service. If you fail to do so,
judgment by default will be taken against you for the relief demanded in the
Complaint.

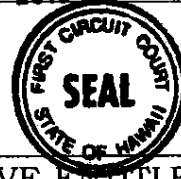
This Summons shall not be personally delivered between 10:00
p.m. and 6:00 a.m. on premises not open to the general public, unless a judge

of the above-entitled court permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawai'i, JUN 22 2010.

H. CHING



CLERK OF THE ABOVE-ENTITLED COURT