

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNIVERSITY LEGAL SERVICE -
PROTECTION AND ADVOCACY, INC.
220 I Street, N.E., #130
Washington, D.C. 20002

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CASE NUMBER 1:04CV01021

JUDGE: Reggie B. Walton

DECK TYPE: TRO/Preliminary Injunction

DATE STAMP: 06/22/2004

Plaintiff,

v.

JOHN STUPAK, ACTING DIRECTOR
NORTHWESTERN HUMAN SERVICES,
in his official capacity,
4406 Georgia Ave., N.W.
Washington, D.C. 20011

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and

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MARTHA B. KNISLEY, DIRECTOR,
DISTRICT OF COLUMBIA
DEPARTMENT OF MENTAL HEALTH,
in her official capacity,
64 New York Ave., N.E., 4th fl.
Washington, D.C. 20002

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Defendants.

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COMPLAINT

NOW COMES Plaintiff, by and through its counsel, and for its complaint against Defendants,
states and alleges as follows:

Preliminary Statement

This is an action for declaratory and injunctive relief brought by the University Legal

Services - Protection and Advocacy, Inc. ("ULS-P&A") pursuant to the Protection and Advocacy for Individuals with Mental Illness Act of 1986 ("PAIMI Act"), 42 U.S.C. §§10801-10827 and 42 U.S.C. §1983. Defendant John Stupak, Acting Director of Northwestern Human Service ("Northwestern"), directly and through his agents has refused to give ULS-P&A access to records of Northwestern and the records of consumers of mental health services provided by Northwestern, records which ULS-P&A has requested pursuant to its authority under the PAIMI Act.

Similarly, Martha Knisley, directly or through her agents and employees, has refused to give ULS-P&A access to District of Columbia's Department of Mental Health ("DMH") records that ULS-P&A has requested pursuant to its authority under the PAIMI Act.

ULS-P&A alleges that the Defendants' refusal to provide ULS-P&A access to these records violates the PAIMI Act, and the First and the Fifth Amendments of the U.S. Constitution.

Jurisdiction and Venue

1. Jurisdiction is conferred upon this court pursuant to 28 U.S.C. §§1331 and 1343(a)(4) as this action arises under 42 U.S.C. §§10801-10827 and 42 C.F.R. §51.41 and the First and Fifth Amendments to the Constitution of the United States and 42 U.S.C. §§ 1983.
2. Venue in the United States Court for the District of Columbia is invoked pursuant to 28 U.S.C. §1391(b) as this is the judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.

Parties

3. Plaintiff ULS-P&A is an agency mandated by Congress and designated by the mayor of the District of Columbia to provide protection and advocacy services to individuals with

disabilities. ULS-P&A is authorized to investigate incidents of abuse, neglect and civil rights violations and to pursue administrative, legal, and other remedies on behalf of individuals with mental illness wherever programs for such individuals are operated within the District of Columbia or within the District's control. 42 U.S.C. §10805 and 42 C.F.R. §51.41(b)(2).

4. Defendant John Stupak is Acting Director of Northwestern which is a service provider to persons with mental illness, doing business in the District of Columbia and providing governmental services for DMH. Northwestern was certified by the District to deliver services on behalf of the District as an Assertive Community Treatment ("ACT") team, providing what was supposed to be intensive, integrated crisis treatment for consumers with serious and persistent mental illness. 22 DCMR 3423.1.
5. At all relevant times, Northwestern was acting under color of state law. Northwestern is authorized and certified by the District of Columbia to provide Medicaid funded mental health services. Northwestern's actions are governed by the District's laws, regulations, policies, contracts and other District of Columbia authority. John Stupak, as Acting Director of Northwestern, acted at all times under the color of state law and within the scope of his employment.
6. Defendant Martha Knisley is the Director of the District of Columbia's Department of Mental Health ("DMH"), which is a public agency of the District of Columbia. DMH is the District of Columbia agency responsible for regulating all mental health services and mental health supports in the District of Columbia and is responsible for assessing and meeting the service needs of District of Columbia consumers of mental health services.

D.C. Law § 7-1131.03 and § 7-1131.04.

7. At all relevant times to this action, Defendant Knisley was operating under the color of state law as a representative of a public entity and within the scope of her public employment.

Factual Allegations

8. ULS-P&A has a federally protected right to obtain certain information in order to investigate suspected abuse or neglect of vulnerable persons with disabilities and has instituted this action to redress the refusal of the Defendants to disclose certain documents. The PAIMI Act, 42 U.S.C. §§10801-10827, gives each state's protection and advocacy system the right to access records in order to fulfill the statute's purpose: "to ensure that the rights of individuals with mental illness are protected." 42 U.S.C. § 10801(b)(1).
9. The PAIMI Act was enacted in 1986 by Congress to establish independent protection and advocacy programs ("P&As") nationwide with authority to protect individuals with mental illness from abuse and neglect. 42.U.S.C. § 10801(b)(2)(A), (B). Congress established P&As in response to the myriad accounts of abuse and neglect against individuals with mental illness that were substantiated by congressional investigations.
10. Congress found that "individuals with mental illness are vulnerable to abuse and serious injury" as well as "neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning." 42 U.S.C. § 10801(a)(1), (3). Moreover, Congress found that "[s]tate systems for monitoring compliance with respect to the rights of individuals with mental illness vary widely and are frequently inadequate." 42 U.S.C.

§ (a)10801(4).

11. Congress granted P&As the power to investigate incidents of abuse and neglect of persons with mental illness if the incidents are reported to P&As or if P&As have probable cause to believe that incidents have occurred. 42 U.S.C. § 10805(a)(1)(A). To meet this objective, Congress gave P&As the broad authority, under certain circumstances, to access *all* records of individuals with mental illness, including “[r]eports prepared by an agency charged with investigating reports of incidents of abuse, neglect and injury.” 42 U.S.C. §§ 10805(a)(4) and 10806(b)(3)(A).
12. ULS-P&A is designated by the District of Columbia as the protection and advocacy system for individuals with disabilities throughout the District.
13. DMH is required by District of Columbia law to “plan, develop, coordinate, and monitor comprehensive and integrated mental health systems of care for adults . . . [and to] arrange for all authorized, publicly funded mental health services and mental health supports for residents of the district, whether operated directly by, or through contract with, the Department.” D.C. Law § 7-1131.03 and § 7-1131.04.
14. On or about March 25, 2003, ULS-P&A sent a grievance to DMH about Northwestern in which ULS-P&A asked DMH to investigate Northwestern for certification violations related to one of ULS-P&A’s clients who was homeless, dirty, disheveled, and eating out of garbage cans. ULS-P&A has written many letters, made dozens of phone calls, and participated in several meetings with DMH and Northwestern, attempting to improve the care and financial management for clients who were served by Northwestern.

15. Upon information and belief, Northwestern is a service provider to persons with mental illness, doing business in the District of Columbia and providing governmental services for DMH. Northwestern was certified by the District to deliver services on behalf of the District as an ACT team, providing what was supposed to be intensive, integrated crisis treatment for consumers with serious and persistent mental illness. 22 DCMR 3423.1.
16. On or about February 18, 2004, ULS-P&A attended a meeting at which DMH explained that the Federal Bureau of Investigations and the District of Columbia Office of the Inspector General were investigating Northwestern Human Services for allegations of fraudulent billing and Medicaid fraud.
17. Upon information and belief, DMH has performed an investigation and given Northwestern a written statement of noncompliance, to which Northwestern has responded or has had the opportunity to respond.
18. On or about March 23, 2004, ULS-P&A sent a letter to DMH Director Martha Knisley requesting documents, including the names of consumers, or their guardians, suspected to be impacted by the alleged financial wrongdoings of Northwestern. The letter also requested DMH's investigation concerning the alleged financial wrongdoing, the corrective action plan, and all other documents in DMH's possession as a consequence of the investigation.
19. On or about that same date, ULS-P&A wrote to Northwestern requesting similar documents and information concerning its staff.
20. On March 26, 2004, ULS-P&A met with representatives of the District of Columbia Office of the Inspector General for the District and the Federal Bureau of Investigation,

who confirmed their investigations and explained that their investigation would not foreclose ULS-P&A from continuing to work for restitution for the consumers who may have been victimized.

21. DMH responded to ULS-P&A's March letter by stating that DMH is actively investigating the various allegations and because the investigation "is active and ongoing, DMH is not in a position to send ULS a 'complete copy' of any of the requested information." DMH acknowledged that ULS had authority to request the information and agreed to provide the documents but required "appropriate authorization from the consumers in question before releasing any information about a consumer's mental health treatment."
22. An attorney for Northwestern responded to ULS-P&A, asking ULS-P&A to provide authority for its request, but Northwestern did not produce any documents at that time.
23. Upon information and belief, Northwestern is legally going out of business in the District on or about June 30, 2004, and all of its consumers must be transitioned to a new service provider.
24. Experts who have worked with individuals with severe mental health issues understand the need for intensive case management and support during times of transition, especially during a transition from one clinical service provider to another. Many of Northwestern's consumers are homeless and may be lost to the system entirely without advocacy on their behalf.
25. ULS-P&A provided DMH with a detailed letter explaining ULS-P&A's concerns about the poor services Northwestern had provided in the past to consumers of mental health

services and how critical it was for there to be extensive outreach to these vulnerable consumers during the transition from Northwestern to another service provider.

26. In addition to the general requests for documents, ULS-P&A sent requests for specific individuals' records to both Northwestern and DMH, which included individual authorizations for the requested documents.
27. On May 5, 2004, ULS-P&A called and spoke directly DMH General Counsel, Ms. Anne Sturtz. Ms. Sturtz explained that DMH would not provide ULS-P&A with any of the requested documents until the DMH investigation was complete. ULS-P&A expressed concern about the delay, given that Northwestern is closing at the end of June. Ms. Sturtz did not state when the investigation would be complete.
28. On May 14, 2004, ULS-P&A again asked DMH to release the requested documents. In that letter, ULS-P&A described why the P&A needed to receive the documents in order to protect the interests of the vulnerable people with mental illness who are dependent on Northwestern.
29. In detailed letters to both DMH and Northwestern, ULS-P&A explained its PAIMI Act authority, which requires DMH and Northwestern to release the documents.
30. ULS-P&A amended its requests to both DMH and Northwestern to be more specific about the requested records.
31. After several additional requests, Northwestern allowed ULS-P&A to view some but not all of the records of four clients for whom ULS-P&A presented signed authorizations. Nevertheless, Northwestern has not provided all of the records requested, including all of the individuals' financial records.

32. After ULS-P&A called DMH pursuant to this Court's Local Rule 7(m) to confer concerning ULS-P&A's imminent filing of the Motion for Preliminary Injunction, DMH released a copy of a DMH report concerning Northwestern. The report is authored by the DMH's Office of Accountability on February 9, 2004, and is addressed to Ms. McWilliams-Roth, the Director of Northwestern Human Services. The report is titled: Preliminary Findings from Focused Review of Your Consumer Records/Corrective Action Required.
33. The report stated that "DMH is substantiating [emphasis in the original] Dr. Gleason's [former Northwestern psychiatrist] complaint that [Northwestern] lacks documentation for expenditures from consumer accounts where [Northwestern] is the representative payee, has not accounted for missing consumer funds and has little or no documentation of what services [Northwestern] has provided to some consumers." Preliminary Findings at 1.
34. Dr. Gleason's allegations were extremely troubling. According to the Preliminary Findings, Dr. Gleason's complaint alleged "although [Northwestern] held large sums of funds for some consumers for whom [Northwestern] served as representative payee, [Northwestern] was not providing appropriate services and was not accurately accounting for funds expended." Some consumers were homeless despite the fact that Northwestern maintained large sums of money on their behalf. "He also alleged that [Northwestern] staff has personal relationships with some of the landlords and housing operators from whom consumers rent and that these housing providers are paid exorbitant rents for substandard housing."

35. Outreach and advocacy on behalf of individuals with mental illness during times of transition can be critical, especially transition from one service provider to another.
36. Upon information and belief, many of the individuals for whom Northwestern is the service provider are homeless, have been and continue to be subject to abuse or neglect, and may be lost to the mental health system entirely without advocacy on their behalf during the transition from Northwestern to another service provider.
37. Upon information and belief, many of the individuals for whom Northwestern is the service provider are in urgent need of funds that may have been wrongly appropriated or mishandled by Northwestern, and yet these individuals may not understand that there money has been inappropriately handled or may be unable to effectively advocate on their own behalf for restitution from Northwestern.
38. ULS-P&A was able to view account statements that indicated that homeless consumers had accumulated funds well beyond the income limits for the federal Social Security program. These clients, who have experienced malnourishment and pneumonia while homeless, may lose thousands of dollars that should have been used to meet their needs.
39. Individuals who need ACT services have severe and persistent mental illness such as schizophrenia, psychotic disorders, and bipolar disorder with a history of hospitalization, substance abuse, criminal justice involvement or other indication of high service needs, and as a result of their mental illness, have significant difficulty performing daily living and employment tasks.
40. ULS-P&A visited Northwestern on or about June 3, 2004, and at least five of the consumers spoken to were homeless, some of them living on the streets. One of the

consumers that ULS-P&A represents is missing.

COUNT I
42 U.S.C. § 10801 et seq. ("PAIMI ACT")

41. Plaintiff incorporates paragraphs 1 through 40 as if fully set forth herein.
42. Under 42 U.S.C. § 10805(a)(4)(A), P&A programs may have access to **all** records of any individual who authorizes the access.
43. Certain individuals have authorized the Defendants to release certain records to ULS-P&A.
44. Under 42 U.S.C. § 10805(a)(4)(B), P&A programs are authorized to have access to **all** records of any individual with a mental illness who by reason of the mental or physical condition of such individual is unable to authorize the system to have such access, provided the individual does not have a guardian or has a public (state agency) guardian, and with respect to whom the P&A System has probable cause to believe that such individual has been the subject of abuse or neglect.
45. Some of the individuals whose records ULS-P&A has requested are covered by the terms of 42 U.S.C. § 10805(a)(4)(B), as they are incapable of providing authorization for the release of their records and do not have a guardian or have a public guardian.
46. Under the regulations implementing the PAIMI Act at 42 C.F.R. § 51.2 (definition of the term "probable cause") and relevant case law, P&A Programs are the sole arbiter of the determination of probable cause under the PAIMI Act.
47. ULS-P&A has made a determination of probable cause to suspect that the consumers whose records are sought have been and continue to be subject to abuse and/or neglect.

Such determination is based on the multiple investigations of Northwestern regarding its apparent mismanagement of consumers' funds needed to pay for their daily living expenses (food, shelter, clothing, medicine, etc.) and DMH's substantiated findings regarding such practices, as well the fact that such consumers apparently are not being properly transitioned from Northwestern to another provider of mental health services.

48. The PAIMI Act at 42 U.S.C. § 10806(b)(3)(A) defines "records" available to a P&A system to include, "reports prepared by any staff of a facility rendering care and treatment or reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, and injury occurring at such facility that describe incidents of abuse, neglect, and injury occurring at such facility and the steps taken to investigate such incidents, and discharge planning records."
49. The records requested by ULS-P&A fall within the broad description of records and information to which ULS-P&A must have access in order to complete a thorough investigation. 42 U.S.C. § 10806(b)(3)(A) and 42 C.F.R. § 51.41(c)(1) through (5).
50. Defendants have denied ULS-P&A access to these records.
51. Defendants' refusal or failure to give ULS-P&A access to consumers' records, as well as the DMH investigations report and related documents, violates the PAIMI Act, 42 U.S.C. § 10805(a)(4)(B) and its implementing regulations, 42 C.F.R. § 51.41(c)(1) through (5).
52. Under the regulations implementing the PAIMI Act at 42 C.F.R. § 51.43, a service provider is required to provide to the P&A promptly upon its request the name, address and telephone number of the legal guardian, conservator or other legal representative of an individual with mental illness. The service provider also is required to promptly

provide to the P&A the identities and contact information for persons with mental illness themselves.

53. Defendants have failed to provide to ULS-P&A the identities and contact information for consumers of mental health services and for their guardians in violation of the PAIMI Act and its implementing regulations.
54. The Defendants have violated and continue to violate the PAIMI Act by: (a) preventing Plaintiff from conducting an investigation when ULS-P&A has probable cause to believe abuse or neglect has occurred and (b) preventing Plaintiff from fulfilling its obligations under the PAIMI Act. 42 U.S.C. § 10805(a)(1)(A).
55. The Defendants have violated and continue to violate the PAIMI Act by preventing Plaintiff from pursuing administrative, legal and other appropriate remedies on behalf of the Northwestern consumers for whom Plaintiff has probable cause to believe may have been subject to abuse or neglect. 42 U.S.C. § 10805(a)(1)(B).
56. ULS-P&A has no adequate remedy at law and continues to suffer irreparable harm as a result of Defendants' actions.

COUNT II

42 U.S.C. § 10801 et seq. ("PAIMI ACT") and 42 U.S.C. § 1983

57. Plaintiff incorporates paragraphs 1 through 56 as if fully set forth herein.
58. Defendant Department of Mental Health is required by District of Columbia law to "plan, develop, coordinate, and monitor comprehensive and integrated mental health systems of care for adults . . . [and to] arrange for all authorized, publicly funded mental health services and mental health supports for residents of the district, whether operated directly

- by, or through contract with, the Department.” D.C. Law § 7-1131.03 and § 7-1131.04.
59. Defendant Martha Knisley is the Director of the DMH was operating under the color of law as a representative of a public entity and within the scope of her public employment for DMH which is the agency responsible for regulating all mental health services and mental health supports in the District of Columbia and is responsible for assessing and meeting the service needs of District of Columbia consumers of mental health services.
60. Northwestern was certified by and/or contracted with the District to deliver services on behalf of the District, fulfilling DMH’s obligations under the District’s laws and providing governmental services for DMH.
61. John Stupak is Acting Director of Northwestern operating under the color of law, statutes, regulations, and customs of the District of Columbia and within the scope of his employment.
62. The policies and actions of the Defendants have violated and continue to violate the PAIMI Act.
63. Defendants, acting under color of law directly or through agents, have violated and continue to violate the rights of Plaintiff as guaranteed by the PAIMI Act.
64. The Civil Rights Act of 1871, 42 U.S.C. §1983, provides relief for persons who, under color of state law, have been deprived of any rights, privileges or immunities secured by federal law.

**COUNT III
FIRST AND FIFTH AMENDMENT**

65. Plaintiff incorporates paragraphs 1 through 40 as if fully set forth herein.

66. As the designated protection and advocacy system for the District of Columbia, Plaintiff has a protected right under the First and the Fifth Amendments of the U.S. Constitution to communicate and consult with people with mental illness who receive services from the District of Columbia. Access to clients' names and contact information is essential for effective communication between Plaintiff and Plaintiff's clients and to investigate allegations of abuse or neglect of individuals with mental illness. Advocacy Center v. Stalder, 128 F. Supp.2d 358, 365 (M.D. La. 1999).
67. Defendants, acting under color of state law, directly or through agents and employees, have violated and continue to violate the rights of Plaintiff as guaranteed by the First and Fifth Amendments of the U.S. Constitution.
68. The Civil Rights Act of 1871, 42 U.S.C. § 1983, provides relief for persons who have been deprived of any rights, privileges, or immunities secured under the U.S. Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court:

- A. Grant a preliminary and thereafter permanent injunction against Defendants, their agents and employees, and all those acting in active concert, or under contract, or other arrangement with them, ordering that they provide ULS-P&A, within three days of the date of this order:
1. the identities and contact information of consumers of mental health services who received services from Northwestern from May, 2002, to the present, for whom (1) staff at Northwestern or Northwestern acted as representative payee or

for whom (2) Northwestern held funds or had authority over any of their funds, and/or of those consumers' guardians, if they exists;

2. any and all DMH investigation reports concerning allegations of financial mismanagement by Northwestern, and the related corrective action plans (and/or any response provided by Northwestern), as well as any subsequent investigation findings or recommendations, and any records received and/or reviewed or prepared by DMH in preparing the report, including but not limited to records which describe persons who were interviewed, physical and documentary evidence, records prepared or maintained by Northwestern evidencing who provided services to the consumers, when, and how often, and any reports concerning or responsive to allegations that Northwestern financially mismanaged consumers' funds prepared;

3. for individuals for whom ULS-P&A has presented authorizations, any and all records requested in exhibits 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, and 16 attached to the Plaintiff's Memorandum in Support of its Motion for Preliminary Injunction, which records are within the possession or control of Defendants or their agents;

4. any and all requested records of individual consumers of mental health services that received services from Northwestern, including any correspondence and internal memoranda related to financial mismanagement, financial and billing/invoicing records for services provided to and housing for clients, and any records or documents related to Northwestern or its staff's actions as representative payee, which are within the possession or control of Defendants or

their agents, for whom individual authorization has been or will be provided;

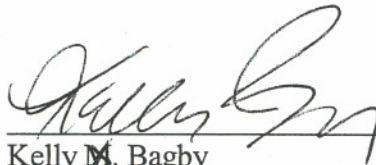
5. any and all records of individuals identified in para. 1, including any correspondence and internal memoranda related to financial mismanagement, financial and billing/invoicing records for services provided to and housing for clients, and any records or documents related to Northwestern's or its staff's actions as representative payee, which are within the possession or control of Defendants or their agents, for whom authorization is not required under the PAIMI Act because those individuals do not have guardians and are unable to authorize their release as well as those for whom their guardian is an agency of the District of Columbia; and

- B. Declare that Defendants refusal to provide ULS-P&A with prompt access to the identities and contact information of the individuals with mental illness described, and/or of their guardians is a violation of the PAIMI Act and its implementing regulations as well as the First and Fifth Amendment;
- C. Declare that Defendants denial of access in a timely manner to reports of investigations prepared by DMH concerning abuse, neglect, or injury of individuals with mental illness along with corrective action plans and supporting documentation and other records requested related to suspected abuse or neglect is a violation of the PAIMI Act and its implementing regulations as well as the First and Fifth Amendment;
- D. Permanently enjoin Defendants, their agents and employees, and all those acting in active concert, or under contract, or other arrangement with them from denying any and all future access to facilities, records, employees, and residents in accordance with the

PAIMI Act, 42 U.S.C. §10801 et seq. and relevant implementing regulations; and

- E. Award Plaintiff its attorney's fees and costs pursuant to 42 U.S.C. § 1988.
- F. Award such further relief at law and in equity that the Court deems to be proper.

Respectfully submitted,



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