

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

Lynn E., by her guardian,)
 Barry Ellsworth; Kenneth R.,)
 by his guardian, Tri-County CAP, Inc./GS;)
 Sharon B., by her guardian, Office of)
 Public Guardian, Inc.; Amanda D., by)
 her guardian, Louise Dube; Amanda E.,)
 by her guardian, Office of Public)
 Guardian, Inc.; and Jeffrey D.,)
 on behalf of themselves and all)
 others similarly situated,)

Plaintiffs,

V.

John H. Lynch,)
Governor of the State of New)
Hampshire; Nicholas A. Toumpas,)
Commissioner, New Hampshire)
Department of Health and Human)
Services; Nancy L. Rollins,)
Associate Commissioner, New Hampshire)
Department of Health and Human Services,)
Community Based Care Services;)
Mary Ann Cooney,)
Deputy Commissioner, New Hampshire)
Department of Health and Human Services,)
Direct Programs/Operations; Erik G. Riera,)
Administrator, New Hampshire Bureau of)
Behavioral Health,)

Defendants.

Civ. No. 1:12-cv-53-LM

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs Lynn E., Kenneth R., Sharon B., Amanda D., Amanda E., and Jeff D. (collectively the “named plaintiffs”), respectfully move this Court to certify the above-captioned

case as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2). In support of their motion, the plaintiffs state as follows:

1. The named plaintiffs are adults with serious mental illness who currently are institutionalized at New Hampshire Hospital (NHH) or the Glencliff Home (Glencliff) or at serious risk of institutionalization in these facilities. They bring the instant class action on behalf of themselves and at least several hundred similarly situated individuals.

2. This case seeks to end the suffering and harm experienced by the named plaintiffs and plaintiff class members by providing integrated, community services to avoid their needless institutionalization.

3. The Complaint requests that the Court certify a class comprised of:

all persons with serious mental illness who are institutionalized at New Hampshire Hospital or the Glencliff Home or at serious risk of institutionalization in these facilities.

4. The named plaintiffs, and the class they seek to represent, all have disabilities that substantially limit major life activities and require ongoing services and support. They are qualified to receive mental health services in integrated community settings, yet New Hampshire (the “State”) has failed to provide the community services they need to avoid their unnecessary institutionalization.

5. In order to remedy these systemic legal violations, the named plaintiffs and the plaintiff class seek declaratory and injunctive relief under Title II of the Americans with Disabilities Act (ADA) 42 U.S.C. §§ 12101 et seq., Section 504 of the Rehabilitation Act, 29 U.S.C. §§794 et seq., and the Nursing Home Reform Amendments (NHRA) to the Medicaid Act, 42 U.S.C. §§1396 et seq., and an order directing the State to provide the community services

required to avoid class members' needless institutionalization, including mobile crisis, Assertive Community Treatment (ACT), supportive housing, and supported employment.

6. As more fully described in the attached Memorandum, and as supported by the evidence attached as exhibits 1-9, the proposed class satisfies the numerosity, commonality, typicality, and adequacy of representation requirements of Rule 23(a) of the Federal Rules of Civil Procedure.

7. The defendants have administered the State mental health system in a way that discriminates against persons with serious mental illness by failing to provide the community-based services required to avoid their unnecessary institutionalization. Thus, the defendants have acted or refused to act on grounds generally applicable to the class, making injunctive and declaratory relief appropriate for the class as a whole. As a result, the proposed class satisfies the standards of Rule 23(b)(2) of the Federal Rules of Civil Procedure.

8. The named plaintiffs are jointly represented by the Disabilities Rights Center, Devine Millimet & Branch, the Bazelon Center for Mental Health Law and the Center for Public Representation. Co-counsel have extensive experience in complex litigation and the prosecution of class actions, including class actions on behalf of persons with disabilities. They have the skills and resources to adequately represent the plaintiff class in this case.

9. Because this is a Rule 23 (b)(2) class action, notice to the class is not required. Fed. R. Civ. P. 23(c)(2)(A).

10. Pursuant to Local Rule 7.1(c), the plaintiffs certify that a good faith attempt has been made to obtain concurrence in the relief sought and defendant has responded that they do not assent at this time.

WHEREFORE, the plaintiffs respectfully request that, pursuant to Fed. R. Civ. P. 23(c), the Court certify a class consisting of:

all persons with serious mental illness who are institutionalized at New Hampshire Hospital or the Glencliff Home or at serious risk of institutionalization in these facilities.

Plaintiffs further request that the Court appoint the Disabilities Rights Center, Devine Millimet & Branch, the Bazelon Center for Mental Health Law and the Center for Public Representation as co-counsel for the class pursuant to Fed. R. Civ. P. 23(g). The plaintiffs have filed a Memorandum in support of this Motion for Class Certification.

Dated: March 23, 2012

Respectfully submitted,

Lynn E., by her guardian, Barry Ellsworth;
Kenneth R., by his guardian, Tri-County
CAP, Inc./GS; Sharon B., by her guardian,
Office of Public Guardian, Inc.; Amanda D.,
by her guardian, Louise Dube; Amanda E.,
by her guardian, Office of Public Guardian,
Inc.; and Jeffrey D.,

By their attorneys:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically on this 23rd day of March, 2012 and hand delivered to counsel for defendant, Michael Brown, Esq., Senior Assistant Attorney General, 33 Capitol Street, Concord, NH 03301.

/s/ Amy Messer

March 23, 2012