UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUAN F., et al.,	:	
Plaintiffs,	:	
v.	:	CIVIL NO. H89-859 (CFD)
M. JODI RELL, et al.,	:	
	:	August 31, 2010
Defendants.	:	

MOTION FOR RECONSIDERATION

Pursuant to Rule 7(c) of the Rules of this Court, the defendants hereby move for reconsideration of that portion of this Court's Ruling and Order Interpreting Consent Decree (Document 633) ("Order") that holds that children receiving services through DCF's Voluntary Services Program are members of the Juan F. class. Defendants respectfully submit that the Court overlooked certain matters in reaching its conclusion. The Court held that children receiving services through DCF's Voluntary Services Program are members of the Juan F. class because those children are "at risk of maltreatment." In fact, as fully briefed in defendants' accompanying Memorandum of Law, no such finding has been made.

CARMODY & TORRANCE LLP
Attorneys at Law
50 Leavenworth Street
Post Office Box 1110
Waterbury, CT 06721-1110
Telephone: 203 573-1200

THE DEFENDANTS,

By _____

Ann H. Rubin (ct04486)
arubin@carmodylaw.com
Carmody & Torrance LLP
50 Leavenworth Street
P. O. Box 1110
Waterbury, CT 06721-1110
Phone: (203) 573-1200
Fax: (203) 575-2600

CERTIFICATION OF SERVICE

I hereby certify that on the above date, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

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Ann H. Rubin

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MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RECONSIDERATION

Pursuant to Rule 7(c) of the Rules of this Court, defendants respectfully move the Court for reconsideration of its Ruling and Order Interpreting Consent Decree filed on August 17, 2010 (Document 633). DCF has never asserted that "at-risk children who receive services through the Voluntary Services Program … are not and never have been members of the class." Order at 2. In fact, DCF has consistently maintained that the children who receive services through the Voluntary Services Program ("VSP") are *not "at-risk"*, and therefore are not members of the class. See, e.g., DCF Brief, Document 589, at 3-7. Conversely, as discussed more fully below, DCF has always agreed that at risk children whose families are *receiving voluntary protective services* from DCF, *are* members of the Juan F. class. These are two distinct categories of children that the Court has mistakenly concluded are one and the same.[1] In concluding that children receiving behavioral health services through the VSP are members of the Juan F. class, defendants

[1] More specifically, families receiving voluntary protective services from DCF are those who have NOT been substantiated for abuse or neglect but whose children have been found "at risk" of abuse or neglect using an evidenced-based Structured Decision-Making (SDM) tool at the close of an unsubstantiated investigation. In 2009, over 3000 families with "at risk" children received voluntary protective services from the Department. By contrast, there are currently 774 children with behavioral health disorders participating in the DCF VSP program. These children have not been found "at risk" of being abused, neglected or abandoned by their parents.

respectfully submit that the Court overlooked certain matters, as set forth in detail in this memorandum.

Children Receiving Services Through the DCF Voluntary Services Program Are Not "At-Risk"

This Court held that a finding by DCF that a child was "at risk of abuse, neglect or abandonment" was required to make such a child a member of the Juan F. class. Order at 17-18. However, in holding that children who receive services through DCF's VSP are members of the Juan F. class, this Court overlooked that no such required finding has been made with respect to such children. In contrast to the required "at-risk" finding, as outlined by this Court, the criteria for admission to the current VSP include, inter alia:

> The child must have an emotional, behavioral or substance abuse disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders, DSM-IV, that results in the functional impairment of the child or youth and substantially interferes with or limits his or her functioning in family, school or community activities.

Id. at 6-7. None of the criteria for the VSP refer to or include any finding that the child is "at risk" of abuse, neglect or abandonment. As such, DCF does not and has not made such required finding with respect to children receiving services through the DCF VSP. Accordingly, while children receiving services through DCF's VSP may be under the supervision of DCF for that purpose, they receive services because they meet the statutory program admission criteria, and not because they are or have been found to be "at-risk" as set forth in the Juan F. class definition, and as articulated by this Court. No language in the Consent Decree, Manuals, or DCF Regulations or Policy provides otherwise, or supports the Court's conclusion.

Moreover, the only difference between children participating in the DCF VSP program and those participating in the DDS VSP is that the DDS children have a developmental disability *in addition to* the above eligibility criteria. There is no "at risk" determination for either program, but the Court appears to have erroneously drawn a distinction between the "devoted and well-intentioned parents of a child with a developmental disability…" who contact the DCF Hotline for a VSP application and those parents of a non-developmentally disabled child who contact the DCF Hotline for the same purpose. See Order at 19. DCF asserts that ALL parents who contact DCF to seek assistance for a child with one of the above disorders, regardless of whether the child is also developmentally disabled, are "devoted and well-intentioned" and neither group of parents should be presumed likely to abuse or neglect their child simply because they are seeking help.

The Voluntary Services Program

The Voluntary Services Program was created by the Legislature in 2002, more than 10 years after the entry of the Consent Decree. The Consent Decree established a pilot voluntary services program. The Consent Decree states that the pilot VSP was to provide services voluntarily to *families*. Order at 4 (emphasis added). The VSP Manual stated that services would be provided "without a presumption of abuse or neglect." Id. In 2002, the Legislature enacted Connecticut General Statutes Section 17a-11, establishing the Voluntary Services Program ("VSP") at issue before the Court, which provided the Commissioner with the discretion to provide services to *children* with specific behavioral health disorders. Indeed, as this Court found, "children who were ... found to be at risk of abuse or neglect were not eligible for the Voluntary Services Program." Id. at 5.

Services Provided On a Voluntary Basis Are Different From Services Provided Through the Voluntary Services Program

The Consent Decree defines a "case" as, inter alia, "a child or family receiving services provided on a voluntary basis." Consent Decree, § III(2); Order at 15-16. Defendants submit that the Court in its Order overlooked that the phrase "receiving services provided on a voluntary basis" does not mean "receiving services through the Voluntary Services Program." At the time of the Consent Decree and now, DCF provides protective services on a voluntary basis; these services are separate and distinct from the services provided through the statutory Voluntary Services Program. It is only the class membership of the recipients of services through the VSP that are at issue before the Court. Because DCF provides services on a voluntary basis (separate and apart from the services provided through the VSP), the term "case" contained in the Consent Decree (see Order at 15-16) is not superfluous. "Case" refers to the voluntary receipt of protective services, not the VSP.

Children Receiving Services Through the VSP Are Not Members of the Class By Virtue of the Fact That the Exit Plan Makes Reference to "Voluntary" Cases

The fact that certain Exit Plan outcome measures refer to "voluntary" cases (see Order at 16-17) does not convert children receiving services through the VSP into members of the Juan F. class. Exit Plan outcome measures also refer to probate cases (Outcome Measures 16 and 17, for example), but it is undisputed that children who are the subject of probate cases are not part of the Juan F. class.

Conclusion

For all of the foregoing reasons, defendants respectfully request that the Court reconsider its Ruling and Order Interpreting Consent Decree.

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