UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

Patricia Welsch, by her father and natural guardian, Richard Welsch, et al, on behalf of herself and all other persons similarly situated,

Plaintiffs,

vs.

Arthur E. Noot, et al,

Defendants.

MEMORANDUM ORDER
No. 4-72-Civ. 451

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Before the Court is plaintiffs' motion regarding compliance with two provisions of paragraph 89 of Part VII of the Consent Decree in this matter approved by this Court on September 15, 1980. A major goal of the Consent Decree is the reduction of the number of mentally retarded individuals living in State hospitals and the simultaneous development of sufficient community-based residential and day program services. Paragraph 89 of the Decree provides for legislation to implement and promote the development of community placements and identifies six areas that the Commissioner must address through proposals submitted to the Legislature as part of the Governor's 1981 budget recommendation and legislative program. These areas include Semi-Independent Living Services (SILS), the need for additional capacity in community-based residential facilities and developmental achievement centers (DACs), sheltered workshops, the Family Subsidy Program, start up and construction grants-in-aid, and the elimination of financial incentives to place mentally retarded persons in State hospitals. The Decree contains specific dollar amounts for particular programs in three of these areas.

Paragraph 89 is a somewhat unique provision in that all it requires is that specified proposals be made by the Commissioner through the Governor. Compliance is not measured through enactment by the Legislature: the defendant has fulfilled the obligations imposed by the Decree when the proposals are submitted. Nevertheless, the very nature of the provisions in paragraph 89 necessitated the cooperation of the Governor and representatives of both the State Senate and the House of Representatives. Commissioner Noot involved these individuals in the deliberations and negotiations concerning the contents of paragraph 89, and the Governor's approval was obtained prior to the

Commissioner's agreement to the financial commitments included in this paragraph.

In accordance with the Decree, the Governor proposed to the Legislature an over five million dollar increase in State spending for community-based services for the mentally retarded. The following specific increases in State spending were requested:[1]

Program	Amount (in thousands of dollars)
Semi-Independent Living Services	$ 1,700.0
Minnesota Supplementary Assistance	732.2
Developmental Achievement Centers and Cost of Care Increase	618.7
Work Activity and Sheltered Workshops	1,248.6
Family Subsidy Program	373.0
Construction Grants	245.2
Case Management System	180.0
TOTAL INCREASE	$ 5,097.7

The Legislature enacted the proposed program with the exception of the computerized case management system and a one per cent dollar reduction applied to the other items.[2] The total amount appropriated exceeded $4.8 million at a time when the State's financial revenues were declining. This increase in funding will be of great benefit to the plaintiff class, and in the Court's view represents a significant contribution by the State toward improving opportunities for community-based care for the mentally retarded.

There is no dispute that the proposals submitted met the requirements of paragraphs 89a, 89c, 89d, and 89e. The issue presented by plaintiffs' motion is whether the defendants complied with the provisions of paragraphs 89b and 89f. These paragraphs read as follows:

> "89. As part of the Governor's 1981 budget recommendation and legislative program the Commissioner will submit to the Legislature proposals addressing the following:
>
> * * *
>
> b. Need for additional capacity in community-based residential facilities and developmental achievement centers (DACs). The proposal will provide for the development of additional bed capacity and DAC capacity necessary to accomodate former residents of state institutions. The legislation shall address the funding mechanism for DAC programs, transportation, and building renovation necessary to serve former residents of state institutions.
>
> * * *
>
> f. Financial incentives to place mentally retarded persons in state hospitals. The proposal will eliminate the financial incentives currently encouraging counties to place mentally retarded persons in state hospitals."

The question of compliance with these paragraphs was raised by the monitor pursuant to paragraph 95a in a letter to Commissioner Noot dated January 23, 1981. A formal hearing pursuant to paragraph 95g was held before the monitor and Frank Madden, hearing officer, on March 13, 1981. The monitor issued his Findings of Fact and Recommendations on May 21, 1981. The monitor's findings of fact regarding the legislative proposals were as follows:

> "6. The Commissioner has submitted legislative proposals pursuant to paragraph 89(f) which would require counties to pay 4.4% of the costs of state hospital residential and day services for MA [Medical Assistance] eligible persons and 4.4% of the costs in the community for an ICF/MR [Intermediate Care Facility for the Mentally Retarded] home . . . . The proposal further provides that counties will pay approximately 45.3% for community DAC [developmental achievement center] services.
>
> 7. Pursuant to paragraph 89(b) the Commissioner has proposed funding for 100 additional DAC [positions] and an increase of $350,950 in CSSA [Community Social Service Act] funding."

The monitor concluded that the defendants had failed to comply with paragraph 89f of the Decree, stating:

> "counties paid 0.0% for state hospital services including residential and day programs but 45.3% for community DAC services in fiscal year 1980; under the proposals submitted by the Commissioner counties will pay 4.4% for state hospital residential and day program services, but 4.4% for community ICF/MR services and approximately 45.3% for community DAC services. These statistics indicate that the legislative proposals do not eliminate financial incentives for the counties to discontinue their reliance upon state hospital services, nor do they encourage counties to develop community services providing the 'least restrictive environment.' . . . Therefore, the proposals for legislation submitted by the Commissioner do not comply with paragraph 89(f) of the Consent Decree."

With respect to paragraph 89b, the monitor stated that the record was not conclusive regarding the extent of additional DAC capacity necessary, although he noted that there was evidence presented that an additional 200 DAC positions may be needed. The monitor nevertheless found that the Department's budget request for funding for only 100 additional positions complied with the requirements of paragraph 89b. The monitor did, however, conclude that:

> "the Department's proposal for the 'folding in' of funds into the CSSA . . . does not . . . set forth the specific dollar amounts to be utilized for DAC programs, transportation and building renovation, nor does it establish guidelines for the counties in administering these funds or provide for sufficient monitoring by the Commissioner of the counties' expenditures of the funds folded into the CSSA. Insofar as the 'folded in' funds are not 'earmarked' for specific expenditures and the responsibility for determining the appropriate use of these funds is left to the counties, it can be concluded that the Commissioner's proposal does not clearly 'address' DAC programs, transportation and building renovation. While paragraph 89(b) imposes no burden upon the Defendants with respect to specific substantive contents of the legislative proposal, it does require that the Department propose legislation to effectively deal with in particularity the funding mechanism for DAC programs, transportation and building renovation so that the additional capacity for these services will be achieved. The record in the present matter does not support the conclusion that the Defendants have met this objective."

The monitor recommended, based upon his findings and conclusions, that:

> "4. For the next legislative session the Commissioner should propose legislation which will equalize the percentage of costs paid by the counties for state hospital services and for community-based services. If such proposals are not adopted during the 1981 legislative session, the Commissioner should propose such measures for adoption during the 1982 session of the legislature.
>
> 5. For the next legislative session the Commissioner should seek to amend the legislative proposal regarding paragraph 89(b) to state with particularity the funding mechanisms for DAC programs, transportation and building renovation. In addition, the Commissioner should closely monitor the counties' administration of the 'folded in' monies to insure consistency with the intent of paragraph 89(b) and the proposals relative thereto, and provide copies of such a monitoring system to the Plaintiffs and undersigned Monitor prior to implementation."

Paragraph 95h of the Consent Decree provides that the monitor's recommendations may not be implemented except upon motion to the Court after notice and an opportunity for all parties to be heard. The Decree contains no specific guidance as to the standard the Court should use to review the monitor's findings, and the parties have acknowledged that they have not previously addressed this issue. Without establishing any precise standard of review at this time, the Court will simply note that it will review the monitor's conclusions in light of the entire record before the Court, and with the recognition that the monitor is not a lawyer but rather is a specialist in the field of mental retardation whose present occupation is to monitor and attempt to resolve compliance issues that arise with respect to the Decree.[3]

The plaintiffs have brought a motion requesting the Court to adopt the monitor's findings and recommendations concerning the defendants' non-compliance with paragraphs 89b and 89f, and, in addition, have requested that the Court find non-compliance with the first sentence of paragraph 89b because more than 100 additional DAC positions will be needed in FY 1982-83.[4] The Court will first address the defendants' compliance with paragraph 89f.

PARAGRAPH 89f

Counties have the responsibility for making decisions about the placement of mentally retarded individuals under DPW Rule 185, 12 M.C.A.R. 2.185. Prior to the approval of the Consent Decree, it was less expensive for the counties to place mentally retarded persons in the State hospitals, because the percentage of the cost paid by the counties for hospital placement was significantly lower than the percentage of the cost paid by the county for community-based placement. This fiscal incentive to institutionalize mentally retarded individuals was raised by the plaintiffs when they presented their case in chief in

May 1980, and has been a matter of some concern to professionals in the field.

Three disparities in costs to counties for the care of mentally retarded persons existed when the Decree was approved:

> (1) The county share of costs for community residences for Medicaid eligible persons was 4.4%, but the county paid nothing for State hospital placement.
>
> (2) The county share of costs for community residences for non-Medicaid (Cost of Care financed) persons was 30.39%, but the county paid nothing for State hospital placement.
>
> (3) The county share of costs for community-based developmental achievement centers (DACs) was 45%, but the county paid nothing for day program services for persons placed in a State hospital.[5]

There is no present dispute that the first two disparities have been eliminated by the State. The counties now pay the same percentage--4.4%--of the cost of residential services for Medicaid eligible persons who live in community residences as they do for those who live in State hospitals.[6] Moreover, because of a change in how Medicaid eligibility is determined by the State, most Cost of Care financed children are now eligible for Medicaid, which as a practical matter eliminates the second disparity cited above.[7] The third disparity pertaining to DAC costs still remains. Counties now pay 4.4% of the cost of day program services in the State hospitals, but they continue to pay approximately 45% of the cost of DAC services provided in the community. Thus, counties pay more for community placement for adults who participate in DACs than for adults who participate in day programs in the State hospitals.

The defendants do not refute the existence of this disparity, but argue that the plaintiffs have failed to show that such a disparity causes counties to place retarded persons in State hospitals. To the contrary, the defendants contend that the evidence demonstrates that despite the disparity in cost, counties make placement decisions based upon the least restrictive alternative available for each individual. The defendants also note that the population of the State hospital system has been declining since 1973, such that the State is currently 13 months ahead of the deinstitutionalization schedule provided in paragraph 14 of the Decree. Finally, the defendants argue that the Department's 1981 legislative proposals considered as a whole have the cumulative effect of eliminating the financial incentive for counties to place people in State hospitals.

The Court recognizes the substantial increase in the State's financial commitment to community-based facilities and the progress that has been made

toward deinstitutionalization, but the issue presented in plaintiffs' motion is whether the Commissioner proposed legislation to "eliminate the financial incentives currently encouraging counties to place mentally retarded persons in state hospitals," as required by paragraph 89f of the Consent Decree. The defendants agreed to this specific language, and the Court is required to construe the Decree "as it is written." United States v. ITT Continental Baking Co., 420 U.S. 223, 236, 95 S.Ct. 926, 43 L.Ed.2d 148 (1975)(citing United States v. Armour & Co., 402 U.S. 673, 681-82, 91 S.Ct. 1752, 29 L.Ed.2d 256 (1971)). The Supreme Court in United States v. ITT Continental Baking Co., supra, specifically noted that Consent Decrees have many of the attributes of a contract, and should basically be construed as such. 420 U.S. at 236-37.

Giving the word "eliminate" its obvious meaning,[8] the Court must agree with the monitor's conclusion that the defendants' legislative proposals did not comply with paragraph 89f. The Consent Decree was entered into after plaintiffs had presented their case in chief, which included testimony regarding the need to reduce the financial disincentive to counties to make community-based placements, particularly with regard to the funding of DACs.[9] The Department's settlement offer included a proposal to "provide for facility neutral reimbursement, i.e. no fiscal incentives or disincentives to a county to place in a particular type of facility."[10] Moreover, after the Department submitted its 1981 legislative proposals, the Mental Retardation Program Division continued to analyze options to eliminate the remaining disparity in DAC and State hospital program costs.[11] The Commissioner has stated that he is not in favor of recommending one of the possible options discussed by the Mental Retardation Program Division, that of putting DAC services under Title XIX (Medicaid),[12] but this does not relieve the defendants of the legal obligation to submit a proposal to the Legislature to eliminate existing financial disparities. The defendants' argument that the plaintiffs must show that the remaining disparity causes State hospital placements to be made is without merit in this context. The Court is thus in full agreement with the monitor's conclusion that the defendants have not complied with paragraph 89f.

PARAGRAPH 89b

Paragraph 89b addresses the need for additional community-based services because of the decrease in the State hospital population required by the Consent Decree. This paragraph provides that the Commissioner's legislative

proposals "shall provide for the development of additional bed capacity and DAC capacity necessary to accomodate former residents of state institutions [and] shall address the funding mechanism for DAC programs, transportation, and building renovation necessary to serve former residents of state institutions." The funding mechanism for DAC programs at the time the Consent Decree was signed was the Community Social Services Act or CSSA.[13] Through CSSA funding, counties are given a block grant to use for the benefit of various targeted populations,[14] including the mentally retarded.

Plaintiffs' motion raises two issues regarding compliance with paragraph 89b: (1) Was the defendants' proposal for funding 100 additional DAC positions in compliance with the Decree, when more than 100 additional positions will be necessary to serve the total demand for DAC services? and (2) Did the Commissioner's proposal fail to "address the funding mechanism for DAC programs, transportation, and building renovation necessary to serve former residents of state institutions," because it provided additional funds through the CSSA which were not earmarked for particular purposes?

1. Additional DAC capacity necessary to accomodate former residents of State institutions

The Commissioner proposed funding for 100 additional DAC positions. The defendants assert that this proposal complied with the first sentence of 89b because it provided for some increase in DAC capacity, which is all the Consent Decree requires. The defendants assert that the issue of whether the Commissioner's proposal would have to provide for all projected DAC capacity was specifically negotiated, and the changes made in the course of negotiation make it clear that funding for only some additional slots would need to be provided. The sentence in question was amended as follows:

> "The proposal will foster provide the development of the additional bed capacity and DAC slots necessary to accomodate former residents of state institutions."

The defendants contend that the deletion of the word "the" supports the claim that the Commissioner's proposal need not provide for all additional capacity necessary. The Court agrees with the plaintiffs in this matter, however, since in the Court's view, the deletion of "the," without the deletion of "necessary," does not add the word "some" before the terms "additional DAC capacity." The sentence as it now stands provides for a definite amount: the Commissioner's proposal must provide for additional DAC capacity necessary to accomodate former residents of State institutions. It is clear that the Decree does not provide

for a preference for former residents of State institutions in admissions to DACs, so the paragraph must require the State to provide for the additional capacity necessary for all DAC needs. The testimony of Robert Meyer, a Program Specialist in the Mental Retardation Division of the Department of Public Welfare, established that the Department estimated that there would be an overall need for 200 additional DAC positions during FY 1982-83.[15] Moreover, the defendants admit that only some capacity was provided for in the Commissioner's proposals. Thus, the Court has determined that although the exact number of additional positions necessary may be difficult to estimate, the evidence presented is sufficient to conclude that the Commissioner's proposal did not fully comply with the requirements of paragraph 89b regarding the provision of additional DAC capacity.

2. Addressing the funding mechanism for DAC programs, transportation, and building renovation necessary to serve former residents of State hospitals

The second requirement of paragraph 89b is, as the defendants assert, a very general one. The defendants urge that, contrary to the monitor's conclusion, the Department's legislative proposals address the funding mechanism for each of the three elements cited in the paragraph. The defendants' proposals may be summarized as follows:

> (1) DAC programs: the Department's proposal included additional funds for DAC programs through the Community Social Services Act.[16]
>
> (2) Transportation: the Department's proposal provided that the county board shall provide for transportation for eligible persons, "if provision for this transportation is not unreasonably burdensome to the county board and if a more efficient, reasonable alternative means of transportation does not exist."[17]
>
> (3) Building renovation: the Department's proposal made county boards responsible for "a means of facilitating access of physically handicapped or impaired persons to services appropriate to their needs."[18]

The additional $350,950 added to the Community Social Services Act was not in any way earmarked for DAC programs,[19] and the State did not directly provide any funds for transportation or building renovation.[20]

Plaintiffs contend that the lack of specific grants for additional DAC capacity and for the other required services is a violation of the Consent Decree, since there is no guarantee that the funds provided to counties under the CSSA will be spent on DACs or on transportation or building renovation.

Plaintiffs concede that the Commissioner's proposal, which was adopted in large part by the Legislature in 1981,[21] continues the practice of including mentally retarded persons within the scope of those who might receive CSSA services,[22] requires counties to describe the DAC services to be provided,[23] and continues the requirement that counties specify the amount to be spent on DAC services.[24] Plaintiffs note, however, that these requirements were a part of the CSSA funding mechanism prior to the signing of the Consent Decree, and assert that because no change in the way DAC funds are distributed was proposed by the Commissioner, the defendants have not complied with paragraph 89b.[25] Plaintiffs suggest that the word "address" in paragraph 89b means more than that some funding mechanism be proposed. In essence, plaintiffs argue that the CSSA funding mechanism must be changed to ensure that the county spends the block grant funds to provide the necessary DAC services.

The monitor agreed that "[i]nsofar as the 'folded in' funds are not 'earmarked' for specific expenditures and the responsibility for determining the appropriate use of these funds is left to the counties, it can be concluded that the Commissioner's proposal does not clearly 'address' DAC programs, transportation and building renovation." The monitor further stated:

> "While paragraph 89(b) imposes no burden upon the Defendants with respect to specific substantive contents of the legislative proposal, it does require that the Department propose legislation to effectively deal with in particularity the funding mechanism for DAC programs, transportation and building renovation so that the additional capacity for these services will be achieved."

It is clear to the Court that the counties are not required to spend a particular level of CSSA funds for DAC services. Similarly, the building renovation and transportation responsibilities proposed by the Commissioner do not mandate any specific level of expenditure. Indeed, no State funds are directly provided for these purposes. Moreover, it is the Commissioner's position, which was recently affirmed by a three judge panel in Lindstrom, et al v. State of Minnesota, et al,[26] that counties may reduce the number of days of DAC services they provide when faced with serious financial constraint.

Of course, the issue of compliance must be determined by examining the language of paragraph 89b. Under plaintiffs' interpretation, the defendants are required to submit a proposal to "change" or "improve to more particularity provide for" the funding of DAC programs, transportation, and building renovation. The monitor seems to have adopted this view as well. The Court cannot

read these meanings into so vague a word as "address" as it is used in the context of paragraph 89b. In the opinion of the Court, "address" means simply "provide for" or "explain" the funding mechanism to be used in these three areas. Even such a limited definition of the term imposes the obligation to submit a proposal that is reasonably calculated to provide for the DAC services "necessary to serve former residents of state institutions." No particular funding mechanism is required, but the mechanism must be a reasonably effective one. The Court thus finds that although the defendants have technically "addressed" the funding mechanism for the provision of adequate DAC services, it remains to be seen whether the counties will provide sufficient services to the plaintiff class through their use of CSSA funds.

CONCLUSIONS AND REMEDIES

Paragraph 89f of the Consent Decree requires the Commissioner to submit to the Legislature a proposal that would "eliminate the financial incentives currently encouraging counties to place mentally retarded persons in state hospitals." The Court has determined that in the context in which the Consent Decree was negotiated, the "financial incentives" encouraging State hospital placement were the disparities in county payment whereby the county paid a lesser percentage of residential and day program cost in State hospitals than the county paid for residential and day program costs in the community. Three disparities in cost existed prior to the Court's approval of the Decree: one disparity remains. The Commissioner's proposals did not remove this remaining disparity, because the proposals did not require the county to pay for DAC services at the same percentage of cost regardless of whether those services were provided in the community or in a State hospital. The defendants have not, therefore, complied with paragraph 89f.

As relief for this non-compliance, the monitor recommended that the defendants submit a proposal during the 1982 legislative session that would eliminate the financial incentives or disparities that still exist. Plaintiffs urge the Court to adopt this recommendation, but the defendants suggest that the Court proceed with caution in ordering the defendants to submit legislation at this time. The Court is well aware of the difficult financial situation that State officials are presently attempting to alleviate, and has previously noted the strides forward that have been made in the provision of services for the mentally retarded. The foremost duty of this Court, however, is to enforce the provisions of the Consent Decree, which was negotiated and voluntarily entered into by the defendants, and which the defendants agreed to be legally

bound by. The defendants must honor the obligations incurred under this Decree to the same extent as obligations under any other legally binding document. The Court will therefore grant plaintiffs' request that the Court adopt the monitor's recommendation to require the Commissioner to submit a proposal to the 1982 Legislature that will equalize the costs paid by the counties for State hospital services and for community-based services.

Paragraph 89b requires the Commissioner to submit a proposal that would "provide for the development of additional bed capacity and DAC capacity necessary to accomodate former residents of state institutions." This paragraph also provides that "[t]he legislation shall address the funding mechanism for DAC programs, transportation, and building renovation necessary to serve former residents of state institutions." Because nothing in the Decree provides a preference for former residents of State hospitals in obtaining DAC services, the proposal required by paragraph 89b must meet the needs of former State hospital residents as well as those who presently live in the community. Although the exact number of additional DAC positions necessary may be difficult to estimate, the proposal by the Commissioner requested funding for only one-half of the total additional DAC capacity estimated by the Department of Public Welfare and by the defendants' own statement only provided for some additional capacity. Thus, despite the monitor's lack of a finding of non-compliance on this issue, the Court has determined that the defendants' proposal regarding additional DAC capacity did not comply with paragraph 89b. The Court will therefore order the defendants to determine the number of mentally retarded persons who will need DAC services during the remainder of the biennium, based upon the DAC survey conducted by the Mental Retardation Division of the Department of Public Welfare and the Developmental Disabilities Program Office of the State Planning Agency[27] and all other available information, and to submit a proposal to the 1982 Legislature that will provide for the additional DAC capacity necessary in view of this determination.

Paragraph 89b also requires the Commissioner to submit a proposal to "address the funding mechanism for DAC programs, transportation, and building renovation." The Commissioner proposed the continued use of the CSSA funding mechanism for DAC programs, and proposed legislation that made the counties responsible for funding transportation and building renovation. State funding for counties pursuant to the CSSA is not earmarked for specific expenditures

and the Act does not establish any guidelines for the use of CSSA funds, other than very general ones. The Act provides for only limited monitoring of county expenditures. The Court has concluded that while the Commissioner's proposals technically "address" the funding mechanism, it cannot be determined at this time whether the mechanism specified will provide for the DAC programs, transportation, and building renovation necessary to serve former State hospital residents. The Court will therefore order the defendants to develop an effective monitoring process, which shall be submitted to plaintiffs and the monitor prior to implementation.[28] If, after a reasonable period of time, it appears that the level of expenditure by the counties is insufficient to provide the necessary services, the plaintiffs may raise this issue with the monitor and request appropriate relief.[29]

IT IS ORDERED THAT:

1. The Commissioner shall submit a proposal to the 1982 Legislature that will eliminate the remaining financial incentives encouraging counties to place mentally retarded persons in State hospitals by equalizing the percentage of the costs paid by counties for DAC services in State hospitals and in community-based facilities.

2. The Commissioner shall determine the number of mentally retarded persons who will need DAC services during the remainder of the biennium, based upon the DAC survey conducted by the Mental Retardation Division of the Department of Public Welfare and the Developmental Disabilities Program Office of the State Planning Agency referred to in DPW Informational Bulletin 81-84 (October 7, 1981) and all other available information, and shall submit to the 1982 Legislature a proposal that will provide for the additional DAC capacity necessary in view of this determination.

3. The Commissioner shall develop a method of effectively monitoring the counties' expenditures of CSSA funds on DAC services, which shall be submitted to the plaintiffs and the monitor prior to implementation. Should it become apparent that the level of expenditure by the counties is insufficient to provide for the necessary DAC services, the plaintiffs may request the monitor to recommend appropriate relief pursuant to the procedures established in paragraph 95.

/s/ Earl R. Larson

January 13, 1982.

United States Senior District Judge

FOOTNOTES

1. See Memorandum of the Commissioner, Department of Public Welfare: Consent Decree Paragraph 89, at 2, Welsch v. Noot, No. 4-72-Civ. 451 (D. Minn.), dated December 10, 1981.

2. Id.

3. It should be noted that the hearing officer appointed by the monitor for the March 13, 1981, hearing, Frank Madden, is a lawyer and previously served as the monitor for the 1977 Cambridge Consent Decree.

4. This motion was previously scheduled to be heard before the Court in August 1981, but the State employee strike disrupted that schedule.

5. See Memorandum of the Commissioner, supra, note 1, at 7.

6. See Minn. Stat. § 245.0313 (Supp. 1981).

7. See Minn. Stat. § 246.54 (Supp. 1981).

8. "Eliminate" is defined in Webster's Third New International Dictionary (1961) as follows: "to cause the disappearance of esp. as a factor or element in a process or situation: get rid of: ERADICATE."

9. Testimony of Dr. Harold Tapper, Welsch v. Noot, No. 4-72-Civ. 451 (D. Minn.), May 12, 1980, Tr. at 1010.

10. See "Department of Welfare Positions Regarding Institutional Reform and Development of Community-Based Alternatives for Mentally Retarded Persons," July 1, 1980, page 8. This document further states, "The major obstacle to placement into community-based programs continues to be the funding for DAC services." Id.

11. See "An Analysis of the Fiscal Policy Options to Eliminate the Fiscal Incentives for Counties to Place Mentally Retarded Persons in State Hospitals," Mental Retardation Program Division, Department of Public Welfare, St. Paul, MN, February 1981.

12. Affidavit of Arthur E. Noot, December 9, 1981.

13. See Minn. Stat. §§ 256E.01-.12 (1980).

14. See Minn. Stat. § 256E.03(2) (1980 & Supp. 1981).

15. See Testimony of Robert Meyer, Program Specialist, Mental Retardation Division, Department of Public Welfare, Hearing Transcript, March 13, 1981, at 85-86.

16. See Memorandum of the Commissioner, supra, note 1, at 5; Plaintiffs' Exhibits for motion to be heard December 9, 1981, Welsch v. Noot, No. 4-72-Civ. 451, Exhibit 7 at page 1, and Exhibit 12, attachment C; Monitor's Finding of Fact No. 7 (May 21, 1981).

17. See H.F. 3, Section 20, page 14, lines 7-21 (introduced Jan. 8, 1981).

18. See H.F. 3, Section 9, page 8, lines 18-20 (introduced Jan. 8, 1981).

19. See Testimony of Robert Meyer, supra, note 15, at 83. The Commissioner's proposals also included certain amendments to the CSSA that "folded in" $10,060,000 in funding for programs that previously had been categorical grants, such as shared living in the community, mentally ill institutionalization money, Cost of Care for emotionally disturbed and mentally retarded children, and sliding fee day care. The CSSA budget proposal also included a cost of living or inflation factor of 9.1% and $149,200 for FY '82 and $469,500 for FY '83 for additional DACs and for Cost of Care for children in residential programs who are not eligible for medical assistance. Counties will now receive this money in one block grant. See id. at 94-95.

20. Id. at 96-98; 101-02.

21. See Minn. Stat. §§ 256E.03-.10, -.12 (Supp. 1981).

Footnotes, Continued

22. The proposal extended eligibility for CSSA funding to the following groups: families with children under 18 who are experiencing child dependency, neglect, or abuse; persons under the guardianship of the Commissioner of Public Welfare as dependent and neglected wards; vulnerable adults; persons age 60 and over who are unable to live independently and care for their own needs; emotionally disturbed children and adolescents; mentally ill persons; mentally retarded persons; drug dependent and intoxicated persons; and other groups of persons who, in the judgment of the county board, are in need of social services. See H.F. 3, Section 1, subdivision 2 (introduced Jan. 8, 1981).

23. See H.F. 3, Section 12, subdivision 3(d), page 9, lines 34-37 (introduced Jan. 8, 1981).

24. See id. at subdivision 3, page 10, lines 4-5.

25. Plaintiffs also suggest that the only sanction available should the Commissioner fail to approve the county's social service plan is to withhold one-third of one percent of the county's allocation of CSSA funds for each 30 day period of non-compliance. See Minn. Stat. § 256E.05(2) (1980).

26. Lindstrom, et al v. State of Minnesota, et al, Civ. No. 9273, et al, slip op. at 6 (filed Dec. 10, 1981)(appeal docketed Jan. 11, 1982) (No. 84-34). In Lindstrom, Kittson County had made payments to various host counties for the provision of DAC services on a per diem basis. In October 1980, the director of the Kittson County Welfare Board informed the Commissioner and the DAC directors in the host counties that on November 1, 1980, Kittson County's expenditure for DAC services would be limited to three days per week, as opposed to five days per week, in anticipation of a budget shortfall in available funds for DAC services. Appeals were filed on behalf of the DAC recipients, and a formal hearing took place before a referee on January 7, 1981. The referee reversed the county board's decision, but on April 16, 1981, Commissioner Noot affirmed the county's decision to limit DAC services to avoid a firmly projected budget deficit. On appeal to the State district court, a three judge panel affirmed the Commissioner's decision. The panel held that the Commissioner's interpretation of rules and regulations of the Department of Public Welfare was presumed to be correct, and found that the provision of DAC services was mandated only "within the appropriation made available for this purpose." Id. (citing Minn. Stat. § 252.24 (1980)). See also Minn. Stat. § 252.21 (1980).

27. See Information Bulletin #81-84, Minnesota Department of Public Welfare, October 7, 1981.

28. The Court expresses no opinion at this time on the adequacy of the monitoring system currently required by the Community Social Services Act. The monitoring system developed by the defendants must, however, effectively monitor the use of CSSA funds for DAC programs, transportation, and building renovation.

29. See, e.g., Findings of Fact, Conclusions and Recommendations, May 21, 1981 Recommendation 5.