Attention: Jim Pingeon

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss. SUPERIOR COURT
BRCV 2002-00870

RICHARD S. SOUZA & others[1]

vs.

SHERIFF THOMAS M. HODGSON, Individually and as Bristol County Sheriff

MEMORANDUM OF DECISION AND ORDER ON PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT

INTRODUCTION

The plaintiffs, inmates either serving sentences or awaiting trial at the Bristol County Jail or Bristol County House of Correction, filed this action challenging the validity of cost of care fees, medical care fees, haircut fees and GED fees charged by Sheriff Hodgson pursuant to his Bristol County Inmate Financial Responsibility Program.

This matter is before the court on the parties' cross-motions for summary judgment pursuant to Mass. R. Civ. P. 56. For the reasons discussed below, the plaintiffs' motion for summary judgment is allowed and the defendant's cross-motion for summary judgment is denied.

BACKGROUND

The following is taken from the summary judgment record. The undisputed facts, and any disputed facts viewed in the light most favorable to the non-moving party, are as follows. The

[1]Wayne Soares, Barry Booker, Richard Centeno, Antone Cruz, William Perry, William Statkiewitz, Jerome Wieczorek, Jr., on behalf of themselves and all others similarly situated.

plaintiffs are prisoners either awaiting trial or serving sentences at the Bristol County Jail or the Bristol County House of Correction. Defendant Thomas Hodgson ("Hodgson") is the duly elected Sheriff of Bristol County. On July 8, 2002, Hodgson implemented the Bristol County Inmate Financial Responsibility Program, set forth in a written policy which states in relevant part:

> A. The management philosophy of the Bristol County Sheriff's Office (BCSO) of direct supervision includes the assumption of personal responsibility by inmates. The primary purpose of the BCSO Inmate Financial Responsibility Program is to encourage inmates to be financially responsible for a portion of the programs, services and care they receive while within a Bristol County correctional facility. The Inmate Financial Responsibility Program shall assist inmates in preparing for their transition back to the communities to which they will return and to assume the personal responsibilities of a responsible member of their communities.
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> B. As a component of its management philosophy, the BCSO provides quality services for inmates committed to its facilities, which includes nutritious food services, medical and mental health care, recreational, educational and vocational programming opportunities, fire safety and hygiene control, as well as overall care, custody and control of inmates, which services are costly to the taxpayers of the Commonwealth and its communities. The standards set by the BCSO for the delivery of services in its correctional facilities in many cases far exceeds those that our inmates enjoy within the free community. The BCSO Inmate Financial Responsibility Program places a portion of the financial obligations for these costs onto the inmate population, encouraging personal responsibility and defraying the cost of incarceration, while still maintaining quality programs and services.

On July 1, 2002, Hodgson announced that as part of the Inmate Financial Responsibility Program, he was instituting a Cost of Care Program. Under this program, inmates are charged a $5 cost of care ("COC") fee for each day of incarceration, which is automatically deducted directly from the inmate's Inmate Money Account ("IMA"). An inmate who has $5 or less in his account for a period of 30 days is deemed to be indigent, but the $5 fee is still deducted from his IMA, creating a negative balance which is treated as a debt owed by the inmate. Any funds sent to the inmate while he is incarcerated are first applied to satisfy the outstanding debt and the remainder, if any, is

deposited in the inmate's IMA.

An inmate who has an outstanding debt in his IMA cannot purchase items at the prison commissary such as deodorant, combs, radios, fans or food. Hodgson provides indigent inmates with a hygiene kit containing one bar of soap, one disposable shaving razor, one tube of toothpaste, one plastic toothbrush, and if necessary, articles of feminine hygiene. Since Hodgson implemented the COC fee, the number of indigent inmates in Bristol County has increased. Inmates incarcerated in Bristol County have no earned funds, as they are not paid for any work they perform while incarcerated.

Regional lock-up prisoners, federal prisoners, and prisoners transferred from other counties or from the Department of Correction are exempt from the COC fee. Prisoners awaiting trial must pay the COC fee, but if they are ultimately found not guilty, or have all charges against them dismissed, they may obtain a refund of all fees paid by presenting Hodgson with certified docket entries or other court documents indicating the favorable disposition of their case.

If an inmate is released with an outstanding debt in his IMA, the debt is kept on his record and remains in force for two years. If the inmate is incarcerated again in Bristol County within the two year period, he must pay off the existing debt before he can use his IMA to purchase any items from the commissary. In addition, new debt will accumulate on top of the amount of the existing debt. If, however, the inmate is not incarcerated again in Bristol County within two years, his debt is forgiven.

The Inmate Financial Responsibility Program also includes a medical care fee of $5 per medical sick call, defined as any medical visit initiated by an inmate through a written request or unscheduled walk-in visit not related to a known chronic disease list problem. Certain medical

services are exempt from this $5 fee, including admission health screening, emergency health or trauma care, prenatal care, hospitalization care, lab and diagnostic care, contagious disease care, chronic disease list care, and certain follow-up care appointments. Inmates are also charged a $3 fee for pharmaceutical prescriptions and a $5 fee for eyeglass prescriptions. The medical care fees are automatically deducted from an inmate's IMA when the inmate requests medical services. Inmates who are indigent are not denied health care because of inability to pay the medical care fees or because of a record of past non-payment. However, medical care fees are deducted from an indigent inmate's IMA, creating a negative balance which is treated as a debt owed by the inmate. This debt is automatically deducted from any funds sent to the inmate while he is incarcerated.

The Inmate Financial Responsibility Program imposes a $5 fee on non-indigent inmates who request a haircut or beard trim. The haircut fee is deducted directly from the inmate's IMA at the time of the request. Indigent inmates are allowed one haircut per month without cost. The Commissioner of Correction has established a $1.50 hair cut fee for non-indigent prisoners in state correctional facilities.

Finally, the Inmate Financial Responsibility Program provides that inmates who participate in the General Educational Development ("GED") testing program shall be charged a $12.50 registration and testing fee.

The plaintiff inmates filed this suit pro se on July 9, 2002, challenging the legality of the COC, medical care, haircut and GED fees. On August 5, 2002, counsel for the plaintiffs filed an amended complaint pursuant to Mass. R. Civ. P. 15(a) and on August 28, 2002, Hodgson removed the case to the United States District Court for the District of Massachusetts. Count I of the plaintiffs' Amended Complaint alleges that the Inmate Financial Responsibility Program ("the

Program") is *ultra vires* and void because Hodgson lacks the statutory authority under Massachusetts law to charge fees for the cost of incarceration. Count II alleges that the Program deprives the plaintiffs of their rights to procedural and substantive due process under the Fourteenth Amendment to the United States Constitution and the Massachusetts Declaration of Rights. Count III alleges that the Program deprives the plaintiffs of their right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution and the Massachusetts Declaration of Rights. Count IV alleges that the Program violates the *Ex Post Facto* provisions of the United States Constitution and the Massachusetts Constitution. Count V alleges that the Program constitutes an unlawful tax under the Massachusetts Constitution. Count VI alleges that by taking funds deriving from the plaintiffs' social security and veterans benefits, the Program violates 42 U.S.C. § 407 and 38 U.S.C. § 5301. Count VII alleges that Hodgson has committed conversion. Count VIII alleges that the Program violates the separation of powers provision of the Massachusetts Declaration of Rights, while Count IX alleges that the Program constitutes an unlawful seizure of property in violation of the Fourth Amendment to the United States Constitution and Article 14 of the Declaration of Rights. The plaintiffs voluntarily dismissed with prejudice all of their federal claims, and on July 17, 2003, the District Court remanded the case to the Superior Court for resolution of the state law claims.

DISCUSSION

Summary judgment shall be granted where there are no genuine issues as to any material fact and where the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); Cassesso v. Commissioner of Correction, 390 Mass. 419, 422 (1983); Community Nat'l Bank v.

Dawes, 369 Mass. 550, 553 (1976). The moving party bears the burden of affirmatively demonstrating the absence of a triable issue, and that the summary judgment record entitles the moving party to judgment as a matter of law. Pederson v. Time, Inc., 404 Mass. 14, 16-17 (1989). The moving party may satisfy this burden either by submitting affirmative evidence that negates an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of his case at trial. Flesner v. Technical Communications Corp., 410 Mass. 805, 809 (1991); Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991).

The Cost of Care Fee

The plaintiffs contend that Hodgson exceeded his authority in promulgating the COC fee and thus, such fee is *ultra vires*. A government agency or officer has no authority to promulgate rules or regulations which conflict with or exceed the authority conferred by the statutes creating the agency or office. Massachusetts Hosp. Assoc., Inc. v. Department of Med. Security, 412 Mass. 340, 342 (1992); Telles v. Commissioner of Ins., 410 Mass. 560, 564 (1991). In addition, where the Legislature has fully regulated a subject by statute, an agency or officer cannot further regulate that subject by establishing a policy inconsistent with the statutory scheme. Massachusetts Hosp. Assoc., Inc. v. Department of Med. Security, 412 Mass. at 347.

Hodgson contends that his authority to enact the COC fee derives from G.L. c. 126, § 16, which provides in relevant part:

> The sheriff shall have custody and control of the jails in his county, and except in Suffolk county, of the houses of correction therein, and of all prisoners committed thereto, and shall keep the same himself or by his deputy as jailer, superintendent or

keeper, and shall be responsible for them.

This provision is a broad grant of authority over prisoners in county facilities, and certainly does not bar the imposition of a COC fee. Nonetheless, G.L. c. 126, § 16 cannot be read in isolation, and this Court must fully examine the statutory scheme relating to county prisoners in order to determine whether the COC fee exceeds Hodgson's authority.

The plaintiffs argue that the COC fee conflicts with several provisions of Chapter 126 of the General Laws that place the responsibility for the support of county prisoners on the county. Specifically, the plaintiffs cite G.L. c. 126, § 8, which provides in relevant part that the county commissioners "shall at the expense of the county provide a house or houses of correction . . . for the safe keeping, correction, government and employment of offenders legally committed thereto . . ." and G.L. c. 126, § 29, which provides in relevant part:

> [t]he expense of keeping and maintaining convicts sentenced to imprisonment in the jail or house of correction, of the keeping of persons charged with or convicted of a crime and committed for trial or sentence, and of prisoners committed on mesne process or execution . . . shall be paid by the county . . . and no allowance therefor shall be made by the commonwealth.[2]

These statutes, by themselves, do no more than impose the cost of running the county correctional system on the county, as opposed to the Commonwealth; they neither expressly nor impliedly prohibit Hodgson from seeking reimbursement of such costs from county inmates.

The plaintiffs further argue, however, that the COC fee conflicts with several other statutory provisions which govern inmate funds. General Laws Chapter 127, section 3 provides that the

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[2]The plaintiffs also cite G.L. c. 126, § 25 (jails and houses of correction must be kept in clean and healthful condition at county's expense); G.L. c. 126, § 28 (necessary supplies for jails and houses of correction to be purchased at county's expense); and G.L. c. 126, § 33 (necessary fuel, bedding and clothing for all county prisoners provided at county's expense).

superintendents and keepers of jails, houses of correction and all other penal or reformatory institutions:

> shall keep a record of all money or other property found in possession of prisoners committed to such institutions, and shall be responsible to the commonwealth for the safekeeping and delivery of said property to said prisoners or their order on their discharge or at any time before. The superintendents of correctional institutions of the commonwealth and the superintendents and keepers of jails, houses of correction and of all other penal or reformatory institutions shall, upon receipt of an outstanding victim and witness assessment, transmit to the court any part or all of the monies earned or received by any inmate and held by the correctional facility, except monies derived from interest earned upon said deposits and revenues generated by the sale or purchase of goods or services to persons in correctional facilities, to satisfy the victim witness assessment ordered by a court pursuant to section eight of chapter two hundred and fifty-eight B. Any monies derived from interest earned upon the deposit of such money and revenue generated by the sale or purchase of goods or services to persons in the correctional facilities may be expended for the general welfare of all inmates at the discretion of the superintendent.

Thus, the Legislature has specifically empowered prison officials, including the Sheriff, to deduct victim and witness assessments from the non-interest portion of inmate accounts and to spend the interest in such accounts for the general welfare of all inmates. A statutory expression of one thing is an implied exclusion of other things omitted from the statute. Fafard v. Lincoln Pharmacy of Milford, Inc., 439 Mass. 512, 515 (2003); Commonwealth v. Russ R., 433 Mass 515, 521 (2001). If the Legislature had intended to permit Sheriffs to deduct room and board fees from inmate funds, it could have expressly authorized such a deduction, as it did with victim and witness assessments.

Further, the statute authorizing Sheriffs to run work release programs for county prisoners, G.L. c. 127, § 86F, provides in relevant part:

> An inmate and his employer shall agree to deliver his total earnings, minus tax and similar deductions, to the sheriff. At no time shall any inmate personally receive any monies, checks or the like from his employer. The sheriff shall deduct from the earnings delivered to him the following: —

> First, an amount necessary to satisfy the victim and witness assessment ordered by a court pursuant to section eight of chapter two hundred and fifty-eight B; second, **an amount determined by the sheriff for substantial reimbursement to the county for providing food, lodging and clothing for such inmate** . . . Any balance shall be credited to the account of the inmate and shall be paid to him upon his final release.

G.L. c. 127, § 86F (1994) (emphasis added). Where the Legislature has employed specific language in one part of a statute but not in another, the language cannot be implied when it is not present. Hallett v. Contributory Retirement App. Bd., 431 Mass. 66, 69 (2000). See also Newton v. Department of Pub. Utilities, 367 Mass. 667, 679 (1975) (reference to a specific power in one section of the General Laws and its absence in another is an intentional limitation of power). The Legislature clearly intended the Sheriff to have the power to charge inmates room and board under circumstances where the inmate earns wages through a county work release program, and it so provided. The Legislature's failure to similarly authorize the Sheriff to charge room and board to inmates generally and to deduct it from inmate accounts is significant. If the general grant of authority to the Sheriff in G.L. c. 126, § 16 encompassed the power to charge inmates room and board and deduct it from inmate accounts, the express grant of authority to make such a deduction from wages would be superfluous. See Welsh v. Department of Correction, 2001 WL 717094 (Mass. Super. April 9, 2001) (Kottmyer, J.) (concluding that DOC lacked authority to promulgate a regulation deducting DNA fee from inmate accounts without inmate consent because the Legislature has specifically regulated by statute the specific deductions which DOC may make from inmate funds through G.L. c. 127, § 3, allowing a deduction from inmate accounts for victim and witness assessments, G.L. c. 127, §§ 48A and 86F, allowing deductions from the wages of prisoners in work programs, and G.L. c. 124, §§ 1(r) and (s) allowing deductions from inmate accounts for haircuts and

medical fees). Hodgson's claim of inherent authority under G.L. c. 126, § 15 to involuntarily deduct COC fees from inmate funds other than those earned through work programs is inconsistent with the statutory scheme designed to safeguard inmate funds, except for statutorily authorized deductions.[3]

Finally, it is significant that at one time the Commonwealth had a statute permitting a county to recoup incarceration costs from prisoners. Revised Law Chapter 224, section 34 provided:

> The county commissioners, and, in the county of Suffolk, the auditor, shall twice in each year, and oftener if necessary, examine and audit the accounts for the care and expense of supporting and employing the persons committed to the houses of correction in their county, and certify what amount is due for supporting and employing each person after deducting the net profit of his labor. If such person refuses or neglects, for fourteen days after demand in writing by the master or keeper, to pay the amount so certified to be due, the commissioners or auditor may recover it in an action of contract in the name of their county, or, in the county of Suffolk, in the name of the city of Boston.

This statute was repealed in 1904. See Stat. 1904, c. 211. The existence of such statute, albeit a century ago, supports the conclusion that the recovery of incarceration costs from county prisoners is not a matter within the inherent authority of county officials but rather, is a matter of judgment by the Legislature.

It is irrelevant to this Court's analysis that in a recent audit, the Commissioner of Correction

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[3]This Court rejects Hodgson's argument that irrespective of the statutes governing inmate funds, he has common law powers that enable him to impose the COC fee. Hodgson emphasizes that sheriffs possessed broad authority during colonial times, that the office of Sheriff was included in the original Massachusetts Constitution at Part II, c.2, § 1, art. 9, and that sheriffs retain all the powers they had at common law. To the extent, however, that sheriffs had broad authority over county prisoners at common law, the Legislature has chosen to circumscribe such authority in the particular area of inmate funds. See Massachusetts Constitution at Part II, c. 6, art. 6; New Bedford Standard-Times Pub. Co v. Clerk of the Third Dist. Ct. of Bristol, 377 Mass. 404, 410 (1979) (unless there is a violation of a constitutional guarantee, the Legislature may modify or abrogate the common law).

deemed the Inmate Financial Responsibility Program to be in compliance with its duly promulgated standards. Pursuant to G.L. c. 124, § 1(d) and G.L. c. 127, §§ 1A and 1B, the Commissioner of Correction is required to establish minimum standards for the care and custody of all persons committed to county correctional facilities. The Commissioner's standards for Budget and Fiscal Management in County Correctional Facilities, set forth at 103 Code Mass. Regs. § 911.01 through § 911.08, do not expressly address the deduction of fees from inmate accounts. Section 911.03(5) merely provides that the Sheriff or Facility Administrator shall have a written policy and procedure relating to the handling of inmate funds, including accrual of interest, specifying that the methods used for the collection, safeguarding and disbursement of monies comply with accepted accounting procedures. Section 911.08 provides that there must be a written policy and procedure regarding inmate funds, including deductions for outstanding victim and witness assessments. A finding of compliance with these standards does not address whether Hodgson has the legal authority to impose the COC fee. In any event, the Commissioner could not confer upon a Sheriff the authority to handle inmate funds in a manner contrary to statute, and this Court is responsible for making an independent determination of the legality of the COC fee.

Thus, this Court concludes that Hodgson exceeded his authority in promulgating and implementing the COC fee, which is *ultra vires* and void. Hodgson's reliance on the decision in Tillman v. Lebanon County Correctional Facility, 221 F.3d 410 (3d Cir. 2000), is misplaced. In Tillman, the court upheld a Cost Recovery Program assessing county prisoners a daily housing fee of $10 and creating a negative inmate account balance which remained a debt that could be turned over for collection upon the prisoner's release. Id. at 414. The court found that the County Prison Board was authorized to enact the Cost Recovery Program pursuant to a statute which "exclusively

vested" the board with "the safe-keeping, discipline, and employment of prisoners, and the government and management" of the prison. Id. at 423 & n.15. Significantly, the court noted that there were no statutes relating to county prisons which addressed the permissible sources of funds used to pay the expenses of the prisons. Id. In contrast, as discussed supra, our General Laws contain several provisions which circumscribe the Sheriff's authority to make involuntary deductions from inmate accounts and suggest that inmate room and board is a matter for the Legislature. Accordingly, the Tillman case is inapposite.

The Medical Care Fees

The plaintiffs further contend that Hodgson exceeded his authority in promulgating the $5 medical appointment fee, the $3 prescription fee, and the $5 eyeglass prescription fee. General Laws Chapter 124, section 1(s) authorizes the Commissioner of Correction to:

> adopt policies and procedures establishing reasonable medical and health service fees for the medical services that are provided to inmates at any state jail or correctional facility. Except as otherwise provided, the commissioner may charge each inmate a reasonable fee for any medical and mental health services provided, including prescriptions, medication, or prosthetic devices. The fee shall be deducted from the inmate's account as provided for in section 48A of chapter 127 . . .[4] Notwithstanding any other provision of this section, an inmate shall not be refused medical treatment for financial reasons . . .[5]

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[4]G.L. c. 127, § 48A provides that certain deductions may be taken from the wages earned by state inmates in prison industries.

[5]Pursuant to these provisions, the Commissioner has promulgated policy 103 DOC 763, which provides that a $5 medical co-pay fee for pre-release status inmates and a $3 medical co-pay fee for other inmates shall be deducted from the inmate's available earned funds. Under this policy, indigent inmates are exempt from the medical co-pay fee, and there is no fee for prescriptions or eyeglasses. Policy 103 DOC 763 applies to "inmate medical co-payment fees within the Massachusetts Department of Correction."

Significantly, G.L. c. 124, § 1(s) authorizes the Commissioner to charge inmates a reasonable medical care fee, but does not so authorize the Sheriff. In contrast, § 1(r) provides that a reasonable haircut fee may be charged by "the commissioner **or a county sheriff.**" G.L. c. 124, § 1(r) (emphasis added). If the Legislature had intended to authorize the Sheriff to impose medical care fees in county correctional facilities, it would have explicitly stated so, as it did with respect to haircuts. See Hallett v. Contributory Retirement App. Bd., 425 Mass. at 69 (where Legislature has employed specific language in one part of a statute but not in another, the language cannot be implied where it is not present). Moreover, the provision in G.L. c. 124, § 1(s) that medical care fees shall be deducted from an inmate's account as provided in G.L. c. 127, § 48A, which allows deductions from an inmate's earned wages, evinces a legislative intent to limit the source of funds from which medical fees may be paid. See Fafard v. Lincoln Pharmacy of Milford, Inc., 439 Mass. at 515; Commonwealth v. Russ R., 433 Mass. at 521 (statutory expression of one thing is an implied exclusion of other things omitted from the statute). Hodgson's deduction of medical care fees from inmate funds which do not consist of earned wages, and the accrual of a negative balance in inmate accounts when an inmate lacks the funds to pay the fees, contravene the apparent intent of the Legislature with respect to making inmates bear part of the cost of their medical care.[6] This Court is not persuaded by Hodgson's argument that G.L. c. 124, § 1(s) governs only the imposition of medical fees by the Commissioner of Correction in state facilities and therefore does not preclude a Sheriff from imposing such fees in county facilities pursuant to his broad common law authority and G.L. c. 126, § 16. As discussed supra, the Legislature has circumscribed the involuntary

[6]It should also be noted that although G.L. c. 127, § 86F enumerates deductions which may be taken from the earnings of a county inmate in a work release program, it does not include medical fees.

deductions which a Sheriff may make from inmate funds. Thus, this Court concludes that Hodgson's imposition of the medical care fees under the Inmate Financial Responsibility Program exceeds his authority.

Haircut Fee

The plaintiffs next contend that Hodgson exceeded his authority in enacting the $5 haircut fee. General Laws Chapter 124, section 1(r) provides that the Commissioner of Correction shall:

> adopt policies and procedures, in consultation with the county sheriffs, establishing reasonable fees for haircuts that are provided to inmates at any county or state correctional facility. Except as otherwise provided, the commissioner or a county sheriff may charge each inmate a reasonable fee for any haircut provided. The commissioner of correction may deduct such fee from the inmate's account as provided for in section 48A of chapter 127.

Although this statute contemplates that county inmates may be charged a haircut fee, it grants the authority to set that fee to the Commissioner, not the Sheriff. The Commissioner has enacted a haircut policy, Policy 103 DOC 762, which establishes a $1.50 haircut fee for all non-indigent inmates to be deducted from an inmate's earned funds. However, this policy on its face applies only to "inmate haircut fees within the Massachusetts Department of Correction." This Court agrees with the plaintiffs that G.L. c. 124, § 1(r) does not authorize Hodgson to charge a fee greater than that set by the Commissioner, despite the fact that the Commissioner's Policy does not expressly include county facilities in its terms. This Court is not persuaded, however, by the plaintiffs' argument that county inmates cannot be charged a haircut fee at all unless the source of funds for that fee is wages earned in a county work program. The Legislature clearly intended to authorize the Sheriff to impose a haircut fee on county prisoners, but chose not to limit the source

of those funds as it expressly did with respect to state prisoners under G.L. c. 127, § 48A, perhaps in recognition of the fact that there are few paying work programs at the county level.[7] Thus, this Court concludes that the deduction of a haircut fee from a county inmate's account when a haircut is requested violates G.L. c. 124, § 1(r) only to the extent that the fee charged by Hodgson exceeds the $1.50 set by the Commissioner.

The GED Fee

Finally, the plaintiffs contend that Hodgson exceeded his authority in imposing the GED fee. General Laws Chapter 127, section 92A provides:

> The department of education shall permit an inmate of a correctional institution of the commonwealth who is eighteen years of age or over to take the general education development tests, and said department shall not charge an application or testing fee to any inmate desiring to take said tests.

Hodgson is correct that this provision prohibits the department of education from charging a GED fee and does not address the Sheriff's authority to do so. Nonetheless, the clear import of G.L. c. 127, § 92A is that the Legislature desired inmates to have free access to GED testing, and the fee imposed by Hodgson contravenes that intent.

Hence, this Court concludes that Hodgson lacks the authority to impose the COC fee, medical care fees, GED fee, and to the extent it exceeds $1.50, the haircut fee established in the Inmate Financial Responsibility Program. Having concluded that the fees at issue are not statutorily authorized, this Court need not reach the state constitutional issues raised by the Amended Complaint. See Greater Boston Real Estate Bd. v. Department of Telecommunications and Energy,

[7] A haircut fee arguably falls into the authorized wage deduction for "sums voluntarily agreed to . . . for personal necessities while confined." G.L. c. 127, § 86F.

438 Mass. 197, 199 (2002).

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the plaintiffs' motion for summary judgment be **ALLOWED** and that the defendant's cross-motion for summary judgment be **DENIED**. It is **ORDERED** and **DECLARED** that the COC fee, medical care fees, GED fee, and haircut fee imposed under the Bristol County Inmate Financial Responsibility Program are invalid and unauthorized by law. It is further **ORDERED** that the defendant Hodgson and his agents, servants, and employees be and hereby are **ENJOINED** from imposing the aforesaid fees. Finally, it is **ORDERED** that this matter be set down for a hearing with respect to the entry of appropriate orders relating to proper certification of the class and the assessment of damages.

Richard T. Moses
Justice of the Superior Court

DATED: July 28, 2004