



# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

June 20, 2011

SUITE 1100  
445 MINNESOTA STREET  
ST. PAUL, MN 55101-2128  
TELEPHONE: (651) 282-5700

*By Personal Delivery*

The Honorable Donovan Frank  
United States District Court Judge  
724 Federal Building  
316 N. Robert Street  
St. Paul, MN 55101

Re: ***James and Lori Jensen, et al. v. Minnesota Department of Human Services, et al.***  
**Court File No. 09-CV-1775 (DWF/FLN)**

Dear Judge Frank:

On behalf of all of the parties to this litigation, please find enclosed a copy of the Settlement Agreement, attachments and exhibits. Counsel are scheduled to meet with you on Thursday, June 23, 2011 at 8:00 a.m. in order to discuss with the Court its review of the Agreement and subsequent steps including the Court's review and execution of the Hearing Order to allow Class Counsel to proceed with notice to the Class.

The accompanying documents are organized as follows:

- Stipulated Class Action Settlement Agreement;
- Attachment A: New policy limiting use of restraints to emergencies;
- Attachment B: Staff training;
- Attachment C: Form to be filled out on each use of restraint;
- Attachment D: Pierringer language (if court subsequently permits an insurance defendant to withdraw from settlement);
- Exhibit 1: Notice of Pendency and Proposed Settlement of Class Action;
- Exhibit 2: Request for Exclusion ("Opt-Out");
- Exhibit 3: Claim Form;
- Exhibit 4: Hearing Order; and

- Exhibit 5: Stipulation for Entry of Final Order, Final Order, and Judgment.

The Notice which will be sent to class members, Exhibit 1, provides a good overview of the case and the procedures that will follow upon this Court's preliminary approval of the Settlement Agreement and execution of the Hearing Order (Exhibit 4). Plaintiffs' counsel, within seven days of the Court's preliminary approval of the settlement, will mail a copy of the Notice, Request for Exclusion ("opt-out") and Claim Form to all class members, their guardians, if any, and a contact person or family member, if known. In other words, as many as three notices will be sent out for each class member.

Class members who wish to opt-out will have to do so by September 1, 2011. Claim forms will need to be submitted by September 15, 2011 in order to be timely, although class counsel has discretion to accept late claims so long as distribution of the settlement fund is not materially delayed. The Fairness Hearing is scheduled for December 1, 2011.

The settlement fund is \$3,000,000 (\$2.8 million from the State and \$200,000 from two insurers). Plaintiffs' counsel will request an award of \$1,000,000 for attorneys' fees and costs. Plaintiffs will also request that a minimum of \$75,000 be apportioned for each of the three named plaintiffs (total \$225,000) for their experience with restraint and/or seclusion as well as serving as class representatives. The remaining approximately \$1,775,000 is reserved for class members, which shall be apportioned by the Court taking into account the documented number of times the member was restrained and/or secluded with a schedule providing for approximately Two Hundred Dollars (\$200) for each restraint or seclusion. See Notice (Exhibit 1) at 6. The Court may apportion funds on other grounds, including serious physical injury.

There are approximately 200 class members. About 140 of them were restrained less than 15 times and would receive less than \$3,000 under the proposed scale. At the other end of the continuum, about 31 class members would receive more than \$10,000 and the top three would receive in six figures.

The Settlement Agreement contains numerous provisions that the parties hope will result in improved lives for residents of the State's facility for people with developmental disabilities with severe behavioral conditions, including immediately and permanently discontinuing the use of mechanical restraint (including metal law enforcement-type handcuffs and leg hobbles, cable tie cuffs, PlastiCuffs, FlexiCuffs, soft cuffs, posey cuffs, and any other mechanical means to restrain), manual restraint, prone restraint, chemical restraint, seclusion, and the use of painful techniques to induce changes in behavior through punishment of residents with developmental disabilities. See Settlement Agreement, Section V. Prohibited Techniques.

The State's revised policy (Attachment A) provides that in the event of an emergency which poses an imminent risk of physical harm to self and others and less restrictive strategies would not achieve safety, certain manual and Velcro strap mechanical restraint may *only* be used on residents of METO and its successor facilities..

The State is also increasing staffing at a cost of \$930,000, training requirements are being increased, people with developmental disabilities will not be transferred to Minnesota Security Hospital and Anoka Metro Regional Treatment Center solely for reasons of their disability, and key policies will be reviewed and revised (Rule 40 and *Olmsted* Plan).

In order to help assure that the limitations on the use of restraints are observed, a third party expert will be consulted in connection with each use of restraint, an employee of the State Health Department will serve as an external reviewer, and the Court will receive quarterly reports from the external reviewer as to whether the facility is in substantial compliance with the Settlement Agreement.

We look forward to seeing you on Thursday.

Very truly yours,

A handwritten signature in black ink, appearing to read "P. Kenneth Kohnstamm", written in a cursive style.

P. KENNETH KOHNSTAMM  
Assistant Attorney General

(651) 757-1266 (Voice)  
(651) 282-5832 (Fax)

Enclosures

cc: Shamus P. O'Meara  
Samuel D. Orbovich  
Dave L. Hashmall

AG: #2841720-v1