

**David Ferleger**  
ATTORNEY

May 29, 2014

TO: Hon. Donovan W. Frank  
United States District Judge

FROM: David Ferleger  
Court Monitor

SUBJECT: Jensen v. Department of Human Services, No. 09cv1775  
Transition of Cambridge Client to Permanent Homes

I write with some urgency on my own part, and reflecting the Department's concerns, regarding the transition of a young man who, it appears, will be the final client to move from Cambridge to a community home. The Court's guidance and assistance would be appreciated to address the situation described below.

**Context.** While the Comprehensive Plan of Action (CPA) provides that MSHS-Cambridge will be closed by August 31, 2014, it also requires that "Residents currently at MSHS-Cambridge transition to *permanent* community homes"(emphasis added) by June 30, 2014, the end of this month.<sup>1</sup> In formulating the CPA, there was agreement among the parties and Court Monitor that it was not beneficial to residents to make two or more moves before coming to their community home.

Four individuals remain living at Cambridge today. DHS has plans for three of the four. They are expected to move to the community by June 30, 2014. The fourth is a young man whose initials are DP; there is no definite plan for him. DP is almost 20 years old. He was admitted to Cambridge in February 2014 from a state-operated group home in Grand Rapids.<sup>2</sup> The Grand Rapids home took two years for the state to develop.

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<sup>1</sup> EC 88 (August 31 closure date); EC 95 (June 30 transition date). CPA, Defendants First Compliance Update Report (April 11, 2014), Dkt. 289. These dates were chosen by DHS in its April 11, 2014 filing.

<sup>2</sup> The Internal Reviewer in *Jensen* issued a seven page report in February 2014 on DP's placement to Cambridge, criticizing the process and the county case management of his situation.

**Resident DP.** The DHS team, with DP, determined in his Person Centered Plan that DP needed a “uniquely-designed one-person site in Brainerd.”<sup>3</sup> On May 9, 2014, DHS suggested in an email to me that, rather than a permanent home, DP be moved to a “temporary residence while the permanent residence is completed.”

**DHS Actions.** In response to the May 9 request from DHS for consideration of a temporary residence, the Court Monitor responded that he has no authority to make exceptions to the EC 95 requirement; that is a matter for the Court. DHS was and is free to file an appropriate motion in that regard.

Since that time, DHS reports that it has been striving to find or develop either a permanent home or a temporary home for DP to move to, hopefully by the June 30 deadline. Not surprisingly, there are various administrative and other challenges which DHS must address (or overcome) to achieve that end.

**Current Situation.** As of today, Thursday, May 29, 2014, DHS does not know whether or how its efforts will succeed. DHS is not today proposing any particular new home, or whether a home would be permanent or temporary. I believe it is fair to say that DHS may wish additional time beyond June 30, but, at the same time, DHS very much wants to meet the deadline. The situation is fluid. DHS is convening a special meeting for this Monday, June 2, 2014 to address DP’s transition.

As the MSHS-Cambridge Director, Steve Jensen, said today, it would be unfortunate for DP, given his needs, to be the last person at Cambridge, and to “languish” there while elsewhere efforts were made to find or develop his home.

### **Court Monitor Observations**

1. A very high priority must continue to be DP’s welfare and fulfillment of his court-ordered Transition Plan; DHS remains committed to that Plan.
2. The Court Monitor is disappointed that, given the months which have elapsed since DP’s February admission to Cambridge, the implementation of the Plan is not closer to fruition. The initial Plan

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<sup>3</sup> The Person Centered Plan was developed in meetings beginning February 26, 2014, with updates March 13, March 28, and May 7, 2014.

was in place in February. See note 3. However, now is not the time to address that possible lapse, if there was a lapse.

3. It is premature for the Court to consider making an exception or extension to the June 30 deadline. An exception would be a 'shot in the dark' as DHS has no specific proposal: how long an extension? To accomplish what result? For a permanent or temporary home? What would the effect be on DP of being the sole client in an institution? And, in any event, such an exception or extension would best be made on motion.
4. There may be administrative, funding, regulatory or similar challenges which, with a judicial mandate, might be overcome and make possible meeting the June 30 deadline. Also, to the extent that DHS needs to move any county to take action, the CPA provides support which did not exist pre-CPA:

Consistent with its obligations under the Settlement Agreement, applicable law, and the federal court orders in this case, the Department of Human Services shall utilize best efforts to require counties and providers to comply with the Comprehensive Plan of Action through all necessary means within the Department of Human Services' authority, including but not limited to incentives, rule, regulation, contract, rate-setting, and withholding of funds. (CPA, "Applicability" section).

Respectfully, and with cognizance of the Court's busy calendar, the Court Monitor requests the Court's guidance and direction at the Court's earliest convenience, so that, for the benefit of DP, the above issues may be addressed.

Cc: All Counsel  
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Peg Booth, Director, Jensen Implementation Team  
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