

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

James and Lorie Jensen, as parents, guardians  
and next friends of Bradley J. Jensen; James  
Brinker and Darren Allen, as parents,  
guardians and next friends of Thomas M.  
Allbrink; Elizabeth Jacobs, as parent, guardian  
and next friend of Jason R. Jacobs; and others  
similarly situated,

Civil No. 09-1775 (DWF/FLN)

Plaintiffs,

v.

**ORDER**

Minnesota Department of Human Services,  
an agency of the State of Minnesota; Director,  
Minnesota Extended Treatment Options, a  
program of the Minnesota Department of  
Human Services, an agency of the State of  
Minnesota; Clinical Director, the Minnesota  
Extended Treatment Options, a program of  
the Minnesota Department of Human Services,  
an agency of the State of Minnesota; Douglas  
Bratvold, individually, and as Director of the  
Minnesota Extended Treatment Options, a  
program of the Minnesota Department of Human  
Services, an agency of the State of Minnesota;  
Scott TenNapel, individually and as Clinical  
Director of the Minnesota Extended Treatment  
Options, a program of the Minnesota Department  
of Human Services, an agency of the State of  
Minnesota; and State of Minnesota,

Defendants.

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Margaret Ann Santos, Esq., Mark R. Azman, Esq., and Shamus P. O'Meara, Esq.,  
O'Meara Leer Wagner & Kohl, PA, counsel for Plaintiffs.

Steven H. Alpert and Scott H. Ikeda, Assistant Attorneys General, Minnesota Attorney General's Office, counsel for State Defendants.

Samuel D. Orbovich, Esq., and Christopher A. Stafford, Esq., Fredrikson & Byron, PA, counsel for Defendant Scott TenNapel.

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Before the Court is *State Defendants' Motion to Amend the Comprehensive Plan of Action* (June 24, 2014) (Doc. No. 317). The motion seeks to amend the Comprehensive Plan of Action (CPA), Evaluation Criterion 95, "to provide for an extension of time to August 30, 2014 [from June 30, 2014] because additional time is needed to transition D.P. to a permanent home from his current placement at MSHS-Cambridge and to do so "consistent with his Person Centered Plan and Orders of this Court."<sup>1</sup>

D.P.'s situation was before the Court previously when, responding to a letter from the Court Monitor, the Court urged Defendants to seek to overcome any obstacles to compliance with the deadline and stated, "What the Court will be obligated to do if D.P. remains at Cambridge after June 30, 2014, is an issue for another day." Order of May 30, 2014 at 3 (Doc. No. 309).

The motion describes in detail the activity in the last month toward D.P.'s move from MSHS-Cambridge. Although the motion seeks an extension until August 30, 2014,

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<sup>1</sup> Defendants' Memorandum at 2.

the motion does not provide a specific date for his move, the address to which he will move, or specifically why two additional months will be needed.<sup>2</sup>

The Monitor's follow-along efforts, in cooperation with Defendants, appears to have been useful (for example, Defendants state they have accepted recommendations from the Monitor). The Court believes that the Defendants' accountability with regard to compliance with EC 95 is best addressed at this time through the Monitor's supervision and Defendants' continued progress reports to him. Simply extending the deadline would not accelerate D.P.'s move; there is a possibility that a two month extension might decelerate his move.<sup>3</sup>

### ORDER

For the above reasons, and considering the entire record of this case, **IT IS HEREBY ORDERED** that the *State Defendants' Motion to Amend the Comprehensive Plan of Action* (June 24, 2014) (Doc. No. [317]) is taken under advisement.<sup>4</sup> The Court Monitor shall continue to consult with Defendants on their efforts for D.P.'s move from

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<sup>2</sup> Defendants state that the timing for bringing staff on board "may be difficult" and potential staff "may want" to give notice elsewhere, and that D.P. may not want to work with particular staff. Memorandum at 12. Perhaps more importantly, there is no fixed move-in date or a date that, setting aside staffing, the home would be available from the property owner for any pre-move work.

<sup>3</sup> It may be a matter of concern how D.P. will fare if he is the sole MSHS-Cambridge resident after the current June 30, 2014 planned closure date. Defendants are expected to address this issue in their continuing reports to the Court Monitor.

<sup>4</sup> After D.P. moves to his permanent home, the Court Monitor shall issue recommendations to the Court regarding disposition of this motion and, if appropriate, any action the Court might take with regard to the missed deadline.

MSHS-Cambridge. Defendants will continue to report to the Monitor at least weekly or, if he so requests, more often.

Dated: June 27, 2014

s/Donovan W. Frank  
DONOVAN W. FRANK  
United States District Judge