

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

James and Lorie Jensen, as parents,
guardians and next friends of Bradley J.
Jensen, *et al.*,

Plaintiffs,

v.

Civil Action No. 09-1775

Minnesota Department of Human Services,
an agency of the State of Minnesota, *et al.*,

Defendants.

**Comments and Expectations:
DHS Diversion from Institutionalization**

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I. Introduction

From the beginning, the Settlement Agreement anticipated “successors” to the MSHS-Cambridge institution, including “transitional” homes for those whom the foundational statute intended to be served, namely, individuals “with developmental disabilities and exhibit serious behaviors which present a risk to public safety.”¹ The Department of Human Services’ decision in June, 2013 to close Cambridge was founded in part on a decision to serve such individuals in small community homes.²

At the time of the *Comprehensive Plan of Action*, ordered by the Court on March 12, 2014,³ the extent of need for such homes “established (or to be established)”⁴ was not known. Therefore, the need for additional community homes beyond four would be determined by a “specific assessment” on stated criteria:

There will be community treatment homes dispersed geographically. Any need for additional community treatment homes beyond four will be determined based on a *specific assessment of need based on client needs with* regard to such criteria as those at risk for institutionalization or re-institutionalization behavioral or other challenges multiple hospitalizations or other transfers within the system serious reported injuries repeated failed placements or other challenges identified in previous monitoring or interventions.

CPA EC 88 at 29 (emphasis added).

Given the State’s commitment to individualized person-centered planning and provision of adequate supports and services, it followed that it would be necessary sometimes to “create” what a person needed, if it was not already available. The CPA provided for that:

If an existing setting or service is not identified or available best efforts will be utilized to *create* the appropriate setting or service using an individualized service design process.

¹ Settlement Agreement, ¶IV (“risk to public safety”).

² Court Monitor, *Status Report on Compliance* (June 11, 2013) (Dkt. 217).

³ Dkt. 284.

⁴ Comprehensive Plan of Action at 2 (using terminology “treatment homes”).

CPA EC 52 (emphasis added).

Counties and provider agencies play a dominant role in directly serving clients in the community (although DHS itself operates a substantial community component). The Court's orders direct how DHS brings compliance to individuals directly served by the counties and provider agencies. DHS is obligated under the Court's orders to "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."⁵ Under state law, the Commissioner has authority to require county agency participation in training programs, to monitor the performance of county agencies in the operation of human services, and to administer and supervise all non-institutional services to individuals with disabilities. Minn. Stat. 256.01.

II. MN LifeBridge and Unmet Needs

DHS has replaced Cambridge with an entity, called MN LifeBridge. LifeBridge is a Cambridge successor and provides both "mobile support services" and "community-based residential treatment services" under the Court's orders.⁶ Placement in its treatment homes is sought only "when other community options and mobile support services cannot effectively or safely support the individual and crisis stabilization services are necessary."⁷

LifeBridge currently operates two community residences (Stratton Lake and Broberg Lake) and plans to open two more.

⁵ *Comprehensive Plan of Action* (adopted by Order of March 12, 2014) at 2 (Dkt. 284). See CPA EC 72.2: "Each county and tribe as relevant, will have a system of locally available and affordable services to serve persons with developmental disabilities."

⁶ DHS Bulletin #14-76-01, *Transition of Minnesota Specialty Health System (MSHS) – Cambridge to Minnesota Life Bridge: Admission and Discharge Processes, Transition Planning and Community Mobile Support Services* (April 29, 2014) at 1.

⁷ *Id.* at 2. This is not intended to be a long-term residential placement. Individuals need not be civilly committed to have access to the LifeBridge program. *Id.*

DHS has not begun any specific needs assessment under CPA EC 88, according to its compliance updates to the Court.⁸ However, there undoubtedly are unmet needs for individuals who otherwise might be admitted to LifeBridge homes or receive LifeBridge's mobile services in their own homes or current residences. Deputy Commissioner Anne Barry has discussed a possible need for additional community residential services informally with the Court Monitor. Ombudsman Roberta Opheim has referred to DHS individuals languishing in inappropriate situations awaiting services and homes, including *Jensen* class members.

Perhaps the most detailed account of the unmet need is found in the reports of DHS' *Minnesota Life Bridge – Weekly Diversion Meetings*, which consider situations in which referral is made or considered to LifeBridge's residential components of individuals who meet the Settlement Agreement's criterion. The meeting participants seek to ensure compliant services for persons "without an identified and appropriate targeted home in the community" and to avoid admission of such persons to more restrictive settings. One principle is not to consider "only existing vacancies and challenges." As each weekly report directs at the top of page one:

Weekly diversion meetings will include person-centered development strategies rather than considering only existing vacancies and challenges. From this perspective: 1) Review any proposed admissions to more restrictive settings and consider all possible diversion strategies; 2) Review status of transition planning for all living at the Facility, 3) Add active, individualized planning / development focus to these transition discussions which is consistent with the *Olmstead* Plan and includes such activities as developing a person-centered request for proposals for any person or persons at the Facility without an identified and appropriate targeted home in the community.⁹

Each Diversion Report comprises a discussion of each client currently on the diversion list, and reports on the status of DHS activity, including contacts (or lack of contact) with county case managers, and others. Brief client-specific discussion of possible options and next steps is presented. The client situation is presented in a single paragraph or a page or so of the multi-page report.

⁸ The docketed compliance updates, as to CPA EC 88, reference only issues relating to development of the existing treatment homes.

⁹ This is the "header" introducing and describing the mission of the diversion meetings.

III. Toward the CPA EC 88 Specific Needs Assessment.

The Diversion Reports are client-by-client and week-by-week. They do not constitute a Jensen-based analysis or “specific needs assessment” under CPA EC 88. It may be that there is no need for more than the currently contemplated four treatment homes; perhaps the LifeBridge mobile support and other non-residential targeted consultation and resources will be sufficient. On the other hand, it may be that additional community treatment homes are needed for those served by LifeBridge. The Court Monitor stresses that it is DHS’ responsibility to perform a comprehensive data analysis to create stronger diversion supports. CPA EC 93 (“DHS will create stronger diversion supports through appropriate staffing and comprehensive data analysis.”).¹⁰

With the goal of sparking action on the CPA requirements identified above, the Court Monitor reviewed all the Diversion Meeting reports to consider what variables affect delays in provision of community homes for individuals who would be considered for services under the *Jensen* orders’ mandate. This analysis, it is expected, might be expanded to any “specific assessment” of need, along with very prompt action in compliance with the Court’s orders.

IV. Analysis.

Diversion Reports from August 5, 2013 to October 20, 2014 were analysed. Seventy-eight individuals were discussed at weekly Diversion meetings during this time period. Individuals at risk of losing their current placement or who are referred to LifeBridge are added to the list. When the person’s issues were resolved (for example, by placement or provision of services or an end to the basis for referral, the person was removed from the list.

¹⁰ It is recognized by the Court Monitor that the LifeBridge-focused compliance reflected in the Diversion Reports takes place in the context of DHS’ efforts regarding unmet needs for other people with developmental disabilities. These are addressed in part through the *Olmstead* Plan’s provisions for moving individuals ready for discharge from the Anoka Metro Regional Treatment Center and Minnesota State Hospital, and for reductions in the waiting lists for community services. Also, in operating the Medicaid Home and Community Based Waiver program, DHS recognizes that “real and perceived financial risk inhibits counties from spending more of their waiver budgets serving clients” and that “addressing risk disincentives is vital to improving and expanding necessary services for more HCBS clients.” DHS Commissioner Lucinda Jesson to Steve Larson, The Arc Minnesota (November 3, 2014).

The chart on the next page shows the time in weeks each person is on the Diversion Report.

The minimum number of weeks a person is in diversion is 2. The maximum number of weeks is, so far, 56 (approximately 14 months). The average number of weeks an individual remains in diversion is 9.4. Most people (68%) are in diversion for 10 weeks or less.

This report looks at the major determinants of staying on this list, that is, not moving to an appropriate community residence. Diversion meeting notes from 11 clients mentioned in meeting notes for “long stayers” (over 18 weeks) were analyzed for issues that may be contributing to delays in moving to a community residence or otherwise receiving appropriate services.

To differentiate the “long stayer” individuals from those who are on under diversion scrutiny for shorter periods (that is, they are placed or their need for services is resolved), we reviewed those on the diversion list for 6 to 8 weeks.¹¹

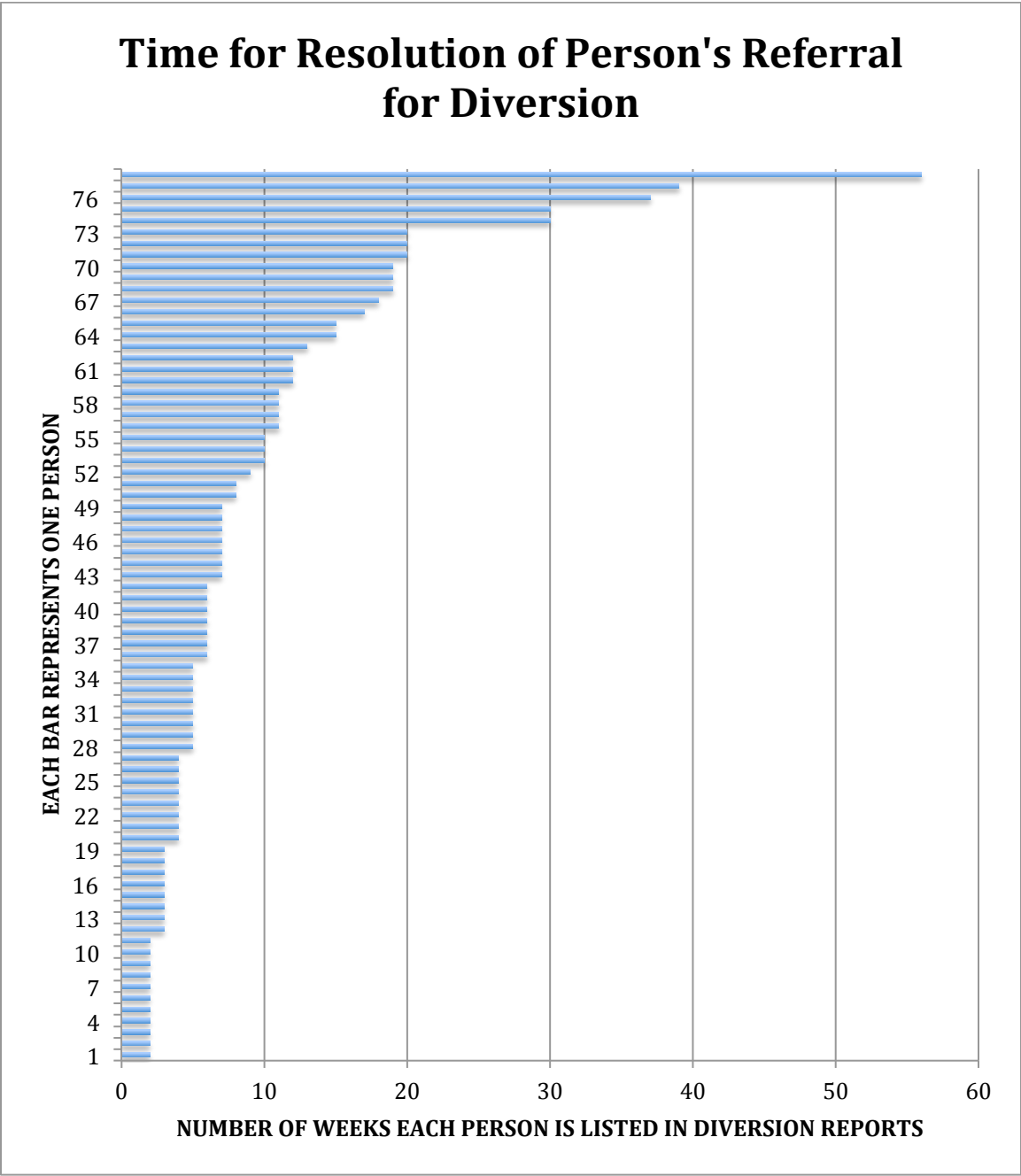
For the *long stayers*, the following issues are often encountered in these diversion meeting update notes.¹² It is, of course, difficult to obtain full picture from meeting notes alone so this list is presented for discussion purposes.

- Court involvement (pending charges, MI/DD commitment, Rule 20)
- Medical (county medical center, emergency room, behavioral health unit)
- Home identification processes (real estate competitiveness, lack of options, provider availability, renovation of new staff offices)
- Home approval and finalization processes (leasing, modifications, code, hiring and training of staff, licensing, fire marshal, Medicaid certification, Waiver qualification)

The last two issues above involve activities and processes, which can be – at least currently – lengthy to complete. Unless the home is an apartment or other non-complex option, these processes are common. However, compressing the time frames would significantly reduce individuals’ waiting time in inappropriate circumstances.

¹¹ 3 of the 4 shortest stayers (3 or fewer weeks from add-on to remove week) went to Anoka Metro Regional Treatment Center. Therefore, the mid-range stayers’ data was considered.

¹² All clients involved, by definition, have behavioral challenges; therefore, these are not listed here.



Another issue present for some of the “longer stayers” in the Diversion Reports involves County Case Management.

- Disagreement with DHS workers
- Prefers an MSOCS residence
- Unresponsiveness (*e.g.*, not returning calls, not updating DHS)
- Revocation of Provisional Discharge status
- Need for a rate exception to serve client
- County of Financial Responsibility not determined
- Referral to Minnesota Life Bridge not received

Finally, the discussion in the Reports indicates that the role of Minnesota LifeBridge is to some extent unresolved.

The “medium stayers” on the list have few entries and stay on the list for a shorter time because the individual was

- Returned to previous residence.
- Moved to an existing community placement identified by the County Case Manager
- Remained in his community home with additional services
- Placed in a crisis home by County County Manager
- Admitted to an institution

V. Concluding Comments and Expectation.

As the Department of Human Services considers the need, if any, for additional *Jensen*-related residential components, and therefore must conduct a *specific assessment of need based on client needs* under CPA CR 88, the Court Monitor, exercising his supervisory and other authority under Paragraphs 4.a. through 4.f of the Court’s Order of September 3, 2014 (Dkt. 340), incorporated here by reference, expects the Department of Human Services to address and act upon the following comments:

1. The Diversion Reports do not include any trigger for special attention to situations which are taking “too long,” do not include target dates, and do not document attention to the requirements for creation of what is needed (where no option presently exists) or for referring problematic situations to upper levels of DHS management to resolve.
2. There is a need to increase the speed involved in finding permanent homes for people. One does not appear on the Diversion Report unless

there is some crisis in a community home or elsewhere, and no resolution is quickly apparent.

3. Improvement in working relationships with all County Case Management is crucial. Where necessary, DHS can and should fulfill its obligations under the Court's orders and authority under state law to secure whatever action by the County and providers is necessary.
4. Expansion of LifeBridge and other mobile resources, and other non-residential options, would possibly resolve many situations presented in the Diversion Reports and obviate the need for new residences.
5. Where DHS determines that a new residential setting is needed, all housing stock options should be considered. There is a notable absence of discussion of options other than homes, which involve the time-consuming processes. Also, finding ways to streamline home modifications, licensing and leasing issues for example would also make a big improvement to timelines.

DHS shall respond to this report within twenty (20) days. Plaintiffs and Roberta Opheim, Ombudsman for Mental Health and Developmental Disabilities, and Colleen Wieck, Ph.D., Executive Director of the Governor's Council on Developmental Disabilities, may respond by that time.

Respectfully submitted,



David Ferleger
Court Monitor

November 6, 2014