



Minnesota Department of **Human Services**

November 13, 2014

The Honorable Donovan W. Frank
United States District Court
District of Minnesota
724 Federal Building
316 North Robert Street
St. Paul, Minnesota 55101

By Hand Delivery & ECF

Dear Judge Frank:

Re: Response to Court Monitor's November 4, 2014 letter regarding DHS "Statistics" [Doc. No.355] Civil No.: 09-1775 (DWF/FLN)

On November 4, 2014, a letter from the *Jensen* Settlement Agreement Court Monitor, David Ferleger, concerning DHS' "Statistics" was e-filed with the Court (Doc. 355). The Minnesota Department of Human Services (Department) respectfully wishes to clarify some of the statements made in that letter.

Behavior Incident Reporting Form (BIRF) Data

To understand more fully the BIRF data mentioned in the letter, it is important to recognize that BIRF data submitted to the Department prior to January 1, 2014, was only from providers licensed by Minnesota Statute §245B. This group is a subset of the overall pool of providers licensed by Minnesota Statute §245D. All providers licensed by Minnesota Statute §245D were required to report behavior interventions as of January 1, 2014. You would expect BIRF numbers would jump after January 1, 2014, and they did, because more providers had to submit BIRFs. It is not apparent from looking at the raw data, that using data received prior to January 1, 2014 for trending or comparison purposes with data received after January 1, 2014 is like comparing apples to oranges. Since January 1, 2014, the trend line of the number of BIRF reports per month is down.

Unfortunately, without undertaking an extraordinary manual matching process between the providers who were licensed by Minnesota Statute §245B and their provider NPI (National Provider Index) numbers, the Department is not able to extract the data for just the providers who were licensed by Minnesota Statute §245B, to show the trend line for that specific group of providers.

In addition, the Department's guidance to 245B providers in mid-2013 was that DHS would not enforce the BIRF reporting requirement until January 1, 2014. Providers submitted the BIRF reports prior to January 1, 2014 as a trial period in order to facilitate providers to start working

the BIRF reporting process into their policies and procedures, and to become familiar with the online reporting system and for the Department to fine-tune the process and the electronic reporting system. This is one likely reason for the overall upward trend in BIRF reports between July and December 2013.

Even if the Department could identify BIRF reports submitted after January 1, 2014 from providers who were licensed by Minnesota Statute §245B, the Department would still be left with an inaccurate comparison because the Department did not have full participation from Providers with the BIRF submission before January 1, 2014.

Additional Points of Clarification

The third paragraph in parenthesis in the Court Monitor's November 4, 2014 letter does not provide a basis to substantiate the statement.

In response, MSHS-Cambridge made very few 911 calls and most calls pertained to one person, who was placed improperly at Cambridge for a few days and kept running away. There were no chemical restraints used; there was one report of a chemical restraint but it upon further review it was discovered to be an errant report.

AL

The Department has received and would like to submit for the Court's review the attached letter from Brown County.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anne M. Barry', with a large, stylized flourish at the end.

Anne M. Barry,
Deputy Commissioner

Cc by E-mail: David Ferleger Esq., Court Monitor, Jensen Settlement Agreement
Shamus O'Meara, Attorney for Plaintiffs
Colleen Wieck, Executive Director for the Governor's Council on Developmental Disabilities
Roberta Opheim, Ombudsman for Mental Health and Developmental Disabilities
Scott Ikeda, Assistant Attorney General
Gregory Gray, Chief Compliance Officer
Amy Akbay, DHS Chief General Counsel
Rick Figueroa, DHS Senior Counsel



Brown County Family Services

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November 7, 2014

Peg Booth
Director, Jensen Implementation Office
Minnesota Department of Human Services
PO Box 64998
St. Paul, MN 55164-0998

RE: [REDACTED] and the Jensen Settlement

In your email dated October 14th, 2014, you mentioned that CSS has been asked to facilitate a person-centered planning meeting that would include [REDACTED] his family and others that know [REDACTED] including his case manager. I know that [REDACTED] have written the Court Monitor related to some concerns they had in the report and have spoken to him directly. I also understand Ann Barry responded to their letter. Mike Scharr from CSS is now offering a conference call so we can "map out what has been learned, process and add to the plan of action." We are most interested in this as we have not had the opportunity to have an ear or voice in these discussions and/or decisions related to [REDACTED] and were unaware the Court Monitor expressed concern over his placement back in [REDACTED]. Likewise his parents/guardians were unaware of this action and we have not been given a reason as to the basis of the Court Monitor's concerns. Even when the parents and the case manager were contacted by DHS in the Spring of this year to participate in the review with the U of M, they were not informed it was due to concerns noted by the Court Monitor regarding [REDACTED] placement.

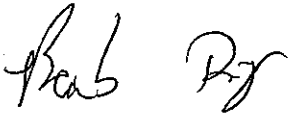
Brown County has several questions and concerns related to the report from the Court Monitor and what the next steps are. I feel compelled to share this with the Jensen Implementation Team since we have been kept out of the loop.

- Back in 2011, Brown County was informed that [REDACTED] could no longer stay at the [REDACTED] program at [REDACTED] due to the Jensen Settlement. It was indicated to us that he had to be placed in the community. This was not a choice made by his guardian or the county but the details were developed and shared with us by CSS and MSOCS. Although [REDACTED] was placed at [REDACTED] the [REDACTED] was not staffed nor equipped to meet his needs. Since there was no existing program that would meet his needs, his current placement was developed specifically for [REDACTED] at a very high cost. As a county we struggled with the notion of this placement costing 4x that of his placement at [REDACTED] as our previous training was that waiver funds were to be used to provide community placement for an individual in a cost-effective manner over institutionalization. But, again, we were told, this had to happen.

- It is not clear to the county why his current site does not meet the stipulations of the settlement agreement since DHS, CSS, the Ombudsman's office, the county and the parents were involved in many meetings to ensure this site met his specific needs. Was the state ill-informed of the requirements while this was being set up or were the wrong people at the table? If the setting has been licensed as an adult foster home, why does it not meet criteria? Is it because it is deemed the home is too isolated? Attached to a day program? Is there anything that can be done with the current facility so it would meet criteria or after a year of planning and almost two years of [REDACTED] living there, do we have to start from scratch? If so, is it realistic to expect this will happen in four short months when it took over a year for the first site to be developed?
- The reference was made to "there is nobody and no agency or office which has acted with accountability for the continued restraint of [REDACTED]" When this site was developed [REDACTED] was involved in making decisions about what he wanted his new home to look like. His responses are not typical of what you might expect someone to say. For instance he asked for bars in his residence (similar to what was in place at [REDACTED] as he did not trust himself to not aggress and was more comfortable with having a barrier to prevent him from responding this way. He was informed we could not put up bars but the plexiglass dividers were set up as a compromise to help him feel like he had a barrier and yet he was not "restrained" and could move around his home setting. Is it more "person-centered" planning to discard his request/wishes just so the home can "look" and "function" like everyone else's?
- There is a negative connotation in the report to the fact that [REDACTED] does not get out in his community, is not working and is "isolated and lonely". Now if he was not allowed this, I would definitely have a problem with this plan. However, the fact is [REDACTED] is, and has been, offered opportunities to go out into the community and to work on a regular basis. In fact, a work site was placed in his building thinking he would be more apt to participate if it was right there and he could be gradually integrated into it. However, he is the one stating he is not ready yet. If you know [REDACTED] you would know it is very important for him to determine his timelines. This has been honored instead of "forcing" him to attend work or go into the community. Is it "person centered" to make someone do something they don't want to because others think he needs to be integrated into the community rather than being able to make the choice himself?
- It is mentioned in the report that [REDACTED] outbursts are rare, but serious. I would contend his outbursts are rare due to the planning that went into developing a site that works for him, yet affords him the opportunity to have his own bedroom, bathroom and living space. The work site next door and the park across the street were all deemed positive factors to help him integrate into the community. However, he has not wanted to partake in these opportunities yet. This home is much improved over the secluded area he was in at [REDACTED]

- [REDACTED] is a unique individual and much has been attempted to help him live as independent and integrated a life as possible while also keeping him and others safe. By trial and error, doing research and consulting with other professionals, many people have worked hard to find this balance for [REDACTED]. In the process, some people have been injured but others have surely been spared due to protective measures that have been put in place.
- Many people have been trying over the years to find the right "mix" to make [REDACTED] life better. In the process he has been moved from place to place when we all know security and stability are important to him. This mandate to move him will continue that instability and likely move him backwards in any steps he has taken thus far.
- I understand that people should have a choice about where they live, who they live with and how they live. But there are also others factors that need to be considered such as what provider(s) are able and willing to meet his needs, are there enough staff available in any location he chooses and can his environment keep him and others safe?

Sincerely,



Barb Dietz
Adult Social Service Supervisor
Brown County Family Services

Cc:

[REDACTED]
Mike Scharr
Deb Dimler
Kim Hemphill-Schmitz
Tom Henderson

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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

Plaintiffs,

vs.

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

Defendants.

File No. 09-CV-01775-DWF-FLN

**PLACEHOLDER FOR
ATTACHMENT A TO
DEPARTMENT OF HUMAN
SERVICES' RESPONSE TO COURT
MONITOR'S NOVEMBER 4, 2014
LETTER REGARDING DHS
"STATISTICS"**

This document is a placeholder for the following item which is filed in conventional or physical form with the Clerk's Office:

Attachment A to Department Of Human Services' Response to Court Monitor's November 4, 2014 Letter Regarding DHS "Statistics" (*filed under seal*)

If you are a participant in this case, this filing will be served upon you in conventional format.

This filing was not e-filed for the following reason:

- ☐ Voluminous Document* (Document number of order granting leave to file conventionally: ____)
- ☐ Unable to Scan Documents (e.g., PDF file size of one page larger than 2MB, illegible when scanned)
- ☐ Physical Object (description):
- ☐ Non Graphical/Textual Computer File (audio, video, etc.) on CD or other media
- ☒ Item Under Seal pursuant to court orders* (Pursuant to Protective Orders Doc. Nos. 57, 114, 190, 239)
- ☐ Item Under Seal pursuant to the Fed. R. Civ. P. 52 and Fed. R. Crim. P. 49.1 (Document number of redacted version: ____)
- ☐ Other (description):

*Requires Judicial Approval