



Minnesota Department of **Human Services**

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September 16, 2015

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

Re: *Jensen, et al. v. Minnesota Department of Human Services, et al.*  
Court File No.: 09-CV-01775 DWF/BRT

Dear Judge Frank:

On September 14, 2015, the Court received a Brief of Amicus Curiae by Ivan M. Levy ("Brief") regarding the revised Olmstead Plan ("Plan"). Please accept this letter as the Department of Human Services' ("DHS") response to the Brief.

Part of the vision statement in the Plan is to "ensure that Minnesotans with disabilities will have the opportunity, both now and in the future, to live close to their families and friends, to live more independently, to engage in productive employment and to participate in community life. This includes: the opportunity and freedom for meaningful choice, self-determination and increased quality of life, through: opportunities for economic self-sufficiency and employment options; choices of living location and situation; and having supports needed to allow for these choices." Olmstead Plan, August 10, 2015, page 12.

Fundamental to the aim of improving quality of life, and woven throughout each area of the Plan, is the opportunity and freedom for individuals to make meaningful choices and to exercise self-determination. At its core, the Plan is based on increasing the use of person-centered planning for individuals with disabilities, which is based on the fundamental principle that "...government and service providers begin by listening to individuals about what is important to them in creating or maintaining a personally-valued, community life. Planning of supports and services is not driven or limited by professional opinion or available service options but focused on the person's preferences and whole life context." *Id.* at 32. In the area of employment, this requires increases in both the array of settings and supports available, and in access to information and experiences that will enable the individual to evaluate their options. Improvements in these two

aspects are at the heart of the goals in the employment section of the Plan.

The Brief raises an understandable concern that as opportunities for individuals to work in more integrated settings increase, focus and resources may shift away from the segregated settings which are, in fact, preferred by some individuals. The Plan anticipates this concern and includes a stakeholder comment that expresses this concern at the top of the employment section of the Plan. *Id.* at 48.

Increasing available choices and information with which to evaluate those choices will have an impact on the choices that individuals make about integrated or segregated employment settings, but the nature of that impact will not be known for some time. As noted in the Plan, it will be necessary to establish a baseline with the information gathered in coming years, and it may be necessary to revise the stated goals given that new information. *Id.* at 52. Accordingly, it cannot yet be known what the future demand will be for various types of settings and supports.

However, as stated in the Plan, “Employment is not about eliminating certain service options or closing specific facilities.” *Id.* at 48. The Plan contains many references to the individual’s choice and acknowledgements of the basic tenet of the Supreme Court’s holding in *Olmstead v. L.C.* that persons with disabilities should receive community-based services when the affected individual does not oppose it. 527 U.S. 581, 607. The Plan anticipates that fulfilling that principle will mean that services that are not community-based will remain alongside more integrated options. While integrated, competitive employment is encouraged, the Plan recognizes that segregated settings will be the preferred choice of some. For the choice of the individual to be meaningful, the array of available options should be broad. The goals and strategies detailed in the Plan take nothing away from existing segregated employment options, and instead focus on expanding options and access to information.

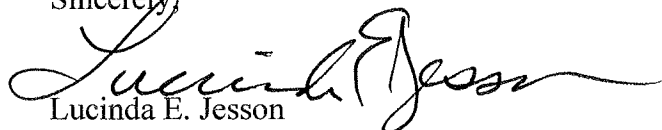
The Brief proposes a number of modifications to the Plan aimed at preserving segregated employment opportunities for persons with disabilities. DHS believes that the Plan adequately addresses these concerns and offers significant protection for the choice of the individual.

The Brief also proposes a modification to the Plan to require the State to give notice that individuals may enforce the *Olmstead* Plan and other ADA rights in this Court. This proposed modification would go beyond what is allowed or required by law. The plan contains a plan management and oversight section which includes a dispute resolution process. *Id.* at 97. DHS believes that these provisions of the Plan, along with the protections already existing in law, provide adequate process to address any concerns.

As the strategies in the Plan are implemented, the changes may prompt a shift in society at large, such that persons with disabilities will not have to choose between competitive employment and the rich quality of life that Mr. Levy’s son discovered when he chose to work in a segregated setting. As more individuals with disabilities choose integrated employment settings and such opportunities become more commonplace, hopefully the individuals who choose those settings will find more positive and enriching experiences than may have been available in the past.

Thank you for the opportunity to respond to the Brief of Amicus Curiae. Please contact me if you have questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Lucinda E. Jesson", with a long, sweeping horizontal line extending to the right.

Lucinda E. Jesson  
Commissioner

cc: Shamus O'Meara, Attorney for Plaintiffs  
Roberta Opheim, Ombudsman for Mental Health and Developmental Disabilities  
Colleen Wieck, Executive Director for the Governor's Council on Developmental Disabilities  
Mary Tingerthal, Chair, Olmstead Subcabinet