

**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/BRT)

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 the State of Minnesota,

Defendants.

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

Scott H. Ikeda, Aaron Winter, and Anthony R. Noss, Assistant Attorneys General, Minnesota Attorney General's Office, counsel for State Defendants.

On December 5, 2011, the Court approved the parties' Stipulated Class Action Settlement Agreement ("*Jensen* Settlement Agreement") and reserved jurisdiction over this matter "to enforce compliance with the provisions of the Agreement." (Doc. No. 136 at 2.) The *Jensen* Settlement Agreement provided that the Court would retain jurisdiction for two years "or as the Court deems just and equitable." (Doc. No. 136-1 at 39.) The Court has since extended its jurisdiction on three occasions, most recently extending its jurisdiction to December 4, 2019. (See Doc. Nos. 223, 340, 544, 545.)

In 2015, the parties participated in multiple mediation meetings with Magistrate Judge Becky R. Thorson on issues identified by the parties that related to the *Jensen* Settlement Agreement. On June 18, 2015, the Court stayed the parties' and the Court Monitor's reporting obligations to the Court to allow the parties to focus on the mediation proceedings. (Doc. No. 462 at 2.) On July 9, 2015, the Court extended the stay of the reporting requirements to August 10, 2015 due to continued mediation. (Doc. No. 472 at 2.) On February 22, 2016, the Court issued Orders addressing the schedule for the Defendants' ongoing compliance reporting requirements with respect to the *Jensen* Settlement Agreement and the Comprehensive Plan of Action ("CPA") and the schedule

for the Defendants to submit periodic reports on the *Olmstead* Plan's implementation.¹
(See Doc. Nos. 544, 545.)

On August 25, 2016, the Court held an informal meeting with Plaintiffs' and Defendants' counsel to discuss the possibility of transitioning to a local Court Monitor, and in particular, the possibility of appointing Anne Barry, a former Deputy Commissioner of the Minnesota Department of Human Services ("DHS"), as Court Monitor in this case. The Court invited the parties to submit letters addressing their positions on the possible appointment. The Court received a letter from DHS on September 7, 2016 (Doc. No. 590), and a letter from Plaintiffs' counsel on September 12, 2016 (Doc. No. 591). In the interim, the Court received the *Jensen Settlement Agreement Comprehensive Plan of Action (CPA) – August 2016 Semi-Annual Compliance Report, Reporting Period: October 1, 2015 – June 30, 2016* (Doc. No. 589) from the Department of Human Services on August 31, 2016.²

Based on the current status of this case, the continued need for ongoing monitoring of Defendants' compliance with the *Jensen* Settlement Agreement and CPA, and the disagreement among the parties as to the appointment of Anne Barry to the Court Monitor position, **IT IS HEREBY ORDERED** as follows:

¹ As directed by the Court, Defendants' filed their Gap Report covering compliance with the *Jensen* Settlement Agreement on February 2, 2016, for the period between May and September 2015.

² The Court also received on that same day the third Quarterly Report on Olmstead Plan Measurable Goals (Doc. No. 588).

1. David Ferleger remains appointed as the Court Monitor and External Reviewer in this case. Pursuant to the Court's March 18, 2016 Order, the Court Monitor's duties directed under prior Orders, including periodic reporting requirements, were stayed. (Doc. No. 551 at 24.) The Court, however, stated that it "reserve[d] the right to direct the Court Monitor to investigate and verify other issues that may arise in the future," and that it "may issue subsequent orders on the scope of the Court Monitor's role." (*Id.*)

2. A separate Order will follow indicating the next steps the Court Monitor will take regarding the investigation and monitoring of Defendants' compliance with the *Jensen* Settlement Agreement and the CPA.

Dated: September 21, 2016

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