

**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, Anthony R. Noss, and Michael N. Leonard, Assistant Attorneys General, Minnesota Attorney General's Office, counsel for State Defendants.

In previous orders, the Court established a plan to convene biannual status conferences with Defendants' Counsel, Plaintiffs' Class Counsel, and the Consultants to facilitate the Court's continued oversight in this matter. (*See* Doc. Nos. 544, 545.) The Court will hold a Biannual Status Conference in this matter on Friday, December 8, 2017, at 1:00 p.m., in Courtroom 7C, Warren E. Burger Federal Building and United States Courthouse, 316 North Robert Street, St. Paul, Minnesota, before Judge Donovan W. Frank and Magistrate Judge Becky R. Thorson. (Doc. No. 654.) The Status Conference will address the *Jensen* Settlement Agreement ("JSA"), the Comprehensive Plan of Action ("CPA"), and the *Olmstead* Plan.

The last Biannual Status Conference covering the JSA and CPA was held on January 5, 2017. (Doc. Nos. 608, 611.) The last Biannual Status Conference addressing the *Olmstead* Plan was held on March 24, 2017.¹ (Doc. Nos. 619, 620.) Since these Status Conferences, multiple relevant items have been submitted to the Court. With respect to the JSA and CPA, Defendants have filed two Semi-Annual Compliance Reports and an Annual Compliance Report. (*See* Doc. Nos. 614, 621, 643.) With respect

¹ At the March 24, 2017 Status Conference, Defendants raised an objection to the Court's jurisdiction over this matter. The parties thereafter submitted briefing on this issue, and on June 28, 2017, the Court issued an order determining that it presently retains jurisdiction. (*See* Doc. Nos. 631, 634, 637, 638.) Defendants appealed the Court's June 28, 2017 Order to the Eighth Circuit Court of Appeals and subsequently moved to stay this matter pending appeal. (*See* Doc. Nos. 639, 655.) Defendants' Motion to Stay Pending Appeal has been briefed by the parties and is currently under advisement. (*See* Doc. Nos. 658, 667, 669.)

to the *Olmstead* Plan, Defendants have filed two Quarterly Reports, and the Court anticipates receiving an additional Quarterly Report by the November 30, 2017 due date. (See Doc. Nos. 544, 636, 649.)

Based upon the entire record before the Court, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

The Court's agenda for the December 8, 2017 Status Conference is outlined below. No later than Wednesday, December 6, 2017, the parties or the Consultants may submit additional proposed agenda items for the Court's consideration.

- 1. Call to Order**
- 2. Introductions**
- 3. Overview by the Court**
- 4. *Jensen* Settlement Agreement & Comprehensive Plan of Action**
 - a. Defendants shall report on the current status of compliance with the *Jensen* Settlement Agreement ("JSA") and Comprehensive Plan of Action ("CPA") in light of the following reports which have been submitted to the Court since the most recent Biannual Status Conference addressing the JSA and CPA:
 - i. *Jensen* Settlement Agreement Comprehensive Plan of Action (CPA) February 2017 Semi-Annual Compliance Report, Reporting Period July 1, 2016 – December 31, 2016 (filed on February 24, 2017). (Doc. No. 614.)

- ii. *Jensen* Settlement Agreement Comprehensive Plan of Action (CPA) March 2017 Annual Compliance Report, Reporting Period: January 1, 2016 – December 31, 2016 (filed on March 31, 2017). (Doc. No. 621.)
- iii. *Jensen* Settlement Agreement Comprehensive Plan of Action (CPA) August 2017 Semi-Annual Compliance Report, Reporting Period: January 1, 2017 – June 30, 2017 (filed on August 30, 2017). (Doc. No. 643.)
- b. To accomplish item 4.a., Defendants shall identify individuals with knowledge to report on actions they have completed or efforts they have made, along with presentations by Defendants’ counsel, if any.
- c. In reporting to the Court on item 4.a., Defendants shall identify notable areas of success and areas in need of improvement. In addition, the Court seeks an update on the current status and circumstances of the *Jensen* Class Members, including what efforts Defendants have made to support these individuals through the Successful Life Project and other measures pursuant to Evaluation Criteria 98.²

² Evaluation Criteria 98, contained in the Comprehensive Plan of Action established by agreement of the parties, provides: “DHS will maintain therapeutic follow-up of Class Members, and clients discharged from METO/MSHS-Cambridge since May 1, 2011, by professional staff to provide a safety network, as needed, to help prevent re-institutionalization and other transfers to more restrictive settings, and to maintain the most integrated setting for those individuals.” (See Doc. No. 283 at 1, 30.)

- d. Following Defendants' presentation on the JSA and CPA, Plaintiffs' Class Counsel and the Consultants may provide comments or observations on these topics.

5. *Olmstead Plan*

- a. Defendants shall report on the current status of the *Olmstead Plan*'s implementation in light of the following reports which have been submitted to the Court since the most recent Biannual Status Conference addressing the *Olmstead Plan*:
 - i. *Olmstead* Subcabinet Quarterly Report on *Olmstead Plan* Measurable Goals, Reporting Period: Data Acquired Through April 30, 2017 (filed on May 30, 2017). (Doc. No. 636.)
 - ii. *Olmstead* Subcabinet Quarterly Report on *Olmstead Plan* Measurable Goals, Reporting Period: Data Acquired Through July 31, 2017 (filed on August 31, 2017). (Doc. No. 649.)
 - iii. *Olmstead* Subcabinet Quarterly Report on *Olmstead Plan* Measurable Goals, Reporting Period: Data Acquired Through October 31, 2017 (forthcoming due November 30, 2017).

- b. To accomplish item 5.a., Defendants shall identify individuals with knowledge to report on actions they have completed or efforts they have made, along with presentations by Defendants' counsel, if any.
- c. In reporting to the Court on item 5.a., Defendants shall identify notable areas of success and areas in need of improvement. In addition, the Court seeks an update on the current status of the Quality of Life Survey process and any preliminary results that may be available.
- d. Following Defendants' presentation on the *Olmstead* Plan, Plaintiffs' Class Counsel and the Consultants may provide comments or observations on these topics.

6. Next Steps

Date: November 29, 2017

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