



Minnesota Department of **Human Services**

June 16, 2016

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

Re: *Jensen, et al. v. Minnesota Department of Human Services, et al.*
Court File No.: 09-CV-01775 DWF/FLN
Letter Regarding Olmstead Issues Discussed at June 6, 2016 Status Conference

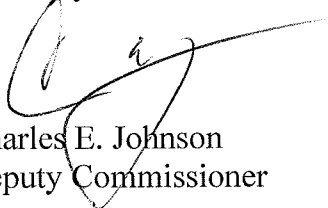
Dear Judge Frank:

At the conclusion of this Court's June 6, 2016 Status Conference in the above-referenced matter, you invited parties or interested persons to submit requests to the Court regarding issues discussed in the proceeding.

Enclosed please find a letter from the Chair of the Olmstead Subcabinet, Commissioner Mary Tingerthal. The letter covers two administrative Olmstead issues regarding reporting and the adoption of future goals that were discussed at the Status Conference. (Doc. No. 568, at 4).

Thank you for the opportunity to submit this letter to the Court.

Sincerely,



Charles E. Johnson
Deputy Commissioner

cc: Magistrate Judge Becky R. Thorson
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



Minnesota Olmstead Subcabinet

June 16, 2016

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

Re: Administrative Issues Regarding Olmstead Reporting and Adoption of Future Goals Discussed at
June 6, 2016 Status Conference

Dear Judge Frank:

Thank you for convening the June 6, 2016 Status Conference and for providing an opportunity to discuss outstanding issues regarding the Olmstead Plan. At the conclusion of the Status Conference, you indicated parties or interested persons could submit requests to the Court regarding issues discussed in the proceeding. We therefore ask the Court to memorialize its approval of the Olmstead Subcabinet's proposals, which I presented regarding an Olmstead administrative reporting issue and the adoption of future goals.

Olmstead Plan Reporting. (Item 2.e.iii in the Court's Agenda, Doc. No. 568)

As discussed at the Status Conference, the Court's February 22, 2016 Order for Reporting on Olmstead Plan contemplates that data on Annual Goals will be reported in the quarterly report immediately following each Annual Goal measurement date. (Doc. No. 544, para 4). As I explained, there are Annual Goals for which the data will not be available in valid or reliable form in time to be reported in the quarterly report immediately following the Annual Goal measurement date. Members of the Olmstead Subcabinet believe it is of fundamental importance that only reliable data be reported to the public, the Court, and the Olmstead Subcabinet. The Court recognized this importance when it required that all data provided to the Court "must be confirmed as reliable and valid". (Doc. No. 544, para 8).

To ensure only reliable data is reported, we suggested that data for each Annual Goal be reported in the next quarterly report following the Annual Goal measurement date and the date upon which the data is reliable and valid. This issue was discussed in the Status Conference and neither the Court nor the parties voiced any objection to this plan. Dr. Wieck indicated that she was supportive of the Olmstead Subcabinet's reporting proposal.

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We therefore request that the Court issue an Order to clarify the Annual Goal reporting process as set forth in the Court's February 22, 2016 Order. We respectfully submit this could be accomplished with the following language:

Notwithstanding anything to the contrary in Paragraph 4 of this Court's February 22, 2016 Order for Reporting on Olmstead Plan (Doc. No. 544), DHS shall include in quarterly reports the status of Annual Goals included in the Olmstead Plan. This information shall be reported in the next quarterly report following both the Annual Goal measurement date and a determination that the data is reliable and valid. All other provisions of this Court's February 22, 2016 Order remain in effect.

Olmstead Plan Adoption of Future Goals. (Item 2.e.iii. in the Court's Agenda, Doc. No. 568)

As discussed in the Status Conference, the Subcabinet proposed a methodology to incorporate new annual goals into the Olmstead Plan. This methodology would apply to both the four instances in the Olmstead Plan that required the establishment of a baseline and annual goals, and any similar goals that will need to be established in the future.

We proposed that such annual goals would be adopted by the Subcabinet on a provisional basis at a meeting subsequent to any applicable due date for the new annual goals. Once adopted provisionally by the Olmstead Subcabinet, the agencies would begin to report progress in subsequent quarterly reports as specified in the reporting schedule. These provisional goals would be then considered for incorporation into the Olmstead Plan as part of the annual cycle for updating and extending the Olmstead Plan that was proposed in the Olmstead Subcabinet's February 12, 2016 letter to the Court (Doc. No. 540) in the language shown below:

Updating and Extending the Olmstead Plan.

As part of the annual review process outlined in the approved Olmstead Plan, the Subcabinet agencies and OIO will be given the opportunity to propose amendments to the Olmstead Plan that are for good cause. As part of the process for proposing amendments, the agencies and the OIO will describe the processes they used for engaging with individuals with disabilities, families and advocates in formulating the amendments. The OIO Compliance staff will prepare a report on the proposed amendments for review by the Subcabinet, including a summary of how input from people with disabilities, families, and advocates was taken into account in formulating the amendments. Based on the recommendations, the Subcabinet will take action to approve a set of proposed amendments to the Olmstead Plan, which will be posted for review by the public and the Court, and will allow for a specific public comment period of at least 30 days. Following the comment period, the Subcabinet will consider whether any changes to the proposed amendments are warranted based on public comments. Any subsequent changes to the proposed amendments will be posted for a brief public review period prior to adoption of the amendments to the Plan by the Subcabinet. Once adopted by the Subcabinet, the Department of Human Services will submit the amendments to the Court while the implementation of the Plan remains under the jurisdiction of the Court. (Doc. No. 540, at 3).

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The Olmstead Subcabinet is currently utilizing the provisional adoption process with the four instances in the Olmstead Plan that required the establishing of a baseline and annual goals. The Subcabinet provisionally adopted two of the goals at the May Subcabinet meeting and expects to review the remaining two goals at the June Subcabinet meeting. These provisionally approved goals will be considered for formal integration into the Plan through the annual Plan revision process.

We believe this structure will be beneficial for all involved. First, having a single primary Plan review process during the year will simplify the process for people with disabilities and advocates. Second, adopting provisional goals as an interim measure will allow agencies and the Olmstead Subcabinet to focus on goals sooner and will allow for adjustment of goals based on experience before they are proposed for final adoption to the Plan.

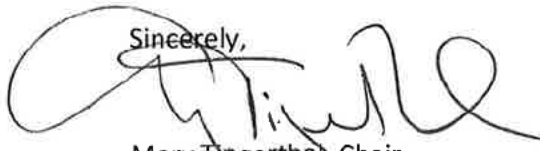
The structure of provisionally adopting goals was discussed at the Status Conference and neither the Court nor the parties voiced any objection. Dr. Wieck indicated that she was supportive of the Olmstead Subcabinet's proposal. We request that the Court memorialize its approval of this process in an Order.

Clarification Regarding Prior Order

As a point of clarification, it is our understanding that the Court's February 22, 2016 Order for Reporting on Olmstead Plan (Doc. No. 544) governs the Plan's reporting process. While that Order set forth a comprehensive reporting process, it did not formally supersede the reporting requirements contained in the Court's January 22, 2014 Order, which contemplated the Olmstead Subcabinet would report "on a 60-day report system". (Doc. No. 265, para. 6). We respectfully ask the Court to clarify that the reporting requirements in the January 22, 2014 Order no longer apply to the Olmstead Subcabinet.

Thank you for the opportunity to submit this letter to the Court.

Sincerely,



Mary Tingerthal, Chair
Olmstead Subcabinet

Cc: Magistrate Judge Becky R. Thorson
Colleen Wieck
Roberta Opheim
Scott Ikeda
Charles E. Johnson
Daron Korte
Shamus O'Meara
Karen Sullivan Hook
Mark Azman
Al Gilbert
Beth Sullivan

Darlene Zangara
Megan Ryan
Mike Tessneer
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Rick Figueiroa
Amy Akbay
Alex Bartolic
Jeremy Hanson Willis