

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
Honorable G. Thomas Cooper, Jr.
Circuit Court Case No.: 2007-CP-40-03365

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FEB 09 2016
SC Court of Appeals

Appellant Case No. 2014-001373

Estate of Edward James Mims,
Laura M. Cole, Personal Representative.....Appellant,

v.

The South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and Stan Butkus, ...Respondents.

Volume XII

RECORD ON APPEAL

Patricia Logan Harrison
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803-256-2017
Attorney for Appellant

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STATE OF SOUTH CAROLINA)
)
IN THE MATTER OF GUARDIANSHIP)
OF EDWARD MIMS)
)
CASE NUMBER 03 GC 4000172)
)

PROBATE COURT

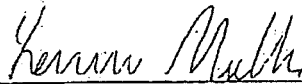
Personally appears before me Lennie Mullis who swears and affirms:

1. I was appointed by the Richland County Probate Court to examine Edward Mims.
2. I have a masters of science degree in psychology.
3. I am certified by the South Carolina Department of Disabilities and Special Needs as a behavioral consultant and a psychological consultant.
4. When I approached the residence, I noticed a sign stating that the facility has been decertified.
5. I first attempted to visit Edward Mims on June 6, 2005 at his residence at 100 Kensington Road.
6. When I approached the residence, I noticed a sign stating that the facility has been decertified.
7. I provided the Court Order appointing me as examiner to the Babcock Center employee who answered the door at approximately 6:15 p.m. The manager on duty called her supervisor and I was not allowed to examine Edward Mims on June 6, 2005.
8. On the evening of June 6, 2005, a Babcock supervisor informed me that I needed to provide Dr. Johnson or Dorothy Goodwin with a copy of the examination form.
9. I faxed the examination form to Dr. Johnson on June 7, 2005.
10. At approximately 6:30 p.m. on June 7, 2005, I returned to 100 Kensington Road, but was again not allowed to examine Edward Mims.
11. On the morning of June 8, 2005, Dr. Johnson left a message to call her or Dorothy Goodwin about examining Edward Mims. I spoke with Dorothy Goodwin who agreed to allow me to examine Edward Mims. She informed me that I would be allowed to examine Edward Mims at 6:00 p.m. on June 8.

Mims 2179

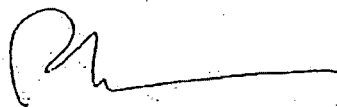
12. When I returned to Kensington at approximately 6:15 p.m. on June 8, 2005, I was not allowed to examine Edward Mims.

Further affiant sayeth not.



Lennie Mullis

SWORN TO BEFORE
ME THIS 8th DAY OF MAY,
2005.



Notary Public for South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF Richland

PROBATE COURT

THE MATTER OF Edward J. Mims

CASE # 03 GC40 00172

VISITOR'S REPORT

The undersigned court-appointed visitor in this guardianship proceeding submits the following report concerning the investigation which I conducted pursuant to Section 62-5-303 of the South Carolina Probate Code. In my visit to the place where the allegedly incapacitated person resides, I observed the following.

REPORT ON THE INCAPACITATED PERSON

1. Date and place of interview: , Sunday, June 5, 2005
2. Oriented as to the time and place? ☒ YES ☐ NO
3. Physical Appearance. Mr. Mims was clean, well dressed in umbro shorts and a t-shirt. Mr. Mims' hair was cut and cut short.

4. Who are his/her closest family members? Margaret Mims, mother and Margaret Diane Mims Therot, sister

5. Does he/she have a doctor? ☒ NO ☐ YES If yes, please list the doctor's name, address, and phone number.
Dr. Ian Platt, M Richland Family Practice, 3209 Colonial Drive, Columbia, SC 29203, (803) 434-6113,

6. Does he/she have an attorney? ☒ NO ☐ YES If yes, please list the attorney's name, address, and phone number.
Edgar S. Kneece, 455 St. Andrews Road, Building D, Suite 3-A, Columbia, SC 29210, (803) 750-3000.

7. Does he/she think he/she needs help caring for himself/herself? ☒ NO ☐ YES If yes, in what areas? Mr. Mims does not have the receptive language skills to understand the question.

8. Would he/she like help in caring for himself/herself? ☒ YES ☐ NO Mr. Mims does not have the receptive language skills to understand the question.

9. Does he/she know the proposed Guardian? ☐ YES ☒ NO Margaret Mims is the mother and proposed Guardian.

10. How does he/she feel about having that person appointed as his/her guardian? Mr. Mims does not have the receptive language skills to understand the question.

11. Does he/she feel any of the guardian powers or duties should be limited or restricted in any way? If so, how? Mr. Mims does not have the receptive language skills to understand the question.

How does he/she feel about the proposed guardianship? Mr. Mims does not have the receptive language skills to understand the question.

13. How does he/she feel about the proposed scope and duration of the proposed guardianship? Mr. Mims does not have the receptive language skills to understand the question.

REPORT ON THE PROPOSED GUARDIAN

1. Has an adult protective service case or family management case ever been opened on this person? NO XYES
If yes, please explain. DDSN proceeding in Richland County Probate Court

If yes, does the DSS record reveal anything you believe the court should know? NO XYES If yes, please explain.

Probate court may wish to review Lexington and Richland County Emergency Room records.

2. Does your investigation of the proposed guardian reveal anything that you believe the court should know? ☒ NO
XYes If yes, please explain. According to a statement by Margaret Mims, Edward J. Mims has been harmed living in a Babcock facility and wishes to bring her son home to stay.

Does your investigation reveal any other person who should be considered to be appointed the guardian in this matter? XNO ☒ YES If yes, please explain, including name, address, telephone, age, and relationship to allegedly incapacitated person.

REPORT ON CONDITION OF PRESENT PLACE OF RESIDENCE

1. Date and time visited: , Sunday, June 5, 2005 @ 3:30 pm
2. Address (include street, city, county, state, zip): 3301 Rosewood Drive, Columbia, SC 29205
3. Type of abode: Wood frame one-story home on the corner of Rosewood and Ravenel Street.
4. Condition:
 - a. exterior: Wood framed home in good condition. The visitor did not go under the home for inspection
 - b. interior: The interior was clean and walking areas free from obstacles. Hard wood floors are throughout the home except kitchen and bathroom. There are two entrances into the home one from the living room and the other in the kitchen.
 - c. utilities working: central heating and air.
 - d. cleanliness: good
 - e. fire hazards: There are some boxes that Mrs. Mims will be moving before Mr. Mims comes home that do not impede entry and exit to the home.
 - f. other (explain):

CONCLUSIONS AND ADDITIONAL COMMENTS: I observed Mr. Edward Mims in the home with Ms. Margaret Mims for one hour. Ms. Mims appeared very attentive to his needs and communicates well with Mr. Mims even though he is unable verbally communicate. During the visit Mr. Mims walked to the kitchen retrieved a cup and brought the cup back to Ms. Mims for her to pour him some Ginger Ale. Ms. Mims presented a picture where she had traced Mr. Mims' hand and stated that he had colored the drawing. She went on to say that he enjoyed activities including, but not limited to, music, drawing and walking with her around the neighborhood. Ms. Mims indicated that both she and Mr. Mims had attended church that day and that Mr. Mims enjoyed going to church activities. Ms. Mims is very calm and is able to direct Mr. Mims in a gentle manner. Mr. Mims comes home on the weekends and appears to be familiar and comfortable with the setting.

Prior to your visit, did you know the person who is alleged to be incapacitated? XNO YES If yes, please explain.

Prior to your visit, did you know the person who is seeking appointment? YES NO YES If yes, please explain. I attended a parent meeting with Ms. Mims in 2004.

Prior to your visit, did you or do you now have a personal interest in these proceedings? XNO YES If yes, please explain.

Executed this 6 day of June, 2005.

Signature: M. B. Miller
Name:

Mary Katherine B. Miller, MSW, CMC
Scribe Matters Consulting, Inc.

STATE OF SOUTH CAROLINA)

FILED

IN THE PROBATE COURT

COUNTY OF RICHLAND)

Case Number: 2003-ES-40-172

IN THE MATTER OF GUARDIANSHIP OF
EDWARD MIMS)

05 JUN 14 AM 11:16

AMY E. JACOBLOCH
PROBATE JUDGE
RICHLAND COUNTY

AMENDED ORDER APPOINTING
TEMPORARY GUARDIAN

(This Order is amended to correct the incorrect hearing date in this paragraph, now changed to June in bold.) This matter came before the Court on the Petition of Margaret Mims, who is the mother of Edward Mims. In attendance at the emergency hearing held on June 9, 2005 were Margaret Mims and her attorney, Patricia L. Harrison; the Court-appointed Guardian Ad Litem for Edward Mims, Edgar Kneece; and M. Leigh Flynn, who was previously appointed by this Court as Guardian Ad Litem for Edward Mims in another proceeding.

The court-appointed Visitor, Mary Katherine Miller, found the residence of Margaret Mims to be clean and in good condition. She reported that Mrs. Mims was very attentive to the needs of Edward Mims and that he appeared to be familiar and comfortable at home. Examiner Tan Platt reported that Edward Mims is incompetent, and is unable to make daily living and health care decisions. A July 3, 2001 Order of this Court found Edward Mims to be "profoundly mentally retarded." In addition, evidence was presented of six emergency room physicians having reported that Edward Mims is incapacitated by reason of mental retardation.

Based on these findings, I find that Edward Mims is incapacitated and I find that no Guardian has been appointed previously. Evidence was presented that Edward Mims' current residence, Kensington ICF/MR, was decertified by the South Carolina Department of Health and Human Services in April of 2005. On May 27, 2005, Edward Mims was found in the facility to have a serious unexplained injury.

Based on the evidence presented to the Court, I find that the welfare of Edward Mims requires immediate action and that the emergency appointment of a temporary Guardian is appropriate pursuant to S. C. Code Ann. §62-5-310. The Guardian Ad Litem joins in the

Mims 2184

recommendation to the Court that a temporary Guardian be appointed. I find that Margaret Mims has priority under S. C. Code Ann. §62-5-311 and that it is in the best interest of Edward Mims to appoint Margaret Mims as his temporary Guardian.

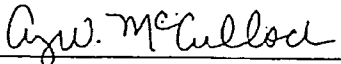
By order dated July 3, 2001, this Court found that Edward Mims was in need of services of the South Carolina Department of Disabilities and Special Needs. I find that services of the South Carolina Department of Disabilities and Special Needs are needed by Edward Mims and that Margaret Mims, as Guardian for Edward Mims, shall have the full authority to exercise all rights to these services which Edward Mims could exercise if he were competent to do so. These services shall be provided in the least restrictive environment as required by state and federal law.

Margaret Mims shall be entitled to the custody of the person of Edward Mims and shall have all statutory powers of a Guardian, including but not limited to the authority to establish his placement. The Guardian shall be authorized to give consents and approvals for Edward Mims to receive medical and other professional care, counsel, treatment and services. In view of the emergency regarding placement, all medical providers shall provide medical records and information as requested by the Guardian.

The South Carolina Department of Disabilities and Special Needs shall be provided with notice of the hearing which has been scheduled in this Court for June 24, 2005. At that time, the Department shall provide the Court with copies of all treatment records of Edward Mims since the date of this Court's July 3, 2001 Order and shall provide the Court with notice of the appointment of a service coordinator and a treatment plan. At that hearing, the Court shall also rule on the Petitioner's request for a permanent Guardian.

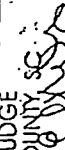
IT IS SO ORDERED!

June 14, 2005
Columbia, South Carolina


Honorable Amy W. McCulloch
Richland County Judge of Probate

A TRUE COPY
ATTEST:

Amy W. McCulloch

PROBATE JUDGE
RICHLAND COUNTY, SC


Mims 2185

Hill, Jim

From: Hill, Jim
Sent: Friday, June 10, 2005 6:30 PM
To: 'Patricia L. Harrison'; Charles Lang; Mary S. Leitner; Deirdra Singleton; Gloria Prevost; Ronald Reed
Cc: 'sbutkus@ddsn.sc.gov'; 'dgoodwin@babcockcenter.org'
Subject: RE: Edward Mims

Patricia, I called your office this afternoon, but missed you. I believe you were in a meeting and I left a message with your assistant.

I am in receipt of your email below concerning Edward. Please note that Edward was judicially admitted to the Department on July 3, 2001. Part of the Court Order for his admission indicated that he may visit his mother on weekends provided that she provide a safe environment and access for inspections of her home to ensure that it was safe for Edward. Your email indicates that Edward will not be returned to Kensington after visitation this coming weekend. This directly violates the Court Order. Because of your written intentions to violate the Court Order, we have asked Babcock to not allow Edward to visit his mother this weekend and we will attempt to review this matter next week or at the earliest convenient time for all involved.

In your email below, you mentioned that you sent Rivermont (Rich/Lex County DSN Board) a copy of "Court's Order." This apparently is something new and pertains to Mrs. Mims efforts to seek guardianship of her son, Edward. Please fax me a copy of this Order. We are unaware of its contents. As mentioned, Edward was committed to DDSN, not Rivermont.

With regard to your request to have Edward discharged to his mother's care and admitted to a local daycare with access to other services provided from Rich/Lex, this must be presented and reviewed by Edward's team in accordance with normal procedures for individual habilitation plans and ICF/MR regulations. The items that you mentioned to me and in your email below constitute a significant transition for Edward. It is my understanding that these matters must be reviewed by the team and, therefore, we cannot comment on whether they are appropriate for Edward at this time.

The Babcock staff have appealed the de-certification and depopulation of Kensington and the matter has been deferred until the appeal has been heard. Any issue about alternate placement of individuals at this time based on de-certification is premature pending the appeal. As you know, alternative placements can be considered at anytime as long as it is planned and approved.

I trust this responds to your email below.

Jim Hill
General Counsel, SCDDSN

cc: Patricia L. Harrison [mailto:plh.cola@worldnet.att.net]
Friday, June 10, 2005 4:55 PM
To: Charles Lang; Mary S. Leitner; Deirdra Singleton; Gloria Prevost; Ronald Reed; Hill, Jim
Subject: Edward Mims
Importance: High

I've notified Babcock Center that Edward would not be returning to Kensington on Sunday. I have sent Rivermont copy of the Court's Order. Babcock called Mrs. Mims today to tell her that they will only send enough medicine home with him for five days. On Wednesday, I asked Mary Leitner that Carol King serve as Edward's service coordinator, but I have heard nothing back from RichLex. Carol has experience with these transitions and does a good job. We need her assistance.

Babcock Center is supposed to be transitioning people from a decertified facility into a placement of their choice. Who is going to handle matters like getting Edward's pharmacy changed (and I expect that we will not be able to get meds from a new pharmacy until next month), getting him into a day program, arranging for necessary transportation, etc?

Trisha Harrison

Mims 2187

P 110

3382

STATE OF SOUTH CAROLINA)

PROBATE COURT

COUNTY OF RICHLAND)

CASE NO.: 2003-GC40-00172

In the Matter of)
Guardianship of:)

OBJECTIONS

EDWARD J. MIMS)

TO: The Honorable Jacqueline D. Belton, Associate Judge, Probate Court
Ms. Patricia L. Harrison, Esq., Attorney for Ms. Margaret Mims
Mr. Edgar S. Kneece, Esq., Guardian Ad Litem for Edward J. Mims

The Objections of the South Carolina Department of Disabilities and Special Needs (SCDDSN) herein are filed with this Court pursuant to a Notice of Hearing, dated September 8, 2005. This matter began many years ago. Edward has been receiving SCDDSN services since October 1993. On October 5, 1999, Ms. Mims (the Petitioner herein) placed Edward with the Babcock Center because she was unable to care for him (Tab A). Subsequently, on/about April 3, 2001, the Petitioner requested Edward's discharge (Tab B). A Petition for Judicial Admission was filed with this Court (Tab C) and the required psychological report (S.C. Code Ann. §44-20-450 (C)) was filed as ordered by this Court (Tab D). A hearing was held on June 26, 2001. At that hearing it was agreed upon by SCDDSN, Edward's attorney, his guardian ad litem, and by the Petitioner with assistance of counsel, W.D. Morris, that Edward would be judicially admitted to SCDDSN. The Court's Order set out parameters for the Petitioner if she wanted to continue Edward's home visits (Tab E). The guardian ad litem testified at the hearing that the Petitioner does not drive; that she has a very modest home and has limited income due to her house cleaning jobs (see guardian ad litem's report; copy should be with Court's case file).

Mims 2188

Later, on November 13, 2001, the Petitioner wrote to the State Attorney General asking that her son, Edward, be returned to her. SCDDSN responded to her inquiry on December 27, 20001 (Tab F).

On Friday, June 10, 2005, at about 4:00 p.m. the Petitioner, with the assistance of her attorney, Ms. Patricia Harrison, attempted to discharge Edward from Babcock Center, Inc., a service provider of SCDDSN. At that time, Ms. Harrison was informed of the Judicial Admission Order; yet, in violation of the Order, Ms. Harrison called the police and The Honorable Judge Amy McCulloch creating a crisis, emphasis added, late that Friday afternoon at Edward's residence at Babcock Center, Inc. (Tab G). An informal meeting was held in Judge McCulloch's office the following Sunday afternoon, June 12th. It was learned at that time that the Petitioner had initiated a Petition for Guardianship of her son. Neither SCDDSN nor Edward's sister, Ms. Diane Theriot were notified of this action. Upon information, the appointed guardian ad litem, Edgar S. Kneece, made no attempt to get in touch with Ms. Theriot, nor did the Court's appointed Visitor, Ms. Mary Katherine B. Miller. It is unclear whether Edward has court appointed counsel; no one has appeared in this capacity at any hearing in this matter attended by the undersigned. After much discussion, it was decided that SCDDSN would not issue a pick-up order (S.C. Code Ann. §44-20-500) and that a Medicaid Waiver application would be expeditiously processed.

A hearing was held on June 24, 2005, before Judge McCulloch on the matter of continuation of temporary guardianship for Edward. Ms. Diane Theriot, Edward's sister, was present at this hearing and the undersigned presented her letter of June 15, 2005, to Judge McCulloch (Tab H). Dr. Kathi Lacy, Associate State Director-Policy, SCDDSN, was also present and presented a recording of events since the June 12, 2005 meeting (Tab I). It should be

noted that SCDDSN on June 21, 2005, obtained eligibility for Edward in the Medicaid Home and Community Based Waiver program, a funding for services for persons residing in the community. Testimony was taken from several individuals including Dr. Lacy and the Petitioner. As recalled by the undersigned, the Court ordered that both SCDDSN and Ms. Theriot would receive notice of any further hearings in this matter. A hearing has now been scheduled for September 29, 2005, before The Honorable Jacqueline D. Belton.

OBJECTIONS:

1. Edward Mims is not represented by an attorney as required by S.C. Code Ann. §62-5-303 (b). Mr. Edgar Kneece has been appointed as guardian ad litem and has limited his activities to this appointment.
2. Ms. Diane Theriot was not notified of this action as required by S.C. Code Ann. §62-5-309 (3). The undersigned was informed by Judge McCulloch that there was no legal duty to inform Ms. Theriot. Respectfully, Ms. Theriot falls into category 3 as Edward's sister. She was well known by the Petitioner, her mother. Since the Petitioner cannot notify herself, the statute requires that a close relative be notified. As a matter of fairness, the Court should make itself available to the information and requests from Ms. Theriot about the guardianship of her brother.
3. Ms. Diane Theriot has expressed serious problems in obtaining counsel so that she may be heard by the Court on these issues. She informed the undersigned that she has contacted four or five attorneys without success. This Court should inquire into whether Edward's trust account can be tapped to cover her attorney expenses. It is submitted that the Petitioner and Ms. Theriot may request that this Court authorize the

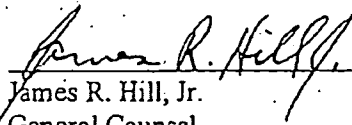
trust to pay for their attorney fees. Both Ms. Theriot and Ms. Mims have limited financial means.

4. This Court heard the matter concerning Judicial Admission and issued its Order on July 3, 2001. At that time, a key element for determining judicial admission was the Petitioner's inability to care for her son at her home. This issue goes not only to her financial capacity to have Edward living with her, but also to her capacity to manage his affairs and his estate. The Petitioner testified before Judge McCulloch that she knew Edward had a trust but she did not know how much was in the trust, and more importantly, where the trust was located. Soon after Edward's judicial admission, she wrote the Attorney General requesting his discharge. Additionally, after taking Edward home on June 10, 2005, she requested alternate residential placement with Mentor, Inc. These actions by the Petitioner raise a serious concern as to her capacity to care for or be a guardian for her son.
5. The Court is not limited to the Petitioner for appointment of guardian. S.C. Code Ann. §62-5-311 allows the Court to consider any competent person, emphasis added. The priority set out in this statute places the Petitioner before her daughter, Ms. Theriot, but this priority is clearly subject to the discretion of the Court. The Petitioner's actions regarding her apparent lack of understanding of the basis and significance of the prior Judicial Admission Order, her demand for discharge without appropriate and pre-arranged services, her age and poor health, her lack of knowledge of Edward's trust, it is submitted, make her a poor candidate for guardian, especially since Ms. Theriot having none of these problems stands ready, willing and able to assume this fiduciary duty.

6. There is ample evidence that Edward is an incapacitated person, but the question of his need, emphasis added, has not been addressed. There has been no showing that his mother or his sister are unavailable to provide consent for health care under the Adult Health Care Consent Act, S.C. Code Ann. §44-66-10. Guardianship is not needed. Guardianship in this case, it is submitted, was a way to move Edward out of Babcock Center, Inc., even in view of the Judicial Admission. But, as a Medicaid recipient, there are other ways to move Edward without resorting to guardianship. S.C. Code Ann. §62-5-304 allows the appointment of a guardian when the Court is satisfied that the appointment is necessary or desirable as a means of providing continuing care and supervision. There has been no showing that Edward has gone lacking for care and supervision by not having a guardian. Very few people with Edward's condition have a guardian. The Visitor's report failed to address any need of Edward requiring a guardian. It is not enough to want to be the guardian of an incapacitated person; there must also be a direct, realistic need for care and supervision that would otherwise be lacking without the appointment of a guardian.
7. Lastly, the Court should consider and address the possibility of conflict, in that, this Court has already ruled, in essence, on the Petitioner's capacity to care for Edward in the Court's Order of July 3, 2001. This Petition was initially heard by Judge McCulloch and no reason has been presented why the Petition has been switched to this Court. Respectfully, the Court may want to consider recusal due to actual or perceived conflict with the prior Court's Order of July 3, 2001.

WHEREFORE, SCDDSN has submitted its objections to this action, which are in essence, serious concerns that should be addressed by this Court. More specifically, SCDDSN questions the need for a guardian for Edward, the Petitioner's capacity to function as guardian, and suggests that if guardianship is needed, the Court consider the appointment of Edward's sister, Ms. Diane Theriot. SCDDSN suggests that this Court look beyond the desires of the Petitioner and examine what is in Edward's best interest.

Respectfully submitted,



James R. Hill, Jr.

General Counsel

South Carolina Department of Disabilities
and Special Needs

P.O. Box 4706

Columbia, SC 29240

Phone: (803) 898-9683

September 28, 2005
Columbia, South Carolina

Encls.

Mims 2193

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3440 Harden Street Ext (29203)
PO Box 4706, Columbia, South Carolina, 29240
V/TTY: 803/898-9600, FAX: 803/898-9653
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June 22, 2005

Mr. Edgar S. Kneece, Esq.
455 St. Andrews Road
Bldg. D, Suite 3-A
Columbia, SC 29210

Re: Guardianship of Edward Mims

Dear Mr. Kneece:

As court appointed Guardian Ad Litem (GAL) for Mr. Mims in this matter, I wanted to bring to your attention a letter that was sent to me by Ms. Diane Theriot, Edward's older sister. She has expressed a desire to be involved in this case and she has information concerning the issues before the Court.

As GAL for Edward, I assume that you would want this information. It may be relevant to your position as GAL in protecting Edward's best interests.

By copy of this letter, I am informing Ms. Theriot that the Richland County Probate Court will be hearing this matter at 11:30 a.m. on June 24th in courtroom 2F and that she may contact you by phone at 750-3000.

Sincerely,

James R. Hill, Jr.
General Counsel

JRH/cch

Encl.

cc: The Honorable Amy McCulloch, Judge-Probate Court
Ms. Patricia Harrison, Esq., Attorney for the Petitioner
Mr. Chris Stegmaier, Attorney for Babcock Center, Inc.
Ms. Diane Theriot

DISTRICT I

8301 Farrow Road, Columbia, SC 29203

Midlands Center Phone: 803/233-7500

Midlands Center Phone: 803/233-2733

DISTRICT II

PO Box 3209, Florence, SC 29502-3209

D 1-1 7nd: 843/664-2655

Mime 2194

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FILED

05 DEC 19 PM 5:37

AMY W. MACCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	PROBATE COURT
IN THE COUNTY OF RICHLAND	)	CASE NUMBER 03 GC 40 00372
IN THE MATTER OF GUARDIANSHIP	)	
OF EDWARD MIMS	)	
	)	
MARGARET MIMS,	)	ORDER APPOINTING
<u>Petitioner</u>	)	PERMANENT GUARDIAN

This matter came before the Court on the Petition of Margaret Mims, who is the mother of Edward Mims. In attendance at the hearing held on September 29, 2005 were Margaret Mims and her attorney, Patricia L. Harrison, the Court-appointed Guardian Ad Litem for Edward Mims, Edgar Kneece and M. Leigh Flynn, who was previously appointed by this Court as Guardian Ad Litem for Edward Mims in another proceeding.

Lynn Lugo, who serves as Service Coordinator for Edward Mims at the Richland Lexington Disabilities and Special Needs Board attended the hearing. Also in attendance were James Hill, legal counsel for the South Carolina Department of Disabilities and Special Needs and Diane Theriot, who is the sister of Edward Mims.

The court-appointed Visitor previously found the residence of Margaret Mims to be clean and in good condition. She reported that Mrs. Mims was very attentive to the needs of Edward Mims and that he appeared to be familiar and comfortable at home. Examiner Tan Platt reported that Edward Mims is incompetent, and is unable to make daily living and health care decisions. A July 3, 2001 Order of this Court found Edward Mims to be "profoundly mentally retarded." The second court-appointed examiner, Lennie Mullis confirmed that Edward Mims is incapacitated. In addition, evidence was presented of a number of emergency room physicians having reported that Edward Mims is incapacitated by reason of mental retardation.

Prior to the hearing, the South Carolina Department of Disabilities and Special Needs filed written objections to the appointment of Margaret Mims as guardian for Edward Mims. At the hearing, counsel for the Department objected to the appointment of Margaret Mims, arguing that no guardian should be appointed for Mr. Mims. Alternatively, the Department recommended that the Court instead appoint Diane Theriot as permanent guardian for Edward Mims. The Department also requested that the funds of Edward Mims be used

[Handwritten signature]

provided care for her son at home until he was twenty-eight years old and that he experienced episodes of abuse and neglect since he was placed in residential services at the Babcock Center in 1999. She testified that she would consider alternative residential placement if she felt that she was unable to provide continuing care in the home in the future.

Lynn Lugo provided testimony about the in-home services which are being provided to Edward Mims by the Richland Lexington Disabilities and Special Needs Board. She testified that she has visited in the home, that Mrs. Mims has done a very good job taking care of Edward, and that it would be in the best interest of Edward Mims for the Court to appoint his mother as permanent guardian. Ms. Lugo further testified that if Margaret Mims got sick, emergency respite would be provided, once Mrs. Mims called to request it.

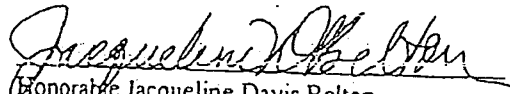
Based on the testimony and evidence presented, I find that this Court has jurisdiction, and venue is properly in Richland County. I also find that Edward Mims is incapacitated and in need of the appointment of a permanent guardian. I further find that Margaret Mims has priority for appointment as permanent guardian under South Carolina Code §62-5-311, and that she is the appropriate person to be appointed.

Margaret Mims shall have all statutory powers of a permanent guardian, including but not limited to the authority to make decisions about and establishing Edward's placement, including living at home with her. Further, given the termination of Edward Mims' judicial admission to the S.C. DDSN, Margaret Mims is to have custody of the person of Edward Mims. The guardian shall be authorized to give all consents and approvals for Edward Mims to receive medical and other professional care, counsel, treatment and services. All medical providers are ordered to provide medical records and information as requested by the guardian.

The court-appointed guardian ad litem and attorney for Edward Mims, Edward Kneece Esq., has provided services in this matter and is entitled to a reasonable fee. Mr. Kneece has not been paid since he began his representation of Mr. Mims, and his fee statement of \$3,065.00 is reasonable given the complexity of the case and time devoted to representing Mr. Mims in this matter. Mr. Kneece's fees are to be paid in their entirety or in increments, as soon as funds become available.

The guardian shall submit a report to this Court and the Guardian Ad Litem six (6) months from the date of this Order, then again twelve (12) months from that date.

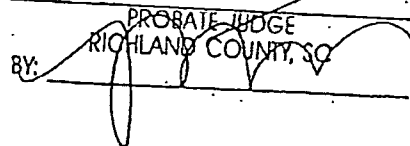
IT IS SO ORDERED.


Honorable Jacqueline Davis Belton
Richland County Probate Court

December 19, 2005.
Columbia, South Carolina

A TRUE COPY
ATTEST:

Amy W. McCulloch

PROBATE JUDGE
RICHLAND COUNTY, SC
BY: 



Greenwood Genetic Center
Columbia Office
8301 Farrow Road
Columbia, South Carolina 29203
(803) 935-5390 • FAX (803) 935-5410

GENETIC CONSULTATION

RE: Edward Mims

DOE: 12-16-99

Edward is a 28 year old Caucasian male that we are seeing at Lexington Clusters today. Our information about Edward was obtained from review of his most recent DDSN chart.

Edward's mom was 32 years of age at the time of his birth. He was delivered at 36 weeks in breech presentation. He remained in the hospital for the first 2 months of his life and had feeding difficulties.

Edward did not walk alone until 5 years of age and has never spoken. He has profound mental retardation with a Bayley score of 20 months.

Edward's past medical history is significant in that he has only one kidney. He has had episodes of hyponatremia, polydipsia and hypertension. He also has had esophagitis associated with GE reflux.

Edward is described as having seizures that began at about 6 months of age. He also has mild myopia. He has probable hearing loss. His current medications include Phenobarbital, Propulsid, Claritin, and Prilosec.

Edward has been evaluated by the Greenwood Genetic Center in the past and has had normal chromosomes and FMR1 studies.

FAMILY HISTORY: There are no other first degree relatives with learning problems.

Clinical Staff

Kate B. Clarkson, M.D.
Clinical Geneticist

Ken Corning, M.S.
Genetic Counselor

Amy Fishburn, M.S.
Genetic Counselor

Mims 2198

P 122

3393

February 3, 2009

Commissioners told to attend hearing

Lawmakers upset that Disabilities and Special Needs board missed first one

By Ben Szobody
STAFF WRITER

State Sen. David Thomas said a new committee could meet next week on allegations of safety gaps, unspent or diverted funds and other problems at the state Department for Disabilities and Special Needs, and this time he expects the agency's six public commissioners to show up.

Two of the six gubernatorial appointees told The Greenville News they didn't attend a Senate hearing last month on what a new audit said was \$9 million in unspent or diverted autism funds at the agency because they didn't know about it or weren't invited.

Thomas and state Sen. Ronnie Cromer blasted agency administrators for telling their staff but not commissioners about the forum, which drew a packed crowd of parents.

"I'm going to hand-write personal invitations to them," Thomas said, describing his remarks as facetious. "Put a nice bow around it. So they'll know they're invited."

Agency spokeswoman Lois Park Mole said Thomas asked director Stan Butkus to speak at last month's hearing by letter, and Butkus informed commission Chairman Bobby Harrell about the meeting.

Thomas said none of the six showed up.

Attempts to reach Harrell and three other commissioners were unsuccessful. They include John Vaughn of Greenville, Otis Speight of Fort Mill and John Powell of Walhalla.

Commissioner Edythe Dove of Charleston told The News she didn't know about the hearing but has confidence in agency staff to answer questions.

Commissioner William Bishop of Leesville said he's not sure if he knew the hearing was taking place, but that regardless, he wasn't invited.

Thomas said, "Every member of their staff looked like they were present. Not to inform the commission ... is a further indictment of the administration."

Cromer said it would be "pretty odd" for agency administrators not to notify commissioners of the meeting, but they should have known about it anyway.

"You would think that they're keeping up with stuff like that within their agency," he said, adding that they "owe it to the citizens of South Carolina" to stay informed.

By George, (commissioners) need to be at any future meeting that we have. It's part of their responsibility," Cromer said.

Exhibit P:123 37

Mims 2199

Thomas, chairman of the Senate Banking and Insurance Committee, said he expects to appoint a subcommittee this week, and the group could meet as early as next week. He said he expects to call agency staff, commissioners and auditors to speak.

In addition to the unused or diverted autism funds, a critical audit last month said the agency, which serves people with brain damage and mental retardation, may not have fired some staff members involved in cases of abuse and neglect, didn't follow up on numerous safety and welfare violations and doesn't conduct nationwide criminal background checks on caregivers, among other issues.

DDSN has said appropriate action was taken in cases of abuse and neglect 100 percent of the time, that it's the job of providers to correct quality problems and that it would take a change in state law to conduct national background checks.

Thomas said the audit's findings are "well-founded" but he's trying to find out where to place the blame.

"Is it a board not doing its job, or is it an administration out of control?" Thomas said.

February 4, 2009

Senator: Agency retaliating against 5

Disabilities and Special Needs official says jobs outsourced based on audit

By Ben Szobody
STAFF WRITER

Five state employees who told auditors about health and safety problems in the state Department of Disabilities and Special Needs are being terminated by June in "retaliation" by the agency for their honesty, state Sen. David Thomas said.

Agency spokeswoman Lois Park Mole said it's not yet clear if the employees will be terminated, but the department is following a recommendation in December's critical audit to make the licensing of its care facilities more independent by outsourcing the job to a contractor.

The audit didn't recommend a switch to a private contractor, and George Schroeder, director of the Legislative Audit Council, said it's not the best solution.

Thomas said all five members of the agency's licensing staff were told last week their jobs would be cut, and he provided a letter signed by all five people that describes an agency meeting in which a top administrator told them the change amounts to a "reduction in force."

"The fact that the department has deviated from the specifics of the (audit) demonstrates that they are retaliating, in my opinion, against these people," Thomas said. "This is outrageous behavior."

Mole said the employees were informed of the plan to hire a contractor in an effort to be transparent, and the agency doesn't yet know what response it will get to its request for contract proposals. She said DDSN is looking for the "greatest degree of independence" when it comes to licensing but doesn't believe anything is wrong with the current arrangement.

Thomas said he's concerned by the agency's choice to go private because of past instances when he said DDSN picked contractors close to the agency that would do its bidding.

Mole said she hasn't heard those concerns from Thomas and couldn't respond Tuesday.

The audit said a former DDSN director was simultaneously employed by the agency, its local boards and an agency contractor, an arrangement that had "the appearance of impropriety," though in one instance an Ethics Commission ruling found no violations of state ethics law.

The former director told The News the services he provided were "very different" and that there was no impropriety.

Licensing employees said in a letter to Thomas, which he provided to The News, that under the new approach, DDSN would continue to determine "key indicators" and provide policy and directives to the outside contractor, effectively creating an appearance of independence while "nothing would actually be changing."

Mims 2201

The letter said an associate director told the employees that DDSN intends to hire the contractor by June 30, which would be their last day of employment.

December's audit of the department, which serves people with brain injuries and mental retardation, said DDSN reviews the quality of its adult residential facilities one-third as often as other states and didn't adequately follow up when it found expired food, missing smoke detectors and water heaters set too hot.

Contributing to the potential health and safety risks is a lack of independent licensing used by other states, the audit said, adding DDSN licenses some of its own facilities, creating potential conflicts of interest that can "impede objective reviews."

Mole has said the facilities themselves -- not the agency -- are required to follow up on quality problems. The agency said in a written response that it received "plans of correction" for 100 percent of the licensing reviews cited by the audit.

The audit said 26 residential licensing reports were reviewed and 25 should have required a follow-up.

The audit said two follow-ups were reports.

Another sample of nine reports occurring after January 2007 showed more than 100 quality deficiencies but "no documentation" that any follow-up visits took place, the audit said.

Thomas said the licensing officials would report health and safety problems, then come back three years later and find that they hadn't been fixed. He said they were "forthright" about the issues to state auditors and are now paying the price.

Auditors recommended more follow-ups as well as moving the licensing role to the state Department of Health and Environmental Control. If the job stays within DDSN, auditors said the agency should do reviews more often.

Schroeder said the problem was that the agency wasn't doing enough reviews, and that the "best thing" would be to move the licensing staff and its funding to another agency.

"We did not recommend that they fire the people that were currently" doing the reviews, Schroeder said, adding he doesn't understand how the agency will hire a contractor to do a job it wasn't doing effectively itself.

"How are they going to know what it should cost?" Schroeder said.

Mole said the decision to privatize the licensing function came out of a meeting between DDSN commissioners and Gov. Mark Sanford's staff.

"It's going as independent as you can possibly go with the highest degree of quality," Mole said.

Sanford spokesman Joel Sawyer said the licensing issue was discussed with commissioners, but not how the agency would do it. Commissioners later informed the governor's staff that they intended to privatize, Sawyer said, adding that if it isn't in line with the audit's recommendations, the governor will have the board "re-evaluate" the plan.

GreenvilleOnline.com

February 19, 2009

Ex-Greenville pastor among DDSN board members asked to resign

By Ben Szobody
STAFF WRITER

Gov. Mark Sanford asked for the resignations Thursday of four of the seven commissioners of the state Department of Disabilities and Special Needs after a critical audit alleged problems, including health and safety gaps, unused funds and a lack of transparency.

Retired Greenville pastor John Vaughn was among them.

State Sen. David Thomas applauded the move and said it "clears the deck" for officials to get at the agency's problems.

"If the new commission fails to clean house at very top level of the agency, they will have failed," he said.

Vaughn told *The Greenville News* on Thursday, "I'm a team player. He's the coach. If he wants to put somebody else in, that's not my call."

Attempts to reach the other commissioners removed Thursday were unsuccessful.

They include Edythe Dove of North Charleston, John Powell of Walhalla and William Bishop of Leesville, said Sanford spokesman Joel Sawyer, adding that the Governor's Office is in the process of identifying their replacements.

Sawyer said none have yet submitted their resignations, and that if anyone chooses not to resign, he'll be replaced when his term expires or removed by executive order.

Vaughn said he told the governor that he'd serve until his replacement is found.

Sawyer also reiterated the governor's call to restructure the agency, which serves people with mental retardation and brain injuries. As a cabinet agency, Sawyer said Sanford would also have the power to change the administration.

The Greenville News reported in 2007 allegations that the agency let a private contractor review claims of abuse at its own facility, that it was "almost impossible" to connect state payments for care with what was actually spent on patients and that the commission had barred individual members from inquiring about agency operations without the consent of the full board.

December's audit said the agency diverted or left unused \$9 million in autism funding, may not have fired some staff members involved in cases of abuse and neglect, didn't follow up on numerous safety and welfare violations and denied commissioners access to public information, among other issues.

Mims 2203

The agency has said appropriate action was taken in cases of abuse and neglect 100 percent of the time, that it's the job of providers to correct quality problems and that the commission doesn't bar information from its members.

Former agency commissioner Mary Katherine Bagnal, an agency critic who said Sanford asked her to step down last year, has questioned why none of the remaining DDSN commissioners had been removed more than two months after the audit.

Sawyer has previously declined to comment on the issue, but said Thursday that the audit made clear that changes were needed at the agency and that removing board members is what falls under the governor's authority.

"This is all that's in our powers to do," Sawyer said.

Sawyer has said the Governor's Office acted on many of Bagnal's concerns, but asked for her removal because her conflicts with other agency officials had become a distraction.

Asked Thursday why Sanford picked the four commissioners for removal, Sawyer said three of them had expired or nearly expired terms, while Bishop is also chairman of board for the Babcock Center in Columbia, a DDSN-funded agency.

Because of the close relationship between the agency and its local boards highlighted in the audit, Sawyer said Bishop was removed.

He also said that with a new board, "There may very well be a change in chairmanship."

Bobby Harrell of Yemassee, who wasn't removed, is the current chairman.

Vaughn said Sanford's office asked him in September to reapply for his seat, which expires in June, but that because of family responsibilities he never submitted the application.

Asked if he thought the audit justified Sanford's move, Vaughn said, "I don't have his perspective. I respect him and the leadership he has to provide."

Thomas said legislators will continue to investigate agency problems revealed in the audit and by current and former employees and The News, including the purchase of a Superfund hazardous cleanup site in Inman with DDSN money.

The newspaper reported in December that livestock, residences, hospitals and day cares are banned on the property where a DDSN-funded center trains disabled adults for jobs.

The center's director has said there's "no danger," while the state Department of Health and Environmental Control has said it continues to investigate the extent of groundwater contamination on the site.

Thomas has said numerous public hearings will be held in coming weeks.

He also said it remains to be seen whether House legislation to restructure the agency, making it directly accountable to the Governor's Office, will pass in the Legislature.



February 24, 2009

Ex-Disabilities board member says Sanford 'posturing'

Spokesman says governor wants more accountable agency structure

By Ben Szobody
STAFF WRITER

One of the commissioners removed by Gov. Mark Sanford from the state Department of Disabilities and Special Needs board blasted the governor Monday for what he said is "political posturing" designed to "concentrate his power" at the expense of the Legislature, and that no one has done anything wrong.

"As with his dithering over the acceptance of federal stimulus dollars, the only people who will suffer are the most vulnerable elements of our communities," said commissioner John Powell, a real estate agent from Walhalla. "I am very disappointed in Gov. Sanford's office for not taking a stand for the people."

Sanford spokesman Joel Sawyer said it's no secret that the governor wants a more accountable agency structure that would allow him to hire and fire the director. Under the current structure, he said, a critical audit made clear that the agency's leadership needed to change.

Sanford asked for the resignations of four of the agency's seven commissioners last week, citing a December audit that alleged problems including health and safety gaps, unused funds and a lack of transparency.

Powell said the move is a "stepping stone" for Sanford to take over the agency, replacing the board with the equivalent of "Cabinet appointees." He also said he didn't join the commission until a year ago, after the audit was underway, and that it doesn't make sense to remove him.

Powell said the audit didn't accuse the agency of wrongdoing but offered "recommendations for improvement," which he said will always show up under scrutiny.

He said the governor bent to pressure from former agency officials, causing the ouster of one of the country's top executive directors, who he said made the agency a national model.

Sawyer said the audit offered more than recommendations, but identified "real issues that need to be addressed."

Agency spokeswoman Lois Park Mole said Monday that Stan Butkus remains the director of the agency. Sanford has told commissioners to look at removing top administrators, and Powell has said Butkus' ouster could happen soon.

He said he questioned why Sanford removed only Senate appointees and no governor appointees.

Sawyer said all commissioners are appointed by the governor and approved by the Senate,

and Powell's confusion calls into question his criticism overall.

Powell also defended the agency's use of \$9 million appropriated for a new autism program that the audit said was diverted or unused. He said budget cuts hit the agency before the program could be fully implemented, and by rolling back the program, "nobody was really hurt" because they hadn't yet begun to receive care.

Asked about complaints that the rollout was unnecessarily slow, Powell said that's probably true, but that he's glad it happened that way because of the eventual cutbacks.

Powell said he believes the issues raised in the audit will now "go away."

"Mission accomplished," he said. "Fire people -- which was the purpose of the audit to start with. All recommendations have been addressed. No one has done anything wrong."

GreenvilleOnline.com

February 26, 2009

Ex-auditor: Agency didn't heed warnings

Disabilities officials have no record of recommendation to track workers fired for abuse, spokeswoman says

By Ben Szobody
STAFF WRITER

The former internal auditor of the state Department of Disabilities and Special Needs said top administrators ignored his warnings beginning in 2003 that they needed a way to track employees fired for abuse so they couldn't be rehired elsewhere in the system.

Steve Jeffcoat, internal auditor from 1982 to 2007, told The Greenville News that in one case an agency-funded provider rehired someone it had earlier fired for physical or verbal abuse. After his report, the employee was fired again, Jeffcoat said, but it was still impossible to know if the person was rehired elsewhere.

Agency spokeswoman Lois Park Mole said Wednesday that no one in senior management knows of an audit, memo or other documentation from Jeffcoat recommending a central registry to track fired employees.

December's critical audit of the agency, which serves people with mental retardation and brain injuries, said DDSN doesn't have an adequate system to ensure that caregivers dismissed for safety infractions aren't rehired elsewhere in the system.

Mole said the agency was already strengthening its hiring and reference process before the audit, and that since January 2007, all allegations of abuse, neglect or exploitation are reported to the State Law Enforcement Division. She said any convictions show up when a care provider runs a SLED background check.

Jeffcoat said part of the problem is that the directors of the agency's local boards aren't held accountable in cases in which auditors repeatedly find the same problems. Instead, he said all they have to do is write a "corrective action plan."

Jeffcoat can't recall if he told commissioners but said he made clear to administrators in agency meetings that they needed a central registry of employees fired for abuse to prevent them from moving to a different county and continuing to receive a paycheck.

"There was never any response about it," Jeffcoat said, adding, "I couldn't force them to do it, obviously."

The audit said the agency should amend its contracts with the local boards to require that they formally record whether they would rehire a departing employee. The audit also said the agency should require the boards to use written references that include employee evaluations and why and how they were terminated.

In its response to the audit, the agency agreed to implement the changes. The audit did not

recommend a central registry.

Mole said DDSN's contract with providers already prohibits hiring a person who has abused a consumer and it uses audits to ensure compliance.

However, Jeffcoat said the agency's internal auditor can't cover more than a handful of providers each year, which means providers and their directors are held accountable "only when internal audit goes out and finds them doing something improper."

Mole said a 2002 audit found an employee terminated for abuse was "inappropriately rehired," and both the employee and the executive vice president for administration were terminated as a result.

Jeffcoat said that's true, but the executive vice president was later hired as executive director for another provider.

Mole also said a follow-up audit showed the provider had addressed most of the earlier findings, but multiple reviews also showed "systemic problems still existed," so the agency cut the provider's contract for residential services 50 percent.

March 5, 2009

Disabilities agency must fix procedures

The director of the state agency serving the mentally and physically disabled resigned Feb. 27 after Gov. Mark Sanford and legislative leaders called for his ouster. The resignation of Stan Butkus, director of the state Department of Disabilities and Special Needs (DDSN), gives the agency an opportunity to reform a number of policies identified in a highly critical audit of the agency in December.

Whether it was necessary for Butkus to resign to bring change to the agency is debatable. Certainly Sanford and state Sen. David Thomas believed it was an important step. Thomas believes other top administrators need to resign as well. Sanford has called on four DDSN commissioners to resign.

Sanford's desire to bring greater accountability to this agency can be applauded. A hope is that, with a faltering state economy and record unemployment, Sanford will apply the same high level of accountability to other state agencies as well.

Sanford has argued rightfully that the governor has direct control over too few state agencies. The House Judiciary Committee recently approved legislation that would make the DDSN as well as the state Employment Security Commission directly accountable to the governor. Those are positive measures.

The most important task at DDSN, meanwhile, is to ensure that recommendations from the December audit are followed thoroughly. The audit found that DDSN reviews the quality of its adult residential facilities one-third as often as do other states. The agency also failed to conduct follow-up reviews of facilities with problems.

State auditors reviewed a sampling of 26 DDSN licensing reports for residential service providers and said one report found no quality deficiencies but 25 others should have required a follow-up.

Another sample of nine reports occurring after January 2007 showed more than 100 "Class II" quality deficiencies -- defined as quality problems that do not pose an immediate danger but that could put someone's "physical, emotional and financial well-being in jeopardy," the audit said. The deficiencies included a failure to document that medication was appropriately administered, the presence of expired foods, missing smoke detectors and water heaters set at temperatures too hot for consumers, but the agency conducted no follow-up visits to the facilities, the audit said.

DDSN serves more than 28,000 South Carolinians with mental retardation and related disabilities, autism, traumatic brain injury and spinal cord injury. Almost 5,000 of the agency's clients receive residential services in one of the agency's regional centers or in community residential homes. The remaining clients live at home and receive support there.

Whether or not more administrators or commissioners resign, DDSN needs to improve its procedures. A comprehensive follow-up audit is needed as well to ensure that DDSN is adequately and responsibly serving the needs of its vulnerable clients.

March 4, 2009

Committee moves to place state agencies under Sanford

By Tim Smith
CAPITAL BUREAU

COLUMBIA -- The House Judiciary Committee on Tuesday approved bills placing the Employment Security Commission and the Department of Disabilities and Special Needs under Gov. Mark Sanford's control.

Both agencies had been accused of mismanagement in recent months and both had supporters tell lawmakers the agencies did not need fixing.

The bills move next to the full House for approval. Similar legislation is up for consideration by Senate committees this week.

"I guess folks had their mind made up here," ESC Chairman McKinley Washington said afterward. "I sort of expected the bill to be passed by the committee. I think it may be a different story once it gets to the floor of the House."

Sanford issued a statement afterward praising the committee's passage of the bills.

"The need for more accountability at both of these agencies has been well-chronicled as of late, and to that end I'd give real credit to the House Judiciary Committee for moving forward on this front," Sanford said.

One bill would make the ESC a Cabinet agency, turning over its control to an executive director to be named by Sanford. The agency's three commissioners, who currently are its top administrators and appellate judges, would continue for three years as an appellate panel before turning that job over to the state Administrative Law Court.

Sanford has long criticized the agency, especially for its handling of the unemployment trust fund.

The disabilities agency was the target of a critical performance audit last year. Sanford asked four of the department's seven commissioners to resign two weeks ago, and the agency's executive director resigned last Friday.

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DDSN may become absorbed into governor's cabinet

Posted: March 4, 2009 05:58 PM EST

Updated: March 4, 2009 05:58 PM EST

COLUMBIA, SC (WIS) - The Department of Disabilities and Special Needs has already had a big shake-up at the top.

Thousands of disabled South Carolinians and their families are waiting to see what happens next.

On the south side of the State House, a wintertime rally was held for a summer camp in trouble.

The event was designed to call legislative attention to the funding crisis at Camp Burnt Gin -- the camp program in Wedgefield that serves Bill Green and hundreds of other children with disabilities and illnesses. Green's father, Dr. William Green is a USC psychiatrist.

"I just think it would be a real tragedy for South Carolina to close that. It's probably one of the few things that I truly think state government works wonderfully in, is Camp Burnt Gin," Green said.

The rally was aimed to reverse budget cuts that have put the camp's future in doubt.

Just one part of day-long effort by advocates for those with disabilities to save what they say are essential services.

This year, the annual Disability Advocacy Day comes at a sensitive time for those in charge of protecting the disabled.

The state's Department of Disabilities and Special Needs is in a state of

DDSN may be absorbed into governor's cabinet, Jack Kuenzie reports

SC Politics more>>

Sanford says he's pressing for 'fiscal responsibility'

SC bill allows access to unlicensed homes

DDSN may become absorbed into governor's cabinet

SC lawmakers advance dental care bill

Obama administration launches housing plan

Kerry: Syrian leader wants peace talks with Israel

SC gov expects stimulus decisions next week

Bill could stop people from smoking in cars with children

Britain's Brown sounds warning on Iran, nuke

transition.

plans

A highly critical legislative audit and four of seven commissioners on the way out along with long-time director Stan Butkus.

Leahy pushes for Truth Commission

He resigned last Friday as lawmakers and others continued to press for changes in leadership and control.

"Right now we're taking the steps we can take. We've made the changes with regard to board membership. That's so we can then make a change with the executive director. We've been working with house and senate to try to move this legislation forward," Gov. Mark Sanford said.

"We hopefully bring in somebody new that has no background with this agency, that has some international or national standing, and can come in and take over and make the agency what we know the agency is capable of being and doing," State Sen. David Thomas said.

Kelly Floyd is one of the three DDSN commissioners who will stay on.

"I think that the events that happened were necessary. And I think that the department will be better for it," Floyd said.

But some remain skeptical that putting DDSN in the governor's cabinet will guarantee better administration.

"According to theory, the Department of Corrections is very accountable because it's a cabinet agency. But the problems of the agency are demonstrated by the amount of legal settlements they're paying," State Sen. Phil Leventis said.

Thomas continues to call for a housecleaning of other administrative positions under the director. He still sees questions about money flow and how the agency is being operated on a functional level.

But while Thomas supports putting DDSN in the cabinet, he too says that won't guarantee performance. He believes constant legislative scrutiny will help.

Reported by Jack Kuenzie

Posted by Jeremy Turnage

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DDSN may become absorbed into governor's cabinet

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

GREENVILLE DI

Lennie Schlaeger Mullis,
Plaintiff

v.

David Rotholtz, in his official
capacity; et. al.
Defendants

) Case No.

) AFFIDAVIT

PERSONALLY appeared before me Rob Pruitt, who after being duly sworn, deposes and says as follows:

1. I am the father and guardian of Robyn Sommer Pruitt, who has mental retardation and epilepsy and receives services from DDSN.
2. Kathi Lacy is a defendant in a lawsuit filed on behalf of my daughter in 2003 in the United States District Court for South Carolina. Exhibit 1.
3. My daughter first filed an administrative appeal when DDSN refused to provide her with services in 2002.
4. Kathi Lacy provided the DHHS hearing officer an affidavit stating that DDSN would provide my daughter with residential habilitation services and her administrative appeal was dismissed based on this affidavit in 2003. Exhibit 2.
5. Then Kathi Lacy personally retaliated against my daughter for filing the appeal by attempting to terminate her eligibility for Medicaid and she refused to provide the residential habilitation services that she had promised to provide.
6. We were forced to file the lawsuit in federal court (*Doe v. Kidd*) to keep Kathi Lacy from terminating my daughter's services.
7. In retaliation for our filing the federal lawsuit, Kathi Lacy ordered a school psychologist to secretly evaluate Sommer in 2005 to determine whether her seizures were "real" in an attempt to cause her federal lawsuit to become moot.

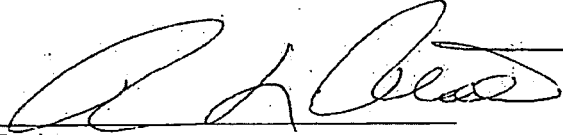
8. Kathi Lacy determined that my daughter does not have mental retardation, even though DDSN has billed Medicaid for services for many years under a diagnosis code of "mental retardation," she receives SSA benefits based on her condition of mental retardation and at least six physicians have diagnosed her as having mental retardation.
9. Even after my daughter underwent brain surgery to attempt to control her seizures, Kathi Lacy has continued to insist that she does not have severe epilepsy, which would entitle her to continue to receive services from DDSN.
10. Kathi Lacy secretly enlisted the assistance of Dr. David Rotholtz when she was trying to terminate my daughter's services.
11. Dr. Rotholtz showed up uninvited at my daughter's annual planning meeting and my daughter asked him to leave.
12. I had never even met Dr. Rotholtz before and had no idea how he knew about my daughter's annual planning meeting or who had invited him to attend the meeting.
13. I never authorized anyone at DDSN to release records related to my daughter to Dr. Rotholtz, who was employed by the University of South Carolina at that time.
14. I personally hand delivered the administrative appeal letter to DDSN headquarters the day after I received notice of Kathi Lacy's determination that Sommer no longer qualified for services.
15. In 2005, Kathi Lacy sent a response to me saying that DDSN was terminating Sommer's services because they did not receive my appeal.
16. Michelle Ford testified that Kathi Lacy herself ordered her to reevaluate my daughter's eligibility for services because of the lawsuit Sommer had filed against Kathi Lacy and others at DDSN. Exhibit 3.
17. Michelle Ford also testified that it was unusual to perform such a reevaluation and that these reevaluations were done only in "high profile cases."
18. Lennie Mullis began providing psychological services to my daughter in 2005 and she was listed as a witness in the federal litigation.
19. Kathi Lacy was well aware of Ms. Mullis' role in the federal litigation involving my daughter.
20. It is inconceivable that Dr. Lacy had no knowledge of the affidavits that Lennie Mullis provided in support of Sommer, that were filed with the federal Courts and the South



Carolina Supreme Court, or that she was not aware that Lennie Mullis was listed as a witness for my daughter.

21. The Fourth Circuit twice overturned the award of summary judgment to Dr. Lacy and other state actors, and in 2011 granted summary judgment to my daughter because Kathi Lacy and other defendants had failed to provide residential habilitation services to my daughter in violation of the Medicaid Act.
22. I have talked with other parents of persons who receive services from DDSN and there is a general fear of retaliation amongst parents, especially a fear of retaliation by Dr. Lacy.
23. Lennie Mullis has provided exceptional services to my daughter and she has been a strong advocate for her which facts are well known to Kathi Lacy.
24. I believe that Kathi Lacy terminated Ms. Mullis' contract in retaliation for her advocacy efforts for Sommer and other persons who receive DDSN services.

FURTHER, YOUR DEPONENT SAYETH NAUGHT.


Rob Pruitt

Sworn and subscribed before me this
14 day of December, 2011.

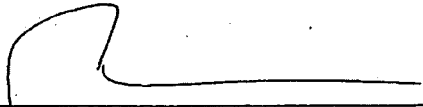

Notary Public for the State of South Carolina
My Commission Expires:

Exhibit 1

Complaint filed in US District Court on June 9, 2003
Doc v. Kidd, 3:03-cv-01918

Mims 2218

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Joe

(b) County of Residence of First Listed Plaintiff: Lexington
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS Linda Kidd,
Stan Butkus, Kathi Lacy, the South
Carolina Dept. of Disabilities and Special Needs,
Robert Kerr, and the South Carolina Dept. of
Health and Human Services.

County of Residence of First Listed: Richland
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number) 803/256-2017

Patricia L. Harrison, Esquire
611 Holly Street
Columbia, South Carolina 29205

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State: ☐ 1 DEF ☐ 1 PTF ☐ 4 DEF ☐ 4
Incorporated or Principal Place of Business in This State
Citizen of Another State: ☐ 2 DEF ☐ 2 PTF ☐ 5 DEF ☐ 5
Incorporated and Principal Place of Business in Another State
Citizen or Subject of a Foreign Country: ☐ 3 DEF ☐ 3 PTF ☐ 6 DEF ☐ 6
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contracts ☐ 195 Contract Product Liability	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury	PERSONAL INJURY ☐ 362 Personal Injury—Med. Malpractice ☐ 365 Personal Injury—Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 422 Appeal 28 USC 155 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce/ICC Rates/etc. ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 510 Selective Service ☐ 550 Securities/Commodities/Exchange ☐ 575 Customer Challenge 12 USC 3410 ☐ 591 Agricultural Act ☐ 592 Economic Stabilization Act ☐ 593 Environmental Matters ☐ 594 Energy Allocation Act ☐ 595 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes ☐ 990 Other Statutory Actions
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☒ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence ☐ 530 Habeas Corpus ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition	LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY ☐ 861 HIA (1395m) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (403(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (403(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. This action arises under the process clause of the Constitution of the US, 42 USC 1396a et seq. (the Medicaid Act), due the Americans with Disabilities Act (ADA) and the SC Omnibus Adult Prot. Act (SC Code of Laws §43-35-5) SC Code of Laws §16-5-10, the SC Mental Retard. Act and 42 USC §1983.

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND UNDER F.R.C.P. 23. CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE

6-9-03

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Mims 2219

ORIGINAL FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

JUN 9 2003

LARRY W. PROPPES, CLERK
COLUMBIA, SC

Sue Doe,
Plaintiff,

v.

COMPLAINT

Linda Kidd, Stan Butkus, Kathi Lacy, the South
Carolina Department of Disabilities
and Special Needs, Robert Kerr,
and the South Carolina Department
of Health and Human Services,
Defendants.

3 03 19 10 10bc

The Plaintiff, complaining of the Defendants, respectfully shows the Court:

1. Plaintiff is a citizen of Lexington County in the State of South Carolina. The South Carolina Department of Disabilities and Special Needs and the South Carolina Department of Health and Human Services are agencies of the State of South Carolina, having offices throughout the State, but with principal offices in Columbia, South Carolina. Individual defendants Stan Butkus, Kathi Lacy and Robert Kerr are employees of the State of South Carolina and are residents of South Carolina. Individual defendant, Linda Kidd is the Chair of the DDSN Commissioners, the governing board of DDSN.
2. This action arises under the due process clause of the Constitution of the United States, 42 U.S.C. 1396a et. seq. (the "Medicaid Act"), the Americans with Disabilities Act (ADA) and the South Carolina Omnibus Adult Protection Act (South Carolina Code of Laws §43-35-5), South Carolina Code of Laws §16-5-10, the South Carolina Mental Retardation, Related Disabilities, Head Injuries and Spinal Cord Injuries Act and 42 U.S.C. §1983.

Mims 2220

FACTS

3. Sue Doe is a fictitious name for the Plaintiff, who is a twenty year old woman who has developmental disabilities, including epilepsy, mild mental retardation and cerebral palsy. Plaintiff currently resides in the home of her mother in Lexington County.
4. The South Carolina Department of Health and Human Services (hereinafter referred to as HHS) is the state agency which is responsible for the implementation and oversight of all Medicaid programs in South Carolina. Robert Kerr is the Director of HHS. Section 44-20-240 of the South Carolina Code of Laws, as amended, grants the South Carolina Department of Disabilities and Special Needs (DDSN) the authority over all the state's services and programs for the treatment and training of persons with mental retardation, related disabilities (including epilepsy and cerebral palsy), autism, head injuries and spinal cord injuries. HHS contracts with DDSN to administer the MR/RD (mental retardation and related disabilities) Medicaid waiver program which provides benefits to persons who have mental retardation and/or related disabilities. Stanley Butkus is the Director of DDSN. Kathi Lacy is an employee of DDSN. Linda Kidd is the Chair of the South Carolina Department of Disabilities and Special Needs Commissioners. The Richland Lexington Disabilities and Special Needs Board (RichLex) is the local DDSN board which contracts with DDSN to provide Medicaid services for Plaintiff and other persons eligible for the MR/RD Medicaid waiver in the midlands of South Carolina.
5. Capitated funding is the system DDSN adopted a system to determine funding available to individual Medicaid recipients. This system determines funding based on whether or not a person is institutionalized and provides significantly limited funding for persons who choose to live in the community.

6. Services for Plaintiff were first requested from the Richland Lexington Disabilities and Special Needs Board (RichLex) on behalf of Plaintiff in 2000. The agency did not provide Plaintiff with information on Medicaid eligibility and available services and failed to advise Plaintiff of her appeal rights in violation of the Medicaid Act. RichLex, the local DDSN board, did not request a Medicaid waiver slot for Plaintiff until legal counsel was retained by Plaintiff in 2002. No services were provided to Plaintiff until 2003.
7. For more than two years, DDSN repeatedly found Petitioner to be ineligible for services under both the mental retardation and related disabilities categories. These two categories have separate criteria established by the federal government which must be applied in determining eligibility for MR/RD Medicaid services. DDSN informed Plaintiff that she could not appeal DDSN's decision to deny Plaintiff's eligibility outside of DDSN and that the decision of the State Director of DDSN was final and not subject to review.
8. Plaintiff requested residential habilitation services, in addition to other MR/RD waiver services. DDSN again denied Plaintiff's eligibility for services in 2002 under both categories of mental retardation and related disabilities.
9. On December 16, 2002, DDSN notified Plaintiff that she had been placed on a waiting list for MR/RD Medicaid waiver services, which caused Plaintiff to believe that DDSN had determined her to be eligible for MR/RD waiver services. DDSN did not advise Plaintiff at that time that DDSN had again determined her to be ineligible for services under both mental retardation and related disabilities categories. DDSN first provided Plaintiff with notice of her right to appeal this adverse decision in January, 2003 and

Plaintiff filed a request for a fair hearing with HHS. DDSN and HHS have repeatedly attempted to dismiss Plaintiff's complaint since her request for fair hearing was filed.

10. DDSN finally determined that Petitioner was eligible for the MR/RD waiver under the related disabilities category on March 7, 2003, just prior to Plaintiff's federally mandated fair hearing, which had been scheduled for March 26, 2003. DDSN and HHS again attempted to prevent Plaintiff from exercising her federally protected right to a hearing on the merits. At a hearing on the State's motion to dismiss held on March 26, 2003, employees of DDSN advised the hearing officer that Plaintiff's appeal was moot because all of Plaintiff's requests for services had been met. Plaintiff objected to the dismissal of her fair hearing appeal, disagreeing that all requested services had been provided. The fair hearing on the merits which had been scheduled for March 26, 2003 was cancelled by the HHS hearing officer and no hearing has been held on the merits. The hearing officer informed the parties on March 26, 2003 that he was going to dismiss Plaintiff's fair hearing appeal, however, no order has been issued. Plaintiff has not received the requested residential habilitation services and DDSN has not provided Plaintiff and other similarly situated consumers with the required free choice of providers for residential habilitation services.
11. Since the hearing on Defendant's motion to dismiss on March 26, 2003, Plaintiff has received multiple threats from the State of their intention to discontinue MR/RD Medicaid waiver services.
12. Plaintiff's mother has will be moving to another state within a month due to illness. Plaintiff will have no place to live after her mother leaves South Carolina and she requires close supervision due to her severe seizures, cerebral palsy and other disabilities.

Plaintiff does not have funds to pay for needed medical and residential care.

FIRST CAUSE OF ACTION

The State has deprived Plaintiff of rights to
Medicaid services in violation of 42 U.S.C. §1983.

13. Plaintiff is a person who is entitled under the Medicaid Act to receive residential and other MR/RD services funded by Medicaid.
14. DDSN and HHS are obligated under the Medicaid Act and relevant rules and regulations to provide Plaintiff with residential habilitation and other MR/RD services.
15. Stan Butkus and Kathi Lacy are state actors who, under color of law, have deprived Plaintiff of rights conferred by the Medicaid Act in violation of 42 U.S.C. §1983 through their actions as officers or employees of DDSN.
16. Stan Butkus and Kathi Lacy have deprived Plaintiff of due process rights secured by the United States Constitution and rights to Medicaid services under various federal Medicaid laws and regulations.
17. Stan Butkus, Kathi Lacy, Linda Kidd, DDSN and HHS have failed to provide residential rehabilitation services and freedom of choice of providers of residential rehabilitation services as is mandated by the Medicaid Act, federal regulations and the State Medicaid Plan.
18. Defendants' actions are subject to repetition but have evaded review and may continue to do so.
19. Plaintiff has been injured by the Defendants' failure to provide services to which she is entitled under the Medicaid Act.

20. Plaintiff needs the protection of this Court in granting preliminary injunctive relief and she will suffer immediate and irreparable harm if Defendants continue refusing to provide residential MR/RD services to which she is entitled to receive.
21. Probable injury to the Defendants if this Court grants Plaintiff's request for preliminary injunctive relief is minimal.
22. Plaintiff is entitled to injunctive relief, damages and attorneys fees and costs resulting from the violation of Plaintiff's rights under 42 U.S.C. §1983.

SECOND CAUSE OF ACTION

DDSN and HHS have violated Plaintiff's due process rights.

23. The allegations set forth in all foregoing paragraphs are incorporated by reference.
24. More than ninety days have passed since Plaintiff requested a fair hearing and a hearing on the merits has not been granted in violation of the Medicaid Act.
25. Plaintiff's eligibility determinations and claims for medical assistance have been denied and/or delayed due to action taken by DDSN and HHS or action which should have been taken but was not taken with reasonable promptness.
26. Plaintiff's due process rights were denied by Defendants' failure to consider Plaintiff's request for residential habilitation services as an application for medical assistance under the Medicaid MR/RD waiver.
27. Plaintiff is entitled to notice of adverse actions taken by Defendants and to a fair hearing.
28. DDSN and HHS have denied Plaintiff's right to a fair hearing, thereby violating Plaintiff's due process rights.
29. Plaintiff is entitled to injunctive relief, damages and attorneys fees and costs.

THIRD CAUSE OF ACTION

Defendants have failed to provide services with reasonable promptness in violation of 42

U.S.C. §1396a(a)(8).

30. The allegations set forth in all foregoing paragraphs are incorporated by reference.
31. Plaintiff requested medical assistance from DDSN in 2000, including residential habilitation services and has specifically requested residential and other MR/RD Medicaid waiver services from both DDSN and HHS since 2002.
32. Plaintiff is entitled to the requested services.
33. DDSN and HHS have failed to provide services with reasonable promptness.
34. Plaintiff has sustained injury, including, but not limited to a deterioration in her condition, specifically including increased seizure activity, and has incurred expenses of litigation as a result of this failure to provide services with reasonable promptness.
35. Defendants' failure to provide services with reasonable promptness is subject to repetition.
36. Plaintiff is entitled to injunctive relief, damages and attorney fees and costs.

FOURTH CAUSE OF ACTION

Defendants have violated Plaintiff's freedom of choice of providers for medical and residential habilitation services.

37. The allegations set forth in the foregoing paragraphs are incorporated by reference.
38. DDSN is required by the Medicaid Act to enlist sufficient providers to provide Medicaid beneficiaries, including Plaintiff, with a choice of providers for residential habilitation services.
39. Plaintiff is entitled to residential habilitation services.

40. DDSN and HHS have failed to enlist enough providers so that care and services for MR/RD waiver participants are available under the plan at least to the extent that such care and services are available to the general population in the geographic area as required by §1396a(a)(30)(A), thereby denying Plaintiff federally mandated freedom of choice of providers.
41. DDSN and HHS have failed to establish payment rates to private providers which are at levels sufficient to enlist qualified providers in violation of 42 U.S.C. §1396a(a)(30)(A) thereby denying Plaintiff with freedom of choice of providers..
42. HHS and Linda Kidd have failed to oversee the establishment and implementation of policies of DDSN and have contributed to the impediments to free choice of residential rehabilitation providers in South Carolina which has caused injury to Plaintiff and other similarly situated individuals.
43. As a result of Defendants' actions, Plaintiff has been denied her right to a meaningful choice of providers for medical and residential habilitation services which are needed to provide for her health and safety.
44. Plaintiff is entitled to injunctive relief, attorney fees and costs.

FIFTH CAUSE OF ACTION

Violation of Olmstead and the Americans with Disabilities Act (ADA).

45. The allegations set forth in the foregoing paragraphs are incorporated by reference.
46. DDSN's capitated funding system violates Olmstead and the Medicaid Act and denies Plaintiff's right and the rights of similarly situated individuals to receive services in the least restrictive setting.

47. Plaintiff has been injured by the implementation of DDSN's capitated funding system.
48. Plaintiff requests injunctive relief, attorney fees and costs.

SIXTH CAUSE OF ACTION

Failure of HHS to oversee MR/RD Medicaid Program and to assure
that all applicants be notified of all available services.

49. The allegations set forth in the foregoing paragraphs are incorporated by reference.
50. HHS has illegally delegated to DDSN excessive power to exercise administrative discretion in the administration and supervision of the MR/RD Medicaid waiver and the ICF/MR Medicaid plan in violation of the Medicaid Act and 42 CFR 431.10.
51. HHS has allowed DDSN to make administrative decisions and to substitute its judgment for that of the Medicaid agency in respect to policies related to MR/RD waiver and ICF/MR Medicaid services in violation of the Medicaid Act and 42 CFR 435.10(e)(1-3).
52. DDSN and HHS have failed to correct illegal or improper practices promptly when Federal or State reviews reveal serious problems with respect to compliance with Federal requirements, placing Plaintiff and others in danger.
53. DDSN has failed to notify Plaintiff and other applicants of the plan for payment of health insurance premiums for persons qualified for Medicaid services (HIPP) preventing Plaintiff and others from receiving payment for private health care premiums.
54. Plaintiff was entitled to notice of her eligibility for the HIPP program and has incurred damages as a result of DDSN failing to comply with the Medicaid Act.
55. HHS has failed to correct illegal and inappropriate practices in violation of 42 U.S.C. 430.32 upon receipt of information disclosing abuse, neglect and exploitation of persons receiving MR/RD residential services thereby placing Plaintiff and others at risk of harm.

56. HHS has failed to promptly make corrective payments to Plaintiff, retroactive to the date an incorrect action was taken, in violation of 42 U.S.C. 431.246.
57. Plaintiff requests that this court direct HHS, pursuant to 42 CFR 431.250, to reimburse Plaintiff for expenses which should have been paid by Medicaid and to reimburse Plaintiff for expenses which have been incurred in connection with her fair hearing and carrying out the hearing procedures, including expenses of obtaining private medical assessments.
58. Plaintiff is entitled to other damages as a result of HHS' failure to provide oversight and responsibility for the MR/RD Medicaid programs, attorney fees and costs.

SEVENTH CAUSE OF ACTION

Improper termination of MR/RD waiver services.

59. The allegations set forth in the foregoing paragraphs are incorporated by reference.
60. DDSN has adopted policies and practices which improperly authorize the agency to terminate Medicaid eligibility if MR/RD services are not received in a thirty day period which violates the Medicaid Act.
61. Plaintiff attempted to arrange for MR/RD waiver services within thirty days of the DDSN's determination of eligibility.
62. Plaintiff's inability to secure MR/RD waiver services within thirty days was caused by DDSN's failure to comply with the Medicaid Act.
63. These violations of the Medicaid Act and federal Medicaid rules and regulations are ongoing and continuous and are pervasive, affecting Plaintiff and others who are similarly situated.

64. This practice of terminating MR/RD waiver eligibility denies persons benefits to which they are entitled under the State Medicaid Plan.
65. These violations place the health and safety of persons like Plaintiff who have disabilities in jeopardy.
66. The violations contained herein caused Plaintiff to lose skills and fail to develop others and have caused Plaintiff severe mental stress and physical deterioration of her condition due to increased seizure activity and other physical damages.
67. Plaintiff requests injunctive relief, damages, attorney fees and costs.

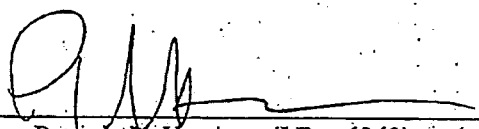
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this honorable Court declare that the actions of the Defendants complained of herein violated the rights guaranteed to Plaintiff. Plaintiff requests that this Court issue its judgment granting injunctive relief, actual damages to be determined at trial, reasonable attorney fees and costs and for such equitable, affirmative or other relief as this Court may deem just and proper including:

1. Preliminary injunctive relief directing DDSN to provide Plaintiff with residential habilitation services through the provider of Plaintiff's choice.
2. Preliminary injunctive relief enjoining the Defendants, their agents, employees, successors, attorneys and those acting in concert or participation with Defendants from engaging in the unlawful practices set forth herein.
3. An Order directing the State to pay Plaintiff's medical expenses as a result of the Defendants' failure to provide MR/RD services with reasonable promptness and to pay health insurance premiums retroactive to six months after the first request for services.

4. An Order directing DDSN and HHS to comply with the federal statutes, rules and regulations of the Medicaid Act.
5. An order directing the State to pay reasonable attorney's fees and costs.

Patricia L. Harrison, Attorney at Law -

BY: 

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E Mail plh.cola@worldnet.att.net

Attorney for Plaintiff

June 9, 2003

Exhibit 2

Affidavit of Kathi Lacy dated 17 July 2003

Mims 2232

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Sue Doe,

Plaintiff,

v.

Linda Kidd, Stan Butkus, Kathi Lacy,
the South Carolina Department of
Disabilities and Special Needs, Robert
Kerr, and the South Carolina Department
of Health and Human Services,

Defendants.

CIVIL ACTION NO.: 3:03-1918-10BC

AFFIDAVIT OF KATHI K. LACY, Ph.D.

PERSONALLY APPEARED BEFORE ME, KATHI K. LACY, Ph.D., who first being duly sworn deposes and states as follows:

1. I am employed as the Associate State Director, Policy at the South Carolina Department of Disabilities and Special Needs ("DDSN"), and have held that position since May 2002. Prior to that, I had been the Director of the Mental Retardation Division at DDSN since September 1997. I have also been employed as a consultant to DDSN, DHEC, and other non-profit organizations, and have over 18 years of professional work experience in the health care industry. My duties in my present position include planning, developing, and coordinating all policies and initiatives to achieve the agency's goals and objectives related to its mission to include service delivery and eligibility, quality improvement and assurance, outcome based performance measurement systems, creating customer-focused and customer-driven systems, and designing best practice models of care. I am familiar with the requests for eligibility made to DDSN on behalf of the Plaintiff in this case, both through

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personal involvement in this matter and through knowledge of the records kept by DDSN and by related agencies.

2. Applications for DDSN services are initially submitted to county agencies, in this case the Richland/Lexington Disabilities and Special Needs Board ("DSN"). DSN processes eligibility applications and MR/RD Waiver Slot requests and forwards them to DDSN, the State agency, which makes the determinations of eligibility for DDSN services as well as the separate decision about whether an individual will be placed on a waiting list for a funded slot.
3. Plaintiff is seeking, and has been found eligible for, the service known generally as "residential habilitation." As set forth more fully in Exhibit 1 (NOTE: All references to Exhibits herein are to Exhibits attached to this Affidavit), residential habilitation services include the care, skills training and supervision provided to individuals in a non-institutional setting. The degree and type of care, supervision, and skills are dependent on the individual's needs.
4. There are several settings in which residential habilitation services can be provided. DDSN has found that but for the illness of Plaintiff's mother and the unavailability of Plaintiff's father, Plaintiff's needs could be met simply by providing certain services in her family home. However, because of her family situation, DDSN has concluded that Plaintiff will require out-of-home residential habilitation services at either the Supervised Living Program II (SLP II) level, or the Community Training Home I (CTH I) level. At present, DDSN would prefer to place Plaintiff in a CTH I facility because Plaintiff has little experience living outside the family home, and in a CTH I setting there is a greater level of assistance available than in an SLP II facility. Plaintiff's family and Plaintiff's counsel claim in this case that Plaintiff should instead be placed in a CTH II facility, which is a more restrictive setting than DDSN has found Plaintiff to need.
5. A CTH I facility is typically a private home, normally in a family setting, in which one or at most two consumers of DDSN services reside with a family. One or more of the family members (or other persons) residing in these homes are trained caregivers who are available 24 hours a day, 365 days of the year. More details about this and other residential options are set forth in Exhibit 2.
6. A CTH II facility is typically a group home in which three or at most four DDSN consumers reside. Caregivers typically do not reside in these homes, but instead are present on a 3-shift, 24-hour basis. The persons placed by DDSN in a CTH II facility are less able to live independently than those placed in a CTH I facility. More details about this and other residential options are set forth in Exhibit 2.
7. The following is offered as additional background for the matters involved in this case:
 - a. The MR/RD waiver is an alternative to Intermediate Level of Care for the Mentally Retarded (ICF/MR). As such, people with mental retardation and

related disabilities who meet this level of care have the choice of receiving services in the ICF/MR or in home and community based settings through the MR/RD waiver.

- b. When a client chooses to receive services in home and community based settings, as in this case, a plan of service is developed to identify needs and to propose solutions to meet those needs. Some of the solutions are services provided through the MR/RD waiver, some are services provided through the state Medicaid plan, and some are supports which can be provided by family members, the community (churches, civic organizations, etc.), or the person himself. Clients are informed of the services available through the MR/RD waiver and the providers approved to render those services.
 - c. A client can state his preference for the services he wants, but ultimately it is up to the State to determine the services required to meet the needs because the State must assure: (1) that the service is sufficient to meet the identified need due to its obligation to assure the health and welfare of the client, (2) that it is a service that meets the least restrictive environment criteria according to the federal Olmstead Supreme Court decision (Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581 (1999)) and the SC Code of Laws 44-20-20, and (3) that the most efficient use of resources is made.
 - d. If DDSN were to allow every client to select services based on want versus actual need, the federal government could potentially recoup money from the state for not following federal law, and the state government could recoup money or reduce its funding to DDSN for not following state law. The client, Sue Doe is requesting the MR/RD waiver service residential habilitation. DDSN has approved this service for Sue Doe. It is up to DDSN to determine which setting in which to provide residential habilitation based on the three criteria stated above. As recently as May 29, 2003, Plaintiff's attorney indicated that residential habilitation services in either a CTH I (foster home) or a CTH II setting (group home) would be acceptable. DDSN has approved CTH I services based on the three criteria set forth in subsection (c) of this paragraph. Apparently, it is now the family's claim or preference that only services in a CTH II setting are appropriate for Plaintiff. As set forth herein, DDSN has determined that neither Plaintiff's physical condition nor her cognitive abilities require this level of need.
8. Plaintiff's mother has applied several times since January 2000 to DDSN, seeking to have Plaintiff declared eligible for DDSN services.
 9. The initial application for services was submitted at some time on or about January 4, 2000, as indicated by the Background Document of that date. (Exhibit 3.) In July 2000, DDSN concluded that Plaintiff did not meet DDSN criteria for eligibility - Mental Retardation was ruled out, and her adaptive behavior scores were too high for her to qualify as eligible for Related Disability services. (Exhibit 4.) In August 2000, Plaintiff's mother was informed in writing of Plaintiff's ineligibility, and was given referrals and telephone numbers to mental health, P&A, and Greenwood Genetics.

The letter also included the right to appeal DDSN's decision. (Exhibit 5.) No appeal was taken, and the case was closed.

10. In October 2000, the case was reopened to determine whether Plaintiff was eligible for DDSN services under Head and Spinal Cord Injury criteria. Plaintiff was again determined not eligible, and her mother was informed of this decision and of her right to appeal. (Exhibits 6, 7, 8 and 9.)
11. In April 2001, Plaintiff's mother appealed the October 2000 eligibility decision. DDSN requested that Plaintiff's mother submit any new medical information and school records. (Exhibit 10.)
12. On June 27, 2001, Plaintiff's mother wrote DSN to advise that she, the mother, would be spending a month in Texas with her parents, and that Plaintiff would be staying with her father in Columbia during that month. (Exhibit 11.)
13. On August 8, 2001 DDSN conducted another evaluation of Plaintiff, and concluded in a written evaluation of the same date that Plaintiff again did not meet DDSN criteria for eligibility under any category. (Exhibits 12 and 13.)
14. On September 26, 2001, DSN notified Plaintiff's mother that Plaintiff did not meet criteria for DDSN eligibility. (Exhibit 14.)
15. On May 31, 2002, Plaintiff's mother by telephone requested a re-evaluation of Plaintiff's eligibility for DDSN services. (See Exhibit 15.)

The remaining paragraphs of this Affidavit are a chronological account of the events related to that request by Plaintiff's mother.

16. June 6 and July 1, 2002:

DSN Board mails letters to Plaintiff's mother reminding her she needs to sign forms in order to process the re-evaluation. (Exhibits 16 and 17.)

17. September 18, 2002:

DDSN conducts a new evaluation of Plaintiff's adaptive functioning. DDSN sent two evaluators – one to interview Plaintiff's mother and one to assess Plaintiff. The reason for this was to resolve conflicting information reported about the severity of Plaintiff's functioning level. Plaintiff's counsel attended and participated in a manner that the evaluators believed inappropriate; this level of participation by Plaintiff's counsel caused the evaluators to question the validity and reliability of the evaluations. A written evaluation followed on November 6, 2002.

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18. November 6, 2002:

The written Psychological Evaluation report (Exhibit 18) from the September 18, 2002, evaluation concludes that Plaintiff "has been diagnosed as having CP [cerebral palsy] and a seizure disorder," but also concludes that

It is the opinion of the examiners that neither her seizure disorder nor her CP nor the two combined meet criteria for eligibility under Related Disability. Overall, [Plaintiff] does not present like someone with mental retardation or very limiting disabilities. Her CP is very mild. She also appears to be experiencing an acute exacerbation of her seizures which may not continue to be severe or lifelong.

DDSN was therefore of the opinion, in light of the information before it, that it would be appropriate to deny eligibility. Nevertheless, in order to leave the door open for the Plaintiff to provide additional evidence of eligibility, the agency did not formally deny eligibility, but instead deferred the eligibility determination because of numerous unanswered questions about Plaintiff's medical condition, including emotional, behavioral, and health problems, as well as family relationship difficulties all as indicated by the six recommendations on page 7 of the Psychological Evaluation dated November 6, 2002.

Those six recommendations were that the following actions be taken:

1. Comprehensive neurological re-evaluation in light of the fact that [Plaintiff's] seizures have increased in frequency;
2. Assurance that [Plaintiff's] medication is being taken as prescribed;
3. Psychiatric evaluation regarding medications, noting [Plaintiff's] history and current symptoms of anxiety and possible depression;
4. Psychiatric and/or psychological evaluation regarding need for individual/family therapy;
5. PT/OT [physical therapy and occupational therapy] evaluations with therapies and assistive devices as recommended, which will assist her in becoming more independent and safe; and
6. Continuation of services through the Department of Vocational Rehabilitation.

The recommendation for a neurological re-evaluation was included in order to determine why Plaintiff was having such an increase in seizures reported by her mother. DDSN was not provided any information about any recent visits to Plaintiff's neurologists or current treatment to address the mother's concern, although DDSN requested this information on numerous occasions.

As will be seen in the following paragraphs, the family was subsequently advised by DDSN on numerous occasions that it was the family's responsibility to have the recommended evaluations performed, but that assistance from DSN to help arrange

these services, as well as financial assistance from Medicaid and other sources, were both available so that the evaluations could be performed without cost or undue difficulty to the family. In spite of this, the family did not avail itself of DSN's assistance in having any of the recommended evaluations performed at the time, and as far as DDSN is aware, still has not had any of those evaluations performed.

19. November 13, 2002:

DDSN notified Plaintiff's mother in writing of DDSN's decision to defer eligibility determination to allow the family to meet Plaintiff's immediate health needs and to allow more time for additional evaluations to be performed, as recommended by the November 6, 2002, Psychological Evaluation, which was enclosed. (Exhibit 19.)

20. November 19, 2002:

Plaintiff's father sent letter to DDSN stating Plaintiff needed government assistance with psychological, physical, and occupational therapy. (Exhibit 20.)

21. November 22, 2002:

Plaintiff's attorney files with DDSN an application for an MR/RD Waiver slot for Plaintiff. (Exhibit 21.) Plaintiff's counsel notes that "I have a considerable amount of information in my files which are available to you in making this determination. . . .," but does not supply copies of this information to DDSN. No information is provided to DDSN by Plaintiff's counsel or the family as to what actions, if any, had been taken to address the six DDSN recommendations.

22. December 3, 2002:

DSN Board submits a request for a MR/RD Waiver slot for Plaintiff to DDSN, noting that "DDSN eligibility is deferred." (Exhibit 22.)

23. December 4, 2002:

On this date, I replied to Plaintiff's father's letter of November 19, 2002. (Exhibit 23.) As my letter indicates, I provided Plaintiff's father with specific instructions on how to access the needed evaluative services through the State Medicaid Plan at no cost to the family. In addition, I informed Plaintiff's father of the DSN Board's attempts to contact Plaintiff's mother, and reiterated the DSN Board's willingness to assist with any of the six recommendations in the November 6, 2002 Psychological Evaluation.

24. December 16, 2002:

Jennifer Duell, (MR/RD Waiver Coordinator for DDSN) wrote Plaintiff's mother, notifying her that Plaintiff was being placed on "regular" (i.e. non-critical) waiting list in the 114th position, and that Plaintiff's mother will be notified when a MR/RD

Waiver slot becomes available. (Exhibit 24.) An appeal information sheet was attached to this notification.

25. January 8, 2003:

Plaintiff's counsel by letter of this date requests a hearing by the South Carolina Department of Health and Human Services ("DHHS"). (Exhibit 25.) This letter contends that DDSN was in error in deferring an eligibility decision, and also contends that Plaintiff should have placed on the "critical" waiting list rather than on the regular waiting list, as was done by DDSN's December 16, 2002 waiting list decision.

26. January 21, 2003:

Plaintiff's counsel sends letter to DSN Board, DDSN, and DHHS stating mother had been hospitalized the previous day for psychiatric problems, and requesting that Plaintiff be moved from the "regular" waiting list to the "critical" waiting list, and that Plaintiff's eligibility be determined immediately. (Exhibit 26.) I am informed that the hospitalization lasted for less than three full days, from January 20, 2003 through January 22, 2003.

27. January 22, 2003:

Because of the mother's hospitalization and the January 21, 2003 statement of Plaintiff's counsel that Plaintiff had been left at home unsupervised on January 21, the DSN Board investigated the matter as a "critical incident." The incident report, (Exhibit 27), notes that the DSN Board called Plaintiff's counsel, who then reported that she thought someone was actually with Plaintiff at all times during the mother's absence.

28. January 22, 2003:

By letter of this date, I replied on behalf of DDSN to Ms. Harrison's December 24, 2002 letter restating deferral of DDSN eligibility determination allowing time for family to implement the six recommendations made in November 2002 and again expressing concern about Plaintiff's reported seizure activity. (Exhibit 28.) Assistance in scheduling appointments to carry out November 2002 recommendations was again offered, with emphasis given to the fact these services were accessible at no cost to the family through the State Medicaid Plan. I noted that no new information had been provided to DDSN, and that Ms. Harrison was provided with all MR/RD waiver information as requested.

29. January 27, 2003:

DSN Board submitted request to DDSN that Plaintiff be moved from the regular MR/RD Waiver Waiting List to the critical MR/RD Waiver Waiting List due to mother's condition as reported by Plaintiff's counsel. (See Exhibit 29.)

30. February 11, 2003:

At a DHHS status conference set as a result of Plaintiff's hearing request dated January 8, 2003, Plaintiff's counsel supplies counsel for DDSN with additional information about Plaintiff's condition. While this information predated DDSN's most recent evaluation, it had not previously been supplied to DDSN by anyone acting on behalf of the Plaintiff.

31. February 18, 2003:

Jennifer Duell, (MR/RD Waiver Coordinator for DDSN) wrote Plaintiff's mother, notifying her that Plaintiff had been moved from the regular MR/RD Waiver Waiting List to the Critical MR/RD Waiver Waiting List (#14) based on information about the mother's condition submitted to DDSN by DSN on (or about) January 27, 2003. (Exhibit 30.)

32. March 7, 2003:

On this date I notified Plaintiff's counsel by letter of DDSN's determination that Plaintiff meets criteria for DDSN eligibility under the Related Disabilities category. (Exhibit 31.) This determination was based on the additional information provided by Plaintiff's counsel at the February 11, 2003 administrative status conference.

DDSN did not then or any time thereafter determine that Plaintiff met the criteria for a diagnosis of mental retardation. The reason for this is that Plaintiff's Verbal scores in 1989, 1992, 2000, and 2001 of 84, 88, 81, and 83, respectively, indicate that she is capable of functioning intellectually in verbal areas in the low average range. Because she has clearly demonstrated such relatively high abilities, a diagnosis of mental retardation is not warranted. Additional proof of Plaintiff's lack of mental retardation can be provided as this litigation progresses.

With this determination that Plaintiff was eligible for "Related Disabilities" services (that is, cerebral palsy and seizure disorder), I notified Plaintiff's counsel in this letter of March 7, 2003 that DDSN had initiated an assessment as to the level of care that would be appropriate for Plaintiff.

33. March 11, 2003:

Following the level of care assessment, Plaintiff was found to meet criteria for MR/RD Waiver Services. An MR/RD Waiver slot was awarded to Plaintiff on March 11, 2003. Plaintiff and Plaintiff's counsel were orally notified of such on the same date; with written notification by letter of March 17, 2003. (Exhibit 32.)

34. March 2003:

Plaintiff was moved from #14 on the Critical MR/RD Waiver waiting list to #1.

35. March 17, 2003:

A service plan meeting for Plaintiff was held. The plan that resulted from that meeting was approved for implementation on April 3, 2003 (Exhibit 34, referenced below), and was sent to Plaintiff's counsel by letter dated April 16, 2003 (see Exhibit 35, referenced below).

36. March 26, 2003:

At the DHHS hearing on Plaintiff's January 8, 2003, appeal, the hearing officer orally grants DDSN's Motion to Dismiss that had been filed on March 18, 2003. A 14-page written Order is issued on June 19, 2003, (Exhibit 33), reaffirming the hearing officer's original conclusion that the case was in effect moot, because "[a]ll of [Plaintiff's] appealed issues of fact were resolved in [Plaintiff's] favor." Order, p. 6. The June 19, 2003 Order is accompanied by a cover letter indicating a right of appeal to the state Administrative Law Judge Division.

37. April 3, 2003:

DDSN approves Plaintiff's service plan. The plan is attached as Exhibit 34. The plan includes four specific services to meet Plaintiff's needs in the least restrictive environment as required by state and federal laws:

- Adult day health care;
- Personal care services;
- Respite care; and
- Psychological evaluation.

The combination of these services was intended to offer the family a flexible, comprehensive plan of services to meet Plaintiff's needs in her family home.

38. April 16, 2003:

DDSN forwards a copy of the approved plan to Plaintiff's counsel. (Exhibit 35.)

39. May 27, 2003 and May 29, 2003:

Plaintiff's counsel sent two letters to DDSN stating that Plaintiff's mother had been hospitalized for depression. (Exhibits 36 and 37.) As a result, Plaintiff's counsel requested residential services for Plaintiff in a CTH I or CTH II setting;

40. May 28, 2003:

As indicated in the "Critical Circumstance Amendment" of this date, Plaintiff's counsel "clarified" that Plaintiff's mother had not been hospitalized, but was receiving outpatient therapy. (Exhibit 38.) Also in this document, the DSN Board reported to DDSN that only one of the four services had been implemented due to failure to follow through on the part of the family and Ms. Harrison. The DSN Board also reported it had been extremely difficult to gather facts about Plaintiff's situation and that there had been minimal effort from the family and Ms. Harrison to put all the approved services into place.

41. May 30, 2003:

Dr. Butkus, Director of DDSN, reiterates in a letter to Plaintiff's counsel that DDSN has an obligation to serve people in the least restrictive environment as required by state and federal laws. (Exhibit 39.) Plaintiff's counsel was also informed of the DSN Board's report that the family was only allowing one of the four specific services to be implemented. Therefore, DDSN disagreed with Plaintiff's counsel's statement that "all efforts to maintain [Plaintiff] in the home had been exhausted." Plaintiff's counsel was encouraged to work with the family to put all the services into place. Once again, she was reminded that the DSN Board was ready to assist.

42. May 2003:

DSN Board submitted a request to DDSN for Plaintiff to be placed on the Critical Circumstances list based on mother's condition and hospitalization as reported by Ms. Harrison.

43. June 5, 2003:

Dr. Butkus, Director of DDSN, sends letter to Plaintiff's counsel requesting actual medical reports related to mother's May 2003 treatment for depression in order to prove that the case met the requirements to be regarded as a "critical circumstances" case, noting that counsel's request will be expedited upon receipt of the mother's medical information. (Exhibit 40.)

44. June 13, 2003:

Plaintiff's counsel responds to DDSN's June 1, 2003 letter, enclosing a one-page signed statement from Plaintiff's mother's psychiatrist stating that mother had been

treated through an outpatient behavioral health program, and that Plaintiff was at "imminent risk" of losing her primary caregiver. (Exhibit 41.)

45. June 26, 2003:

Letter sent from James R. Hill, DDSN General Counsel, to Plaintiff's counsel, confirming Plaintiff's placement on the Critical Circumstances Waiting List and concluding that based on both the health of Plaintiff's mother and the family's refusal to avail itself of available in-home services, the State was left with no alternative but to remove Plaintiff from the least restrictive environment (i.e., in-home placement) and instead make available out-of-home residential habilitation services in either a SLP II or CTH I setting. (Exhibit 42.) This determination was not based on changes in Plaintiff's health, but on the mother's health and the actions or inactions of family members.

46. As of the date of this Affidavit, the status of this matter is that DDSN is ready and willing to place Plaintiff in a CTH I facility, but such placement has been refused by the family. DDSN reiterates that Plaintiff's condition does not warrant her placement in a CTH II facility, i.e., a group home, and that such a placement is also inconsistent with the requirement that Plaintiff be placed in a situation representing the least restrictive alternative.

47. Among DDSN's duties are the duty to keep records as to the availability of each type of placement. As of July 9, 2003, there were no CTH II vacancies in Charleston County for females. This information will be updated, if necessary, as this litigation progresses, but for the reasons already stated, DDSN believes that placement of this Plaintiff in a CTH II facility would be inappropriate even if such space were available.

FURTHER AFFIANT SAYETH NOT.

Kathi K Lacy
KATHI K. LACY, Ph.D

SWORN TO BEFORE ME THIS _____

DAY OF July 19, 2003.

[Signature] (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES:

April 15, 2007

Exhibit 3

Testimony of Dr. Michelle Ford
SC Dept of Appeals and Hearing

Mims 2244

1 FORD: Division. Janet Priest
2
3 WOODINGTON: Okay. Do you also advise Dr. Lacy?
4
5 FORD: As requested, yes.
6
7 WOODINGTON: As requested. Let's go through your educational background,
8 starting with your Bachelors Degree.
9
10 FORD: Okay, I have a -- a Bachelors of Arts Degree in Psychology from
11 Seton Hall University in 1982, and I have a Doctorate Degree
12 in Clinical and Community Psychology from the University of
13 South Carolina, which I obtained in 1990.
14
15 WOODINGTON: Okay, and -- and how long have you held your present position,
16 I'm sorry?
17
18 FORD: I've been here about twelve years.
19
20 WOODINGTON: In that position at DDSN through that time?
21
22 FORD: Yes, from 1994 to the present.
23
24 WOODINGTON: When did you actually start -- I assume you started working as
25 a Psychologist once upon a time?
26
27 FORD: Yes.
28

1 WOODINGTON: Okay, and when did you actually start working as a
2 Psychologist?

3
4 FORD: I mean - I - I function in the role of a Psychologist and
5 completed a lot of Psychological Evaluations during my
6 graduate training and internship, and then after I graduated in
7 1990, I continued...

8
9 WOODINGTON: Did you do any - did you do any of that in the eighties also?

10
11 FORD: Yes, I did.

12
13 WOODINGTON: Okay. Tell me some of your positions involving psychological
14 evaluations and tests.

15
16 FORD: With the state I've - you know - been employed as a
17 Psychologist I, II, III, and IV. In various positions with the
18 Department of Juvenile Justice and the Department of Mental
19 Retardation, now the Department of Disabilities and Special
20 Needs, performing comprehensive psychological evaluations,
21 doing individual and group therapy, writing behavior support
22 plans; and working in the capacity I do now is more of a
23 manager, assisting in the development of policy, overseeing and
24 providing quality assurance for psychological services and
25 behavior support services, working with other state agencies on
26 complex cases, and advising them accordingly.

27
28 WOODINGTON: Since you mentioned the word quality assurance, I'm going to

1 jump ahead a little bit. Is -- is that your role in the Sommer
2 Pruitt matter?

3

4 FORD: Yes.

5

6 WOODINGTON: Okay, we'll get into that later, but -- how much -- how -- how
7 many psychological tests do you think you've administered?

8

9 FORD: In my career?

10

11 WOODINGTON: In your career.

12

13 FORD: Probably over a thousand.

14

15 WOODINGTON: Over a thousand. Have you administered the Vineland
16 Adaptive Behavior Test?

17

18 FORD: I have.

19

20 WOODINGTON: How about the -- the Wechsler Adult test, which is -- do you say
21 that WAIS -- or do you say it at all? WAIS-III?

22

23 FORD: That's an abbreviation for Wechsler Adult Intelligence Scale.

24

25 WOODINGTON: Okay. Have you administered that test?

26

27 FORD: Yes, I have.

28

1 WOODINGTON: Have you – I – I didn't ask – did you administer the Vineland a
2 lot?

3
4 FORD: I did a lot at one time, yes.

5
6 WOODINGTON: And your current job doesn't require administer – you don't do
7 administering...

8
9 FORD: It doesn't require me to administer tests. What it requires me
10 to do is to keep up with current testing, as they're revised and
11 to know how to do that, because part of my job is to interview
12 potential applicants who want to become testing providers for
13 the Department of Disabilities and Special Needs under the
14 waiver. So, I have to ensure that they understand how to
15 diagnose mental retardation, etc., so I have to keep up.

16
17 WOODINGTON: Along those lines of the – the ABAS-III – I can't even
18 remember what that stands for now, but it's...

19
20 FORD: Adaptive Behavior Assessment System.

21
22 WOODINGTON: Is that one you've ever given yourself?

23
24 FORD: I have not given that – that particular test myself, but I
25 understand how to score it and administer it.

26
27 WOODINGTON: Did it – is it – is it relatively new?

28

1 FORD: I am not a member of the Consumer Assessment Team, no.

2

3 WOODINGTON: Okay. You said from time to time, what -- what's the thing that
4 causes you to maybe get involved with a Consumer Assessment
5 Team review?

6

7 FORD: Usually, if it's a complex case, that comes to Dr. Lacy's
8 attention, for review, or if it's a high profile case, she may
9 request that I review it independently and give her some
10 feedback.

11

12 WOODINGTON: What -- what is a kind of complex case or high profile case?

13

14 FORD: Well, as in this case, because it was involved in a lawsuit, and
15 there had been numerous evaluations, she asked me to look at
16 this case. But there may be other cases that come in that are
17 complex, because of numerous evaluations, or multiple agency
18 involvements, and she might ask me to look at it.

19

20 WOODINGTON: Okay, and in those -- in those cases, -- in the cases that you look
21 at, -- let me -- strike that. Well, no. In the cases that you look at,
22 is it true that you review preliminary assessments by the team?

23

24 FORD: Yes, I do.

25

26 WOODINGTON: Okay, and do you advise Dr. Lacy about whether you think the
27 team has made the right decision or not?

28

1 FORD: Yes, I do.

2

3 WOODINGTON: Has -- have teams been known to revise....

4

5 *(End of Tape 8 - Side 1)*

6

7 FRENCH: Okay, we're back on the record. Would you repeat the...

8

9 WOODINGTON: Yeah. Have Consumer Assessment Teams been known to
10 revise their assessments, based on your recommendations?

11

12 FORD: Yes, they have.

13

14 WOODINGTON: Did Dr. Lacy?

15

16 FORD: Yes, they have.

17

18 WOODINGTON: Okay. Is this -- this Sommer Pruitt case, one that -- where the
19 result was different as a result of you -- the ultimate finding was
20 different as a result of your advice?

21

22 FORD: The finding was not different, as a result of my review.

23

24 WOODINGTON: And, when you review these reports, does that involve the
25 application of the DDSN criteria for mental retardation?

26

27 FORD: Yes, it does.

28

1 FORD: 2005?

2

3 WOODINGTON: 2005, right.

4

5 FORD: Yes, I am.

6

7 WOODINGTON: Okay. Did you review that particular assessment?

8

9 FORD: Yes, I did review it.

10

11 WOODINGTON: Okay. What was the purpose of your review of that
12 assessment?

13

14 FORD: Dr. Lacy requested that I review the information and all the
15 material that the Consumer Assessment Team reviewed, to
16 make sure that it followed the standards, that it was – you know
17 – clear, and that the conclusions that they reached were – were
18 sound and appropriate.

19

20 WOODINGTON: Were those conclusions sound and appropriate in your opinion?

21

22 FORD: In my opinion, yes they were.

23

24 WOODINGTON: Okay. Were you familiar with the materials that the CAT team
25 had before in this case?

26

27 FORD: Yes, I was.

28

1 ANDREWS: Alright, good. 2005 – the re-evaluation, what do you know
2 about the process leading up to that decision?

3
4 FORD: I know that Dr. Lacy talked to me about us getting another – re-
5 evaluation of Sommer based on her adaptive skills, as we're
6 required to do at least an annual re-evaluation of people in our
7 care, or as needed, if there are any possible changes in their
8 care. So, I contacted Dr. Leslie Platt, who at that time was not
9 employed with the Department, was an independent contract
10 provider, and requested that she conduct the – the re-evaluation
11 of her adaptive behavior. Since we had already had members
12 of the Consumer Assessment Team evaluate her on at least
13 three different occasions, we thought it would be more
14 appropriate to have an independent person, outside of the
15 department, evaluate her.

16
17 ANDREWS: This wasn't a routine re-evaluation, was it?

18
19 FORD: What do you mean?

20
21 ANDREWS: Well, it didn't occur in the normal course, but it occurred as a
22 result of a special determination that was made concerning
23 Sommer Pruitt. Another way of asking the question, if this isn't
24 clear is – there wasn't anything that was in the calendar that
25 caused this re-evaluation to occur in the normal course, was it?

26
27 FORD: No. And – and – and normally – you know – the request for
28 evaluations come from the Service Coordinator. The only thing

1 different was it came from me.
2
3 ANDREWS: And, how many times have you asked for re-evaluation of any
4 individual who is under the care of – who was found to have
5 been – be eligible for MR RD services, is this the only time it's
6 ever happened?
7
8 FORD: No – been a few times, not many though.
9
10 ANDREWS: Count them on one hand?
11
12 FORD: Probably, yes.
13
14 ANDREWS: Alright. Were all of those high-profile cases as well?
15
16 FORD: Yes.
17
18 ANDREWS: Okay. Were they all in litigation?
19
20 FORD: No. I don't believe so, no.
21
22 ANDREWS: Alright. Now, normally the Service Coordinator makes the
23 request for the re-evaluation, based on – normally, the Service
24 Coordinator do the re-evaluation, or does she request an
25 independent party do it?
26
27 FORD: No. I requested a re-evaluation of her adaptive skills. The
28 Service Coordinator is not qualified to do that. That would be

1 a Psychologist.

2

3 ANDREWS: Does the Service Coordinator typically make that request of a
4 Psychologist?

5

6 FORD: Yes.

7

8 ANDREWS: Is there a list of who those psychologists would normally be?

9

10 FORD: That are approved in the community to provide...?

11

12 ANDREWS: Yeah.

13

14 FORD: Yeah.

15

16 ANDREWS: And, who maintains that list?

17

18 FORD: I do, but it's -- it's on the website -- the DDSN website.

19

20 ANDREWS: And, are individuals allocated by region or are they state-wide?
21 How is it organized?

22

23 FORD: It depends on -- you know -- once they're approved, what
24 counties they want to accept referrals from. So, they may limit
25 themselves as far as which counties they want to accept
26 referrals from, or they may say that they're willing to go state-
27 wide.

28

1 ANDREWS: Uh, huh. And, you had -- had you used Dr. Platt before,
2 personally, asked her to do a re-evaluation?

3

4 FORD: No.

5

6 ANDREWS: At the Department?

7

8 FORD: No. You mean as -- not asking her directly. If she was out in
9 the community accepting referrals from the Board, so...

10

11 ANDREWS: Okay. But with respect to the -- the re-evaluations that had been
12 requested, your testimony is that -- they rarely -- those re-
13 evaluations were rarely requested by the Department, right?

14

15 FORD: I have rarely requested them, yes.

16

17 ANDREWS: So you -- when you've asked for them before -- do you
18 remember how long before the one that you requested Dr. Platt
19 undertake, how long it had been since you had asked for another
20 re-evaluation?

21

22 FORD: No, I don't know.

23

24 ANDREWS: Would it have been several years at least?

25

26 FORD: No.

27

28 ANDREWS: How recent? I mean, six months -- just a range -- a year, two?

1 FORD: I really don't know. It wasn't years, though.
2
3 ANDREWS: Okay. But it doesn't happen much?
4
5 FORD: No, it does not.
6
7 ANDREWS: Alright. Now, you may have said this, and if you did, I'm sorry
8 for missing it, but when – prior to calling Dr. Platt, was it Dr.
9 Lacy who had a conversation with you concerning the need to
10 re-evaluate Sommer?
11
12 FORD: Yes.
13
14 ANDREWS: Did you talk with the CAT team or any CAT team members
15 concerning that issue?
16
17 FORD: No, I talked to Dr. Lacy.
18
19 ANDREWS: And what did she inform you?
20
21 FORD: That we needed to re-evaluate her for a level of care, and that
22 we needed to look at her adaptive skills, because at that time,
23 she was eligible under related disabilities.
24
25 ANDREWS: Uh, huh. And, didn't Dr. Lacy convey to you – doubts about
26 whether Sommer, in her view, was in fact eligible, and should
27 be – whether she qualified for RD services?
28

1 FORD: I don't recall Dr. Lacy specifically saying anything like that, but
2 that -- that we needed to re-evaluate her; she'd been in a
3 different setting for a period of time -- I don't quite remember
4 how -- maybe a year and a half, and that per our requirements,
5 we needed to re-evaluate her, in that area.
6

7 ANDREWS: Wouldn't you agree that you conveyed to Dr. Platt in making
8 the request, skepticism about whether Sommer was in fact -- I
9 shouldn't say eligible -- but did in fact qualify for RD services?
10

11 FORD: This is what I remember about that phone call. I called Dr.
12 Platt, told her that the Department was requesting that she
13 conduct an adaptive assessment of Ms. Pruitt who was at the
14 Newberry Board at the time, and that I know typically that
15 would go through the Service Coordinator, but we were making
16 that request for her to re-evaluate her, and then I -- what I said
17 to her was that she's currently eligible under the related
18 disabilities category, and that's where I stopped, because I was
19 trying to say as little as possible. And she asked me what the
20 situation was, and what the related disability was, and that's
21 when I said, as she stated yesterday or that was her notes, that
22 there were some question about whether her seizures were real.
23

24 ANDREWS: So, you're telling me you didn't convey to Dr. Platt any
25 reservations about whether Sommer qualified for the services?
26

27 FORD: No. What I wanted Dr. Platt to do was go and do an
28 independent evaluation and draw her own conclusions. I did

Durport

Mims 2258

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

LENNIE SCHLAGER MULLINS

Plaintiff

vs.

David Rotholz
in his official capacity; et al.

Defendants

Case No.: 6:10-CV-02310-TMC

Affidavit of Amy Davenport

PERSONALLY appeared before me, Amy Davenport, who after being duly sworn, deposes and says as follows:

1. I am the parent of an adult child who has disabilities and receives services from DDSN.
2. My daughter was injured when a respite care provider from a list provided by the DSN Board was driving under the influence of alcohol, causing the near death of my daughter.
3. While my daughter was in intensive care, Kathi Lacy and Lois Park Mole came to the hospital to assure me that DDSN would provide sufficient respite and personal care hours to allow us to take care of my daughter at home.
4. After I filed a lawsuit against DDSN and the local DSN Board, DDSN refused to provide the hours as Kathi Lacy had promised me.
5. I have had numerous conversations with Kathi Lacy about my daughter's services and I have found her to be retaliatory and untrustworthy.
6. My DDSN funded service coordinator called me on the morning of June 11, 2010 to inform me that Lennie Mullis, my daughter's behavior support provider, had been terminated and that I would have to use a different behavior support provider.
7. Although Ms. Mullis was reinstated a week later, no one from DDSN informed me that Ms. Mullis could be restored as my daughter's behavior support provider.

Mims 2259

8. Weeks later, I learned from Ms. Mullis that she had been reinstated as a service provider and I had to call my service coordinator to ask that Ms. Mullis be restored to provide behavior support services to my daughter.

9. As a result of Ms. Mullis's inappropriate termination, my daughter went without her receive behavior support services for over one month.

10. I have spoken with other providers who have expressed fear of retaliation if they advocate for people whose services are being illegally reduced.

11. The services that Lennie Mullis has provided to my daughter have been exceptional and have helped allow me to keep her at home instead of being institutionalized.

12. Lennie Mullis has been an advocate for my daughter and other people who have disabilities that she serves and it has been obvious to me that she has been targeted because of her advocacy efforts.

13. Other parents I have spoken with have a fear of retaliation if they advocate for their child and Kathi Lacy's name comes up frequently in conversations between parents as instigating this retaliatory conduct.

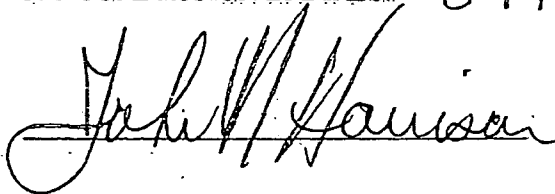
Further Affiant sayeth not.

SWORN TO BEFORE ME THIS 15th
DAY OF December, 2011.



NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 8-14-2017



Mims 2260

PHOTOGRAPH



Edward Mims

12-3-01

Mims001637

Exhibit 7

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Edward Mims, by and through his legal
guardian, Margaret Mims,
Plaintiff

vs.

Babcock Center, Inc., Judy Johnson, the
South Carolina Department of Disabilities
and Special Needs, Kathi Lacy and Stan
Butkus,

Defendants.

DECLARATION OF KATHY HOOVER, R.N.

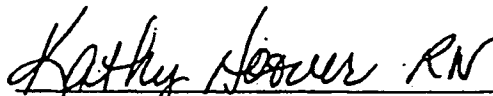
Now comes Kathy Hoover, RN, who swears and affirms that:

1. I have been a licensed registered nurse in the State of South Carolina for twenty-two years.
2. I have experience in critical care, trauma and home-care nursing and have experience reviewing medical records to determine whether appropriate services are being provided.
3. Based on the records I have reviewed, the decision that one-on-one supervision of Edward Mims was medically necessary to protect his health and welfare in a residential setting with aggressive individuals was most appropriate.
4. Due to his inability to defend himself, it would be contraindicated and dangerous to place Edward Mims in a setting with persons who are physically or sexually aggressive.
5. I have reviewed the audit conducted by the South Carolina Legislative Audit Council which criticized DDSN for failing to protect the health and safety of vulnerable clients and the records of Edward Mims are consistent with those findings.
6. The likelihood that Edward Mims would be injured was foreseeable in the ICF/MR facilities where he was placed by DDSN and the Babcock Center and it does not appear, from the records I have reviewed, that appropriate actions were taken to protect Edward Mims from harm.
7. Immediate Jeopardy is a serious finding and it was the duty of the Babcock Center and SCDDSN to move Edward to a safe facility once they were on notice that federal standards were not met.

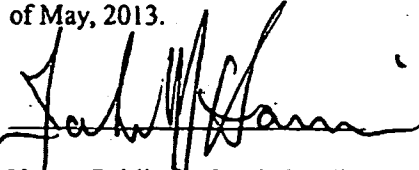
Mims 2262

8. It is well known in the disability community that DDSN officials have established a pattern and practice of retaliating against family members who expose abuse, neglect or exploitation in DDSN programs and there is a pervasive fear among families that their services will be cut or other retaliatory action will be taken.

I have read this declaration and I swear and affirm under penalty of perjury that it is true to the best of my knowledge and information. Executed this 24th day of May, 2013.


Kathy Hover, R.N.

Sworn to before me this 24th day
of May, 2013.


Notary Public for South Carolina
My Commission Expires 8-14-2017