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NM Developmental Disabilities Planning Council
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Frank Fajardo
Manager
NM Office of Guardianship
810 W. San Mateo, Suite C
Santa Fe, NM 87505

Re: *JM v. NM DOH*, NO. CV-07-604 RB/ACT

Dear Ms. Maldonado and Mr. Fajardo:

We are writing to provide Plaintiffs' counsel's response to Defendants' July 3, 2012 submission for inclusion in the DDPC's second annual report regarding Defendants' implementation of the January 8, 2010 settlement agreement in *JM et al. v. the New Mexico Department of Health et al.* There are very few points discussed in Defendants' submission that we have not already addressed in our submission to DDPC. We will not repeat our previous comments, but only address those few exceptions below.

Although over two and a half years have gone by since Defendants signed the Settlement Agreement, it is not clear whether Defendants have properly identified all of the individuals who are eligible to receive its benefits. It is clear, however, that at least 20 people did not receive until 2012 the assessment from Columbus to which they have been entitled. Defendants' letter stated that, "[t]o date, 354 individuals were assessed by Columbus for needs or decisional capacity or both." That statement is inaccurate. On June 22, 2012, Defendants provided Plaintiffs' counsel with 354 Service Plans. Unfortunately, after reviewing all of those Plans, we identified at least 60 individuals whose Plans state that Columbus has not yet assessed them, for one reason or another. So it appears that no more than 292 individuals were actually assessed by Columbus. The correct number of people who have actually received their assessments remains unclear, two and a half years after Defendants committed to providing the assessments.

Defendants still have not provided to Plaintiffs' counsel certain documents which individual members of the proposed class authorized Defendants to provide to us, including Training School records, Community Services Team ("CST") records, DOH eligibility records, and some CSI records, all in violation of the Arbitrator's November 11, 2010 Order. Defendants have still not provided the CST records for all but one of these individuals nor the Training School records themselves for many of them.

In spite of Defendants' assertion to the contrary, their five monthly reports, even when coupled with the updated Service Plans and the few CSI contact notes provided to Plaintiffs' counsel, fail to satisfy Defendants' obligations under the Settlement Agreement and the Arbitrator's Orders. The January 20, 2011 Order required Defendants to provide to us a "Third Report" identifying what actions, if any, CSI personnel have taken on behalf of the individuals entitled to their assistance. The order required Defendants to report in writing, *inter alia,* "the actions taken to facilitate the application for the programs and services which were recommended by Columbus" and to also "[l]ist any other actions taken on behalf of the individual." Although Defendants did provide redacted copies of "service plans" regarding some, but not all, eligible individuals, the documents did not set forth "the actions taken to facilitate the application for the programs and services which were recommended by Columbus," nor did they "[l]ist any other actions taken on behalf of the individual." We have pointed out to Defendants many times that they still have not provided us with some of the information required by the January 20, 2011 Order. Last week, the Arbitrator directed Defendants to provide us much more information regarding the actions they have, or have not, taken to implement the recommendations made by Columbus, to enable us to properly assess whether each eligible individual has received the assistance to which they are entitled.

Defendants stated that, in December 2011, they conducted "an intensive review" to determine whether all former Training School residents had been provided proper notice of the Settlement Agreement, as required by its terms. After concluding that at least some of them may not have received effective notice, Defendants provided those individuals with "a final letter with information regarding the Settlement." Counsel for Defendants provided us with a copy of this so-called "effective notice." (Attached.) Unfortunately, as is made clear by its total of three sentences, this notice is not effective. It does not inform the former residents of the subject of the lawsuit, that they may be eligible for any benefits under the settlement, or any description of those benefits.

Defendants imply that they have met, or in very short order will meet, their obligations to every eligible individual under the Settlement Agreement. However, Defendants did not acknowledge that, over two years after they made their promises, they have not even located at least four individuals. It does not appear that those individuals have received notice of the Settlement Agreement, been evaluated by Columbus, or have even spoken with Defendants or their CSI workers. And, in spite of our requests, Defendants have repeatedly refused to provide us with the information in their possession so that we can attempt to find these individuals ourselves.

Defendants' letter stated "All referrals for those individuals who are interested in the Personal Care Option [PCO] service, except those of the individuals who are incarcerated or were assessed in the past 3 months, have been processed and completed." This glosses over the fact that, over 27 months

after the Court adopted the Settlement Agreement, Defendants have provided inadequate explanations for why 16 of the 78 people who were not receiving PCO services when Columbus determined that they need them are still not receiving PCO services.

Columbus initially referred 129 individuals to Defendants to facilitate an application for PCO services. According to Defendants' reports, 51 of the 129 people were already receiving PCO services prior to the Columbus evaluation. Of the remaining 78 people, four have died and 17 were not referred by Defendants because Defendants believed that their "status" made them ineligible. Even assuming that Defendants correctly determined that 17 people were "ineligible," 57 individuals were reportedly referred for PCO services.

According to Defendants, of those 57 individuals, 23 referrals were declined either by the individual, by persons other than the individual's guardian ("family" or "support"), or by the individual's guardian, and seven have now requested no contact from Defendants. However, the data Defendants have submitted does not make clear who declined the services and by what authority, and whether any individual declining services lacks the decisional capacity to decline those services. Some of those individuals were already deemed by Columbus to lack decisional capacity and to require a guardian, but they still do not have a guardian.

In their final paragraph, Defendants maintain that "the original Columbus recommendations have been addressed ...." The use of the term "addressed" seems, at best, euphemistic. From the perspective of Plaintiffs' counsel, only a small percentage of the people entitled to the benefits of the Agreement have actually received all of them. Once Defendants provide the information that the Arbitrator initially ordered Defendants on January 20, 2011, and then again on July 24, 2012, to provide to us, it will be very clear just how many former residents of the State's Training Schools are still not receiving the benefits of the Settlement Agreement.

Very truly yours,

Peter Cubra

Peter Cubra

cc via electronic mail:

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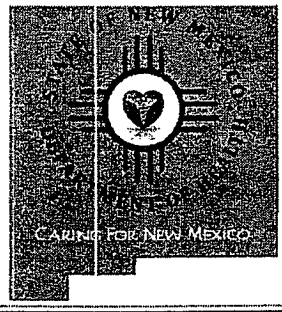

CATHERINE D. TORRES, M.D., CABINET SECRETARY

June 22, 2012

The Department of Health settled a lawsuit brought by 2 individual former residents of the Los Lunas Hospital and Training Center and Fort Stanton. As part of the settlement agreement, the Department agreed to provide written notice to former residents of these two state facilities.

If you have any questions about the lawsuit and settlement agreement, please contact your assigned CSI worker, Kathy Baker, at 505-239-2727.

Thank you,

Shadee Brown
Community Network Coordinator
Community Systems Integration Unit

By Hand Delivery

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