

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

E.H., et al.,
Plaintiffs,

v.

MATIN, et al.,
Defendants.



Civil Action No. 81-MISC-585
Judge Louis H. Bloom

ORDER APPOINTING COURT MONITOR

On July 2, 2009, the parties came before the Court to present an "Agreed Order," which outlines those measures, agreed to by the parties, that are designed to resolve the current dispute regarding the provision and coordination of case management services in the behavioral health care system. The Court entered the Agreed Order that same day.

Pursuant to the aforementioned order, the parties were in agreement that the Ombudsman for Behavioral Health, David G. Sudbeck, should oversee the implementation of the Agreed Order. Considering, however, the protracted nature of this case, and in an effort to facilitate progress, the Court finds, and the parties agree, that David G. Sudbeck shall be appointed Court Monitor and the Office of the Court Monitor shall be established to oversee the implementation of the Agreed Order and all other matters related to case management services, forensic services, and traumatic brain injury services, which are at issue herein.¹ Accordingly, the Court hereby **ORDERS** as follows:

Authority

1. The Court Monitor has authority to oversee implementation of matters related to case management services, forensic services, and traumatic brain injury services, on a non-partisan,

¹of the Ombudsman is terminated and shall now be known as the Office of the Court Monitor.

independent basis. The Court Monitor shall make all efforts necessary to pursue said implementation and shall have those powers and responsibilities specified herein.

2. The Court Monitor is empowered to respond to or investigate matters relating to case management services, forensic services, and traumatic brain injury, which are raised by the Court, by any party, by any citizen, or by his own initiative.

Evaluation of Implementation

3. The Court Monitor, together with the parties, shall establish a reporting or other evaluation system to measure the extent of compliance by the Department of Health and Human Resources (“DHHR”) with those measures agreed to by the parties and those measures ordered by the Court. The Court Monitor may hold meetings where any person with an interest may appear and make recommendations.

Regular Meetings

4. The Court Monitor shall convene and chair meetings between the parties every six (6) weeks. The purpose of said meetings shall be (1) for the Court Monitor to report on the implementation of those measures agreed to by the parties and those ordered by the Court and (2) for the parties and the Court Monitor to jointly resolve problems arising from implementation and/or disputes regarding implementation. The Court Monitor shall set the agenda based on problems and issues raised by the parties and advocates and information the Court Monitor has received through his own activities.

Reports to the Court

5. The Court Monitor shall report, in writing, to the Court and the parties on a regular basis regarding the progress of DHHR with regard to implementation of those measures agreed to by the parties and those measures ordered by the Court. Each report shall include the following information: (1) a report on timetable adherence, (2) a description of all disputes and questions

ved by the Court Monitor, (3) a description of all suggestions and recommendations made, (4) any inadequacies or needs in the implementation process, (5) and such other information as he deems relevant to the implementation process. The report shall be filed with the Court and copies provided to the parties.

Formal resolution of issues of implementation

6. The Court Monitor shall initially deal with all issues regarding implementation raised by the parties pursuant to the "Request for Resolution Process." Further, the Court Monitor has authority to raise and address issues regarding implementation that the Court Monitor has identified through his own activities.

7. The Court Monitor shall afford both parties an opportunity to present information regarding any such issue and may request additional information from either party, which in his view, is necessary for resolution of the issue.

8. If the Court Monitor determines that DHHR is not in compliance with the letter or spirit of those measures agreed to by the parties and/or those measures ordered by the Court, he may issue formal recommendations, which, in his view, will facilitate implementation. Said recommendation shall be filed with the Court and served upon counsel for the parties.

9. Within fifteen (15) business days of the filing of the Court Monitor's recommendation, any party objecting to said recommendation may file a request for a hearing before the Court. Any such request will state the requesting party's objections to the recommendation or state other specific reasons for requesting a hearing. Copies of all recommendations, requests, and objections shall be provided to all parties.

10. The hearing shall be held before the Court at the earliest possible time. Each party shall have the right to present evidence of a documentary or testimonial nature, and to cross-examine the witnesses. The Court shall enter an order to remedy the disagreement.

Budget Review

11. All proposed budgets regarding behavioral health services shall be shared with the Court Monitor and the parties for review and comment prior to their submission to the Director of Finance and Administration.

Access to Records and Confidentiality

12. The Court Monitor shall have access to all facilities and records, access to patients, staff, contractees, or any other person affected by the behavioral health delivery issues at issue herein, for the purpose of gathering information relevant to measuring compliance with law and orders of the Court resulting from this matter. The Office of the Court Monitor shall be subject to the provisions of W. Va. Code § 27-3-1.

Office of the Court Monitor

13. The Office of the Court Monitor shall be staffed with one support staff, as well as, one full-time individual that will provide oversight of commitments, as the parties agreed to in the Agreed Order. Further, the Olmstead Coordinator shall be maintained in the Office of the Court Monitor.

14. The Court Monitor will provide supervision, direction, and discipline over said staff.

15. Compensation for staff and for the Court Monitor himself, as well as, office space, office materials, telephones, equipment, and travel, as deemed necessary, will be provided by DHHR and from the operating budget of DHHR. Any significant change in funding or facilities must be approved by the Court.

16. Compensation for the Court Monitor shall be set at such amount as agreed to by the Court Monitor and DHHR. If the Court Monitor and DHHR are unable to agree on compensation, the issue shall be submitted to the Court for resolution.

17. Compensation for staff of the Office of the Court Monitor shall be consistent with those of other state employees.

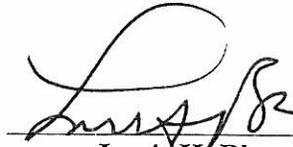
18. The Court Monitor and staff shall be considered employees or contractees of the State of West Virginia and shall be eligible for all benefits at the level of state employees in the State of West Virginia.

19. The Court Monitor and staff shall receive annual cost of living adjustments consistent with that of other state employees.

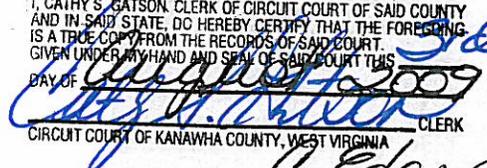
20. Upon the resignation, termination, or inability of the Court Monitor to continue to serve, the parties shall attempt to agree upon, and provide to the Court, the name of the new person or persons to serve. If the parties are unable to agree upon an individual or group of persons to serve as Court Monitor, then each party shall submit a list of candidates to the Court and the Court shall appoint the Court Monitor.

21. Termination of the Court Monitor may occur by Court order upon a showing of gross misconduct or neglect of duty.

ENTERED this 30th day of July 2009.


Louis H. Bloom, Judge

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS

DAY OF August 2009

CLERK
C. Edens

Date: 8/3/09
Certified copies sent to:
____ court of record
____ parties
____ other _____
(please indicate)
By: D. Hedges / J. Wagner
____ certified / 1st class mail
____ fax
____ hand delivery
____ interdepartmental
Other (if received accomplished):
C. Edens
Deputy Circuit Clerk