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FILED
DISTRICT COURT OF GUAM
JUN 08 2004
MARY L. M. MORAN
CLERK OF COURT

UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

RECEIVED
JUN 09 2004
DMHSA
DIRECTOR'S
OFFICE

J.C., a person with a disability, S.F., a
person with a disability, and J.M., a
person with a disability,

No. CV 01-00041

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Plaintiffs,

v.

FELIX P. CAMACHO, in his official
capacity as Governor of Guam,

ROSEANNE ADA, in her official
capacity as Director of the Department of
Integrated Services for Individuals with
Disabilities, and

J. PETER ROBERTO, in his official
capacity as Director of the Department of
Mental Health and Substance Abuse,

Defendants.

RECEIVED
JUN - 9 2004
ATTORNEY GENERAL'S OFFICE

The matter before the Court, the Honorable Consuelo B. Marshall, District
Judge, presiding, is the Court trial in this action for declaratory and injunctive
relief in which Plaintiffs claim that Defendants, Felix P. Camacho, in his official
capacity as Governor of Guam, Roseanne Ada, in her official capacity as Director
of the Department of Integrated Services for Individuals with Disabilities
("DISID"), and J. Peter Roberto, in his official capacity as Director of the

1 and alcohol and drug detoxification services.

2 2. Plaintiff J.C. is an individual with a disability under the ADA. He is a forty-
3 one year old male who has been diagnosed with mental retardation and psychosis
4 NOS (not otherwise specified. He was first admitted to the Adult Inpatient Unit
5 ("AIU") of the DMHSA on or about November 19, 1999 and discharged on
6 December 6, 1999. Plaintiff J.C. was re-admitted to the AIU on September 19,
7 2000. Plaintiff J.C. currently resides at the AIU.

8 3. Plaintiff S.F. is an individual with a disability under the ADA. He is a
9 seventy year old male who has been diagnosed as having dementia with behavioral
10 disturbance and alcohol dependance. S.F. was first admitted to the AIU on July
11 10, 2000 on a sevety-two hour hold. On July 13, 2000, Plaintiff S.F. was re-
12 admitted to the AIU. On August 5, 2001, Plaintiff S.F. was placed at Guma
13 Hinemlo, a permanant supportive housing program operated by Guma Mami under
14 contract by DMHSA, with funds provided through the Guam Housing and Urban
15 Renewal Authority ("GHURA") Continuum of Care Housing and Urban
16 Development ("HUD") program.

17 4. Plaintiff J.M. is an individual with a disability under the ADA. He is a
18 twenty-five year old male who has been diagnosed with autism, bipolar disorder,
19 and moderate mental retardation. J.M. was placed by the Department of Education
20 ("DOE") in September 1987 at the Boston Higashi School because there was no
21 facility or program on Guam appropriate to meet J.M.'s needs. He was returned to
22 Guam in April 2000 because DOE was no longer obligated to provide for Plaintiff
23 J.M.'s care. J.M. has been a client of DISID since July 19, 1999. He was admitted
24 to the AIU on April 26, 2000 and since his admission, J.M. has resided
25 continuously in a seclusion room at the AIU and J.M.'s meals and bed were and
26 are provided by his family.

27 5. On one or more occassions, treating psychiatrists of J.C., S.F., and J.M., and
28

1 been placed in locked seclusion on at least two (2) occasions without doctor's
2 orders. Plaintiff J.C. has been sexually abused by another male client.

3 10. Plaintiffs' treating psychiatrists and Defendants Roberto and Ada,
4 expressed that the AIU is an inappropriate placement for Plaintiffs. In addition,
5 Plaintiffs' expert witnesses have expressed Plaintiffs J.C. and J.M. have
6 experienced and are at risk of further deterioration or regression as a result of
7 placement and/or continued placement at the AIU.

8 11. Plaintiffs J.C. and J.M. receive little or no formal education or therapy at
9 the AIU. Expert witnesses testified on behalf of Plaintiffs that both J.C. and J.M.
10 would benefit from receiving one or more of the following: occupational therapy,
11 speech therapy, vocational therapy, recreational therapy, and brief passes home.
12 These services are not available to Plaintiffs at DMHSA's AIU.

13 12. Plaintiffs' experts testified that the planning of treatment and
14 interventions for Plaintiffs while at the DMHSA substantially departs from the
15 generally accepted minimum standards of care. Plaintiffs' experts testified that
16 DMHSA does not recognize that adequate treatment requires and required that the
17 Defendants' conduct an initial "work up" of the Plaintiffs, formulate an accurate
18 diagnosis with input by all of the disciplines involved in the Plaintiffs treatment,
19 and develop an individualized plan to build on strengths, interests, preferences and
20 goals. Plaintiffs J.C. and J.M. case files contain documents entitled "case
21 summary" and "treatment plan." Plaintiffs' experts found these to bear no
22 resemblance to a comprehensive integrated plan for the provision of treatment
23 addressing the individual needs of the Plaintiffs. In fact, both provided the same
24 treatment: continued medication and placement outside of the AIU. No goals for
25 treatment other than those mentioned (medication and placement) were or
26 currently are in place for Plaintiffs. Plaintiffs' expert found DMHSA substantially
27 departed from the generally accepted minimum standards of care by failing to

1 facilities: the Independent Group Home ("IGH") and the Mary Clare Home. Each
2 home may serve up to five (5) consumers. Guma Mami's residents receive public
3 assistance for housing and utilities from Guam Housing and Urban Renewal
4 Authority ("GHURA") and at least 75% of the homes' food costs are paid through
5 other public funds. DISID contracted with Guma Mami for the placement of up to
6 five (5) individuals in each home. DISID pays \$270,000 for placement at IGH and
7 \$291,000 for the Mary Clare Home. The approximate cost of care per person for
8 each home is \$60,000 per annum. Both IGH and the Mary Clare Home are filled
9 to capacity.

10 15. While Defendants have asserted undue financial hardship, Defendants
11 presented no evidence that resources are not available. To the contrary,
12 Defendants testified that funding was assured by Defendant, Governor Camacho,
13 and from Guam's Health and Human legislative committee chairperson, Senator
14 Lou Leon Guerrero. Additionally, Defendant Ada testified that money received by
15 the Guam Department of Public Health and Social Services under the federal
16 government's Real Choices grant in an amount exceeding \$600,000 could be used
17 for services for Plaintiffs. Finally, GHURA Planner Rebecca Borja, testified that
18 funds available under the federal program for homelessness, continuum of care
19 funding have been (and may be) accessed to provide services to persons similar to
20 Plaintiffs and, in fact, funding was approved with a local match obtained to open a
21 program focused on the needs of that of the Plaintiffs. Ms. Borja also testified that
22 funding for program development is also available under community development
23 block grants received by Guam and while DMHSA has accessed and received
24 funding under both of these programs, DISID has never applied.

25 16. While Defendants have asserted that they have an effective working plan
26 for placing qualified persons with mental disabilities in less restrictive settings and
27 a wait list for those services that moves at a reasonable rate, Defendants' evidence
28

1 3. Section 12132 constitutes a "general prohibition against discrimination by
2 public agencies." *Bay Area Addiction Research & Treatment, Inc v. City of*
3 *Antioch*, 179 F.3d 725, 731 (9th Cir. 1999). The U.S. Supreme Court has held that
4 "undue institutionalization [of mentally disabled persons] qualifies as
5 discrimination 'by reason ... disability.'" *Olmstead v. Zimring*, 527 U.S. 581, 597-
6 98 (1999), The Court stated:

7 States are required to provide community-based treatment for persons
8 with mental disabilities when the State's treatment professionals
9 determine that such placement is appropriate, the affected persons do
10 not oppose such treatment, and the placement can be reasonably
11 accommodated, taking into account the resources available to the
12 State and the needs of others with mental disabilities.

13 *Id.* at 607.

14 4. Nothing in the ADA condones termination of institutional settings for
15 persons unable to handle or benefit from community settings. Consistent with the
16 ADA, the State may rely on the assessment of its own professional in determining
17 whether an individual meets the essential eligibility requirements for habilitation
18 in a community-based program. The individual must also desire placement in a
19 community-based facility. *See Olmstead*, 527 U.S. at 602-03.

20 5. Regulations promulgated under Title II impose an affirmative duty on a
21 public entity to "make reasonable modifications in policies, practices, or
22 procedures when the modifications are necessary to avoid discrimination on the
23 basis of disability." 28 C.F.R. § 35.130(b)(7). However, the State is not required
24 to "fundamentally alter' the nature of its services or programs." *Id.* The state may
25 defend a failure to place individuals in appropriate community-based facilities on
26 the basis that the Plaintiffs' requested modifications to the State's placement
27 system constitute a "fundamental alteration of the States' services and programs."

1 community-based treatment with resources currently available to Guam, or which
2 may be applied for through federal funding sources.

3 10. Defendants have failed to show that Plaintiffs' placement in a community-
4 based treatment center would fundamentally alter Guam's provision of services to
5 persons with mental impairments. Guam provides services to individuals similar
6 to Plaintiffs both on Guam and off island and current plans are underway to
7 expand on-island services for dual diagnosis individuals similar to Plaintiffs.

8 11. Defendants have failed to show that they have an *effective* working plan in
9 place for placement of Plaintiffs, and other individuals inappropriately placed in
10 the AIU, pursuant to *Olmstead*. Defendants have not demonstrated that there is a
11 waiting list which moves at a reasonable pace and have not demonstrated
12 sufficient efforts for placement of qualified persons with mental disabilities in less
13 restrictive settings.

14 12. The Defendants provide an array of services to individuals with mental
15 disabilities. DISID, in particular, provides services to individuals with both
16 physical and mental disabilities. All the Defendants are mandated to provide
17 services to persons with disabilities according to their particular needs.
18 Nonetheless, the Defendants have discriminated against the Plaintiffs by requiring
19 them to reside in the locked unit of the AIU in order to receive services.
20 Furthermore, the services provided to the Plaintiffs are not appropriate to their
21 particular needs.

22 13. Because, as is evidenced in the present case, the Defendants have failed to
23 comply with the Court's Preliminary Injunction, the Court finds that there exists
24 special circumstances requiring the appointment of a special master to insure
25 compliance with the Court's orders herein. The Court's orders herein will require
26 monitoring for compliance, and the Court finds that there is a requirement that the
27 Defendants, not only place the Plaintiffs in appropriate community-based

1 18. Plaintiffs have established that their constitutional rights under *Youngberg*
2 have been violated by the Defendants. Specifically, the court concludes that:

3 a. The Defendants has failed to provide reasonably safe
4 conditions of confinement for Plaintiffs committed to the state
5 psychiatric hospitals.

6 b. The Plaintiffs have been subjected to unreasonable bodily
7 restraints.

8 c. The Defendants have failed to provide the Plaintiffs with
9 minimally adequate habilitation that is reasonable in light of the
10 circumstances of this case.

11 d. The Defendants have consistently failed to implement the
12 recommendations of the State's treating professionals.

13 e. The Defendants' decision to place mentally retarded persons on
14 general psychiatric wards and to seclude and mechanically restrain
15 the Plaintiffs without employing behavioral treatment programs is
16 such a substantial departure from accepted professional judgment,
17 practice and standards as to demonstrate that the decision is not a
18 function of independent professional judgment within the meaning of
19 *Youngberg*.

20 f. The Defendants' failure to fulfill the community placement
21 recommendations of the state's treating professionals is such a
22 substantial departure from accepted professional judgment, practice
23 and standards as to demonstrate that the decision is not a function of
24 independent professional judgment within the meaning of *Youngberg*.

Special Session to Appropriate 3 Million Dollars to DMHSA

- **Urgent Need For Assistance and Relief**

-Two (2) individuals will be remanded to the custody DMHSA in 8 and 19 days from today. Individuals will not receive adequate services calling for a highly structured community based therapeutic home that is driving by a behavioral support plan. Such a service needs to be developed in order to return consumers back on island.

-The Department has now \$22K left for medications and must procure medications immediately to ensure constantly supply and prevent deterioration

-Critical shortage of psychiatrists affecting “on-call” coverage, conducting psychiatric evaluations, court appearances. Extreme burden causing burn out and health problems.

-The existing residential and outpatient services require a quality assurance and risk management program to ensure training, safety and professional capacity to provide services and prevent injury harm to both staff and consumers.

- **Urgent Appeal**

3 M Funding Request to addressing pressing needs and eminent crisis to develop appropriate services, recruit doctors, stabilize medication supply, monitor, train and enforce standards of healthcare so as to prevent any harm or danger to consumers and staff, ensure a healthy work environment and compliance to federal court order for safety, freedom from undue restraints and treatment under safe condition.

- **Necessary Duty/Obligation**

Compliance to federal court order

Provide adequate services for the mentally ill in the community

Ensure appropriate level of care and supports for both staff and patients

Prevent any further violation of patients constitutional rights

Plan Implementation

- **MEDICATIONS**

Upon approval and certification of funds, immediately procure medication formulary consistent with individualized treatment plan to ensure greatest amount of safety, freedom and undue restraints.

Federal Compliance: I. Safety, Freedom from Undue Restraints and Treatment Under Safe Conditions

- **SERVICE EVALUATIONS AND TREATMENT PLAN DEVELOPMENT**

Upon approval and certification of funds, immediately contract professional support services to conduct the necessary Multi-Disciplinary Supports Plans and Transition Profiles of persons currently receiving treatment in the community.

The data will be developed resulting in the “waiting list” of priority needs and services to be developed and a plan submitted to the Federal Court within 30 days.

Federal Compliance:

II. Minimally Adequate or Reasonable Training to Ensure Safety and Freedom

- a. Individualized Support Plan
- b. Individualized Transition Profile

III. Implementation and Placement Plans

- a. “Waiting List”
- b. Develop Appropriate Services

- **COMMUNITY BASED THERAPEUTIC SERVICES**

Upon approval and certification of funds, immediately contract experts to develop and operate a highly structured therapeutic care home in the community and to develop local capacity. Upon development and implementation, to return the off-island clients.

Federal Compliance:

III. Implementation and Placement Plans

- a. Highly Structured Therapeutic Care Home in the Community

- **Quality Assurance and Risk Management**

Upon approval and certification of funds, immediately contract psychiatrists, clinical psychologists, and other experts to provide highly specialized treatment and to develop and operate a quality assurance and risk management program to ensure quality of care for residents in existing community and ensure appropriate training for all staff to reduce harm, injury and liability and to further promote retention of care provides and all levels of care.

Federal Compliance:

I. Safety, Freedom from Undue Restraints and Treatment Under Safe Conditions

II. Minimally Adequate or Reasonable Training to Ensure Safety and Freedom From Undue Restraint, and to Prevent Deterioration.



I MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN

I Ufisinan Etmås Ge'helo' Gi Liheslaturan Guåhan


MARK FORBES

Ge'hilo' Gi Kumiten Kinalamten Kåsu SihaYan Kabåles
Ge'hilo' Gi Kumiten Ekseketibu

August 10, 2005

MEMORANDUM

TO: *I MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN*

FROM: JOANNE M.S. BROWN 
SPEAKER, ACTING

SUBJECT: CERTIFICATION OF EMERGENCY AND WAIVER OF PUBLIC HEARING

The Honorable Felix Camacho, *I Maga'låhen Guåhan*, pursuant to Title 48 U.S.C. Section 1423(h), has, by delivering a letter on August 9, 2005, called *I Liheslaturan Guåhan* into Special Session to address a shortage in funding of the Department of Mental Health and Substance Abuse (DMHSA) and Department of Integrated Services for Individuals with Disabilities (DISID). *I Maga'låhi* attached to said letter a proposed bill for legislative consideration.

In response to said request, and pursuant to the power vested in me by Title 2 G.C.A. Section 2103. I hereby certify that an emergency exists regarding the public health and safety, and that the requirement of a public hearing on the proposed bill forwarded to *I Liheslaturan Guåhan* by the Governor should be deemed waived.


Senator Joanne M.S. Brown
Speaker, Acting

MINA'BENTE O CHO NA LIHESLATURAN GUÅHAN
2005 (~~FIRST~~) Special Session

Second

Bill No. 1(2-5)

Introduced by:


Committee on Calendar

*By request of I Maga'lahaen
Guåhan in accordance with the
Organic Act of Guam, as
amended.*

**AN ACT TO APPROPRIATE THREE MILLION
DOLLARS FROM THE GUAM TELEPHONE
AUTHORITY PRIVATIZATION PROCEEDS FUND
TO THE DEPARTMENT OF MENTAL HEALTH
AND SUBSTANCE ABUSE**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Appropriation to the Department of Mental Health and**
3 **Substance Abuse.**

4 The sum of Three Million Dollars (\$3,000,000) from the Guam
5 Telephone Authority (GTA) Privatization Proceeds Fund is appropriated to
6 the Department of Mental Health and Substance Abuse ("DMHSA") to
7 provide a healthy, safe, and clean environment to individuals in need of
8 services at the Department of Mental Health and Substance Abuse and to
9 provide community services for individuals with mental disabilities to
10 include, but not limited to, payments for building renovations, purchasing
11 Group Homes, obtaining consulting contracts to insure compliance in the

1 Permanent Injunction issued in *J.C., et al. v. Governor of Guam, et al.*, obtaining
2 community services such as physical therapy, speech therapy, occupational
3 therapy and behavior services, and purchasing medical/psychiatric supplies,
4 pharmaceuticals, medical/psychiatric equipment, maintenance contracts,
5 dietary items, dictation and other expenditures directly related to patient
6 treatment. *I Maga'lahi*, the Governor, any appropriate government official,
7 and the Authorized Representative of the GTA Privatization Proceeds Fund,
8 as appropriate, shall immediately transfer the funds appropriated herein from
9 the Escrow accounts to the GTA Privatization Proceeds Fund and then to the
10 Treasurer of Guam for DMHSA's purposes prescribed herein.

11 **Section 2.** The Director of DMHSA shall submit on a weekly basis to *I*
12 *Liheslatura* reports as to expenditures from the enactment of this Act until the
13 end of Fiscal Year 2006.

14 **Section 4. Severability.**

15 *If* any provision of this Law or its application to any person or
16 circumstance is found to be invalid or contrary to law, such invalidity shall *not*
17 affect other provisions or applications of this Law, which can be given effect
18 without the invalid provisions or application, and to this end the provisions of this
19 Law are severable.

8/10/05
2005

FILED
DISTRICT COURT OF GUAM

JUL 13 2005

MARY L.M. MORAN
CLERK OF COURT

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DISTRICT COURT OF GUAM
TERRITORY OF GUAM

300

J.C., a person with a disability,
S.F., a person with a disability,
J.M., a person with a disability,

Plaintiffs,

vs.

FELIX P. CAMACHO, in his official capacity
as Governor of Guam,
ROSEANNE ADA, in her official capacity as
director of the Department of Integrated
Services fo Individuals with Disabilities, and
J. PETER ROBERTO, in his official capacity
as Director of the Department of Mental
Health and Substance Abuse,

Defendants.

Civil Case No. 01-00041

as previously consolidated with

R.A., a person with a disability,

Plaintiffs,

vs.

FELIX P. CAMACHO, in his official capacity
as Governor of Guam,
ROSEANNE ADA, in her official capacity as
director of the Department of Integrated
Services fo Individuals with Disabilities, and
J. PETER ROBERTO, in his official capacity
as Director of the Department of Mental
Health and Substance Abuse,

Defendants.

Civil Case No. 04-00005

**REPORT AND
RECOMMENDATIONS**

///

ORIGINAL

1 The parties had their first meeting with the Special Master on September 9, 2004. At
2 this meeting, the parties discussed what the Plaintiffs believed were inadequacies with the
3 Defendants' plan. The Defendants had agreed to make corrections to their proposed plan,
4 but a plan approved by the Plaintiffs was not and has never been submitted for the Court's
5 approval.

6 On March 22 and 24, 2005, the Special Master again met with the parties to further
7 discuss the Defendants' progress in complying with the terms of the permanent injunction.

8 Dissatisfied by the Defendants' slow progress and failure to meet deadlines set forth
9 in the Permanent Injunction, the Plaintiffs filed a Motion for Order to Show Cause in re:
10 Contempt on March 25, 2005. (Docket No. 282.) An Amended Motion for Order to Show
11 Cause in re: Contempt was filed on May 9, 2005. (Docket No. 285.)

12 In response to the Plaintiffs' Motion, the Defendants filed their Memorandum in
13 Opposition to the Plaintiffs' Amended Motion for Order to Show Cause in re: Contempt on
14 May 23, 2005, stating that although the Defendants have been unable to completely meet
15 the requirements set forth in the Permanent Injunction, the Defendants have and will
16 continue to make marked progress. (Docket No. 287.)

17 On June 1, 2005, the Plaintiffs filed a reply to the Defendants' Response in
18 Opposition to the Amended Motion for an Order to Show Cause in re: Contempt. (Docket
19 No. 295.)

20 In preparation for the June 30, 2005 hearing, on June 23, 2005 the Court conducted a
21 site visit to the Department of Mental Health and Substance Abuse ("DMHSA") facility and
22 a group home in where Plaintiff J.C. currently resides.

23 On June 30, 2005, a hearing was held on the Plaintiffs' Motion to Show Cause in re:
24 Contempt. At the hearing both parties stipulated to a prima facie showing of contempt by
25 the Defendants. However, the Defendants presented various witnesses who testified that the
26 Defendants have made visible progress and that continual efforts are being made to comply
27 with the requirements of the Permanent Injunction.

28 Witness J. Peter Roberto, the director of DMHSA testified that none of the Plaintiffs

1 were currently at the AIU. Mr. Roberto also testified that DMHSA was successful in hiring
2 a nursing administrator (Dr. Judith Avery), obtaining the services of a locum tenens
3 psychiatrist, receiving \$900,000 in appropriations for facility repairs, providing medical and
4 dental services to its consumers, conducting needed training for staff, hiring consultants to
5 assist in meeting the Olmstead requirements, and reducing the number of hours clients were
6 placed in restraints or seclusion.

7 During the hearing, Mr. Roberto admitted that with only 60% of the necessary staff
8 hired, critical positions remain open despite ongoing recruitment efforts. Mr. Roberto
9 attributed the recruitment hardship to the scarcity of qualified candidates on the island and
10 the inability to offer competitive wages. In regards to the waiting list, Mr. Roberto stated
11 that currently DMHSA along with contracted experts are looking at other states to see how
12 they have set up their systems.

13 Mr. Roberto stated that the Defendants had asked the Plaintiffs to stipulate to an
14 extension of the deadlines, but the Plaintiffs refused. Mr. Roberto further explained that
15 the Defendants' slowness in complying with the mandates of the Permanent Injunction was
16 partly due to the lack of a complete understanding of the Court's Order.

17 Mr. Roberto stated that DMHSA has taken the necessary steps to address the
18 immediate safety concerns of its consumers and has laid the foundation to long term plans
19 which address needed systemic changes. Mr. Roberto claimed that despite funding
20 limitations DMHSA continues to do what it can to meet the requirements of the Permanent
21 Injunction.

22 Dr. Judith Avery, the nursing administrator with DMHSA, testified that she was
23 hired in February 2005 and has worked since then to shift the facility from a rule-based,
24 more rigid type of unit to a center that was client focused. Dr. Avery attributed the previous
25 shortcomings of DMHSA to the lack of leadership and direction in AIU along with a
26 demoralized staff. Dr. Avery stated that since February 2005, DMHSA has implemented a
27 zero tolerance for restraint policy and no instance of restraint has since been used.

28 When questioned about the risks associated with inpatient detoxification, Dr. Avery

1 testified that DMHSA has ordered a defibrillator, however, it currently has to rely on the
2 Guam Memorial Hospital for the use of a defibrillator.

3 Dr. Laura Post testified that she is the staff psychiatrist at DMHSA and has worked
4 full time at DMHSA since March 2005. Dr. Post stated that as the lead psychiatrist of the
5 AIU, she has worked to modify the AIU to make it more consistent with the Permanent
6 Injunction. She testified that she was the primary care provider for Plaintiff J.C. and was in
7 charge of creating his comprehensive treatment plan. When asked her opinion on the
8 impediments of hiring personnel (nurses, physicians, etc.), Dr. Post stated that it was money.

9 The Defendants admitted that deadlines were not met and that much work still needs
10 to be done. However, the Defendants claim that there is no lack of intention to work
11 towards the goal of meeting the mandates of the Permanent Injunction and that evolutionary
12 changes are taking place in terms of compliance with the federal mandates.

13 -----The Plaintiffs argued that the Defendants failed to comply with the orders of the
14 Permanent Injunction and that reasonable steps have not been taken by the Defendants.
15 When queried about what sanctions would be appropriate, the Plaintiffs stated that they
16 would leave the details of the sanction to the Court's discretion.

17 Based on the documents filed with the Court, along with the witnesses' testimonies,
18 the Court finds that the Defendants are in contempt and have failed to meet the deadlines
19 and requirements set forth by the Permanent Injunction.

20 While finding the Defendants in contempt, the Court recognizes and commends the
21 visible improvement to the DMHSA facilities as well as the ongoing efforts made by the
22 staff at DMHSA to meet the mandates of the Permanent Injunction. When the Court made
23 an unannounced visit to DMHSA, the Court was pleased by the cleanliness of the DMHSA
24 facility. The staff was knowledgeable and friendly, and the sinks and toilets were in
25 working order. Also worthy of praise is the fact that there were no new instances of
26 restraints and that the seclusion time had been noticeably reduced since the hiring of the
27 new nursing administrator. The Court commends the numerous strives taken by the
28 DMHSA staff, however the Court inescapably finds that the Defendants have been slow in

1 complying with the mandates of the Permanent Injunction.

2 The Defendants showed relatively little progress since the issuance of the Permanent
3 Injunction on June 8, 2004 up until early February 2005. It appears to the Court that the
4 Defendants were negligent and did not actively seek to meet the deadlines of the Permanent
5 Injunction. Most of the improvements of DMHSA have been accomplished post February
6 2005. Although there has been improvement, much still needs to be done. The ADA
7 accessible door does not work and has not worked for over one year. The DMHSA facility
8 is not in compliance with Guam safety and fire regulations. While Mr. Roberto
9 acknowledges that DMHSA is working to fix these violations, the Court believes that the
10 Defendants could be more productive if such actions were undertaken pursuant to a written
11 plan. With a written plan, the Court and the Plaintiffs can easily determine where the
12 Defendants are in its progression to compliance with the Permanent Injunction. The plan
13 should guide the Defendants' actions. Additionally, a plan is essential to ensure that goals
14 are met even if there were to be a change in administration in the future.

15 The Court cannot comprehend why the Defendants have failed to put forth a plan in
16 the one year since the Permanent Injunction was issued. The Defendants have responded by
17 saying that the Plaintiffs have rejected their proposed plan. The Court points out that the
18 Permanent Injunction envisions the Defendants submitting their plan to the Court for
19 ultimate approval should the Plaintiffs become a stumbling block in the approval process.
20 Reason would also dictate that if the Plaintiffs were to unreasonably withhold their approval
21 of the Defendants' plan, the Defendants would have a recourse to the Court. Thus, the
22 Court finds that Defendants have no justified reason for not meeting the plan approval
23 deadlines.

24 Having made the above findings, and to ensure that the Defendants meet the
25 established deadlines, and more importantly to comply with the mandates set forth by the
26 Permanent Injunction, the Court makes the following recommendations to Judge Marshall:

27 **RECOMMENDATIONS**

28 A. The Court hereby recommends that the Permanent Injunction be modified to

1 establish a new set of deadlines for the Defendants to meet the mandates of the
2 Permanent Injunction. The proposed deadlines are as follows:

3 1) Submit for approval to the Plaintiffs and the Special Master a proposed
4 system for implementation of a waiting list within 30 days of Judge Marshall
5 taking action on this Report.

6 2) Develop a comprehensive implementation plan to develop community
7 services and supports which will ensure prompt placements of Plaintiffs in
8 appropriate living situations outside of the AIU. This comprehensive
9 implementation plan shall be developed and submitted within 60 days of
10 Judge Marshall taking action on this Report.

11 3) Develop policies and procedures (including grievance procedures)
12 addressing procedures for changes in community placement and the return by
13 individuals to the AIU. These policies and procedures shall be submitted for
14 approval to the Plaintiffs and the Special Master within 60 days of Judge
15 Marshall taking action on this Report.

16 4) Develop and submit to the Plaintiffs and the Special Master for approval a
17 plan to implement the minimum care requirement outlined in Sections I and
18 II of the Permanent Injunction within 60 days of Judge Marshall taking
19 action on this Report.

20 5) If the Plaintiffs dispute any element of any of the plans submitted by the
21 Defendants for approval, the parties shall meet and confer within ten (10)
22 days and attempt to resolve the dispute in good faith. If the parties fail to
23 resolve the dispute, the Defendants may present their plan to the Special
24 Master for approval. The Plaintiffs shall have ten (10) days thereafter to
25 make their objections to any element of the plan. The Special Master may
26 reject or approve the Defendants' plan with such modifications thereon as
27 may be appropriate.

28 B. The Court also recommends that Judge Marshall implement a scheme for the

1 imposition of sanctions if the Defendants fail to abide by the new deadlines set forth
2 above. The recommended sanctions are as follows:

3 1) If the Defendants fail to meet any of the above-established deadlines, the
4 Defendants shall pay to the Clerk of Court a monetary penalty of \$250.00 per
5 day per violation for the first 10 days. Thereafter, a \$500.00 per day per
6 violation penalty shall be imposed for the following 20 days, and \$1,000.00
7 per day per violation for each additional day thereafter up to 30 days.

8 a) Penalties shall begin to accrue on the day after performance is due
9 and shall continue to accrue through the final date of completion.

10 b) The Clerk of Court shall establish a separate interest-bearing
11 account for all penalties paid by the Defendants. Any and all
12 penalties paid by the Defendants shall be deposited by the Clerk of
13 Court into said account, said funds to remain on deposit pending
14 further order of the Court. Any and all monies in this account shall
15 be donated to community service programs on Guam to be approved
16 by the Court.

17 2) If the Defendants fail to meet any one of the above-established deadlines
18 by more than 60 days, the Defendants will be remanded to the custody of the
19 U.S. Marshal Service until the accrued penalties are paid in full and/or the
20 Defendants have submitted the appropriate plan or report to the Court.

21 The Court applauds the progress thus far made, and thus agrees to recommend that
22 the Defendants be given additional time to comply with the mandates of the Permanent
23 Injunction. While the continuances may appear relatively short, the Court believes the
24 recommended extensions of time are reasonable, given the fact that the Defendants have
25 already had one year to comply with the Court's order. Moreover, the recommended


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1 sanctions are necessary to ensure that progress is not further stalled. The Court is confident
2 that the Defendants will rise to the challenge and meet the new deadlines.

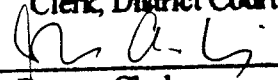
3 **DATED** this 13th day of July 2005.

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5 **JOAQUIN V.E. MANIBUSAN, JR.**
6 **U.S. MAGISTRATE JUDGE**
7 **APPOINTED AS SPECIAL MASTER**

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Notice is hereby given that this document was
entered on the docket on JUL 13 2005
No separate notice of entry on the docket will
be issued by this Court.

Mary L. M. Moran
Clerk, District Court of Guam

By:  JUL 13 2005
Deputy Clerk Date