IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 92-2062D/A
	)	
STATE OF TENNESSEE, ET AL.,	)	
	)	
Defendants,	)	
	)	
PEOPLE FIRST OF TENNESSEE,	)	
PARENT GUARDIAN ASSOCIATION	)	
OF ARLINGTON DEV. CENTER,	)	
	)	
Intervenors.	)	

DECLARATION OF STEPHEN H. NORRIS

I, Stephen H. Norris, pursuant to the provisions of 28 U.S.C. § 1746, do hereby declare:

1. My name is Stephen H. Norris. I am Deputy Commissioner for the State of Tennessee's Division of Mental Retardation Services ("DMRS"). As part of my duties, I oversee the State of Tennessee's provision of services for the mentally retarded, including the implementation of the State's obligations under the orders entered in this case. I am submitting this declaration in support of the State's motion to vacate all outstanding injunctive relief and dismiss this case.

2. The State is in the process of transitioning all of the residents of the Arlington Development Center ("ADC") to community placements in accordance with the orders entered in this case. There are currently 97 residents remaining at ADC, all of whom are adults. There have not been any children residents at ADC since 2004. DMRS has seven individuals scheduled to be transitioned from ADC in September, two in October, and two more in

November; in addition to the first twelve individuals designated to move into the State-operated ICF/MR homes currently set to open in November. However, the Court Monitor, Dr. Nancy K. Ray, has indicated that she will not approve *any* transitions to community homes because she disagrees with the State's policies concerning the funding of nursing services.

3. Over the four-year period from July 2004 to June 2008, the State has paid $4,207,178.44 in fees to Dr. Ray and her staff. *See* Exhibit 1 (attached). To the best of my knowledge, NKR & Associates' payroll, much of which is provided for with State dollars, includes 10 individuals, four in its New York office and six in the Tennessee office. The monitor fees have increased during the last quarter by over 50 percent, from a monthly average of $84,963 (from July 2004 to March 2008) to a monthly average of $127,952 (from April 2008 to June 2008). These figures translate to an annualized increase from just over $1 million per year (annualized average from July 2004 to March 2008) to over $1.5 million per year (annualized average from April 2008 to June 2008). *See* Exhibit 1.

4. The State has paid $1,213,195.31 in attorney fees and expenses for People First for the period of October 2002 to October 2007. *See* Exhibit 2 (attached).

5. Mentally retarded individuals in the Arlington class receive a court-ordered housing subsidy that identically situated mentally retarded individuals in the statewide waiver do not receive. In fiscal year 2007-2008, the State paid $1,428,094, with no federal financial participation ("FFP"), to subsidize housing costs for Arlington class members in West TN. A total of 288 West TN class members received housing subsidies as high as $1,642 per month in fiscal year 2007-2008; the average monthly housing subsidy was $413 per class member.

6. Mentally retarded individuals in the Arlington class receive a court-ordered transportation subsidy that identically situated mentally retarded individuals in the statewide

waiver do not receive. In fiscal year 2007-2008, the State paid $982,278, with no FFP, to subsidize transportation costs for Arlington class members in West TN. A total of 293 West TN class members received transportation subsidies as high as $742 per month in fiscal year 2007-2008; the average monthly transportation subsidy was $279.37 per class member.

7. Mentally retarded individuals in the Arlington class receive dental benefits pursuant to court order, which identically situated mentally retarded persons in the statewide waiver do not receive. Most of these dental services are provided through Community Services Network of West Tennessee ("CSN") and are thus included in the annual State expenditures for CSN, listed below.

8 Mentally retarded individuals in the Arlington class receive vision benefits pursuant to court order, which identically situated mentally retarded persons in the statewide waiver do not receive. Most of these vision services are provided through CSN and are thus included in the annual State expenditures for CSN, listed below.

9. Most mentally retarded individuals in the Arlington class receive health care services through CSN, rather than through a TennCare managed care organization ("MCO"), unlike identically situated mentally retarded persons in the statewide waiver. This increases costs to the State because CSN is not bound to follow Medicaid and TennCare regulations for determining whether particular services are covered. State costs are also increased because CSN is funded primarily with state dollars, rather than receiving the 2-to-1 federal matching funds provided for services under the Medicaid State Plan or a Medicaid waiver. The State pays 100 percent of CSN expenditures for contract (administrative) costs, items normally covered under the state plan, and the cost of items usually not covered by TennCare, such as over-the-counter drugs and other miscellaneous supplies. For those CSN services that DMRS forwards on to

TennCare for federal participation, there is usually still a portion that is 100% state dollars as CSN pays the providers more than what the providers would accept from TennCare.

10. Total expenditures (state and federal) for CSN in fiscal years 2004-2005 to 2007-2008 were as follows: $9,304,813.25 (fiscal year 2004-2005), $8,793,471.68 (fiscal year 2005-2006), $10,025,865.45 (fiscal year 2006-2007), and $11,389,117.41 (fiscal year 2007-2008). From July 2004 through March 2008, approximately 16 percent of the total CSN expenditures has been billed through the Arlington waiver, most of which DMRS has recovered from TennCare. Additional waiver claims for the months of February 2008 through June 2008 are anticipated as further CSN billing details are received. Thus, the State has received no FFP on approximately 84 percent of CSN expenditures.

11. Mentally retarded persons in the Arlington class receive advocacy services pursuant to court order, which identically situated mentally retarded individuals in the statewide waiver do not receive. For fiscal year 2007-2008, the estimated cost of advocacy services for Arlington class members is $342,742.

12. The State is required by court order to provide conservators/guardians for Arlington class members, unlike identically situated mentally retarded persons in the statewide waiver. For most class members needing a conservator, the State pays the one-time costs of the attorney and court fees, as well as the ongoing cost of a professional conservator for those who need one. The cost of establishing conservatorship (attorney and court fees) is estimated to average $1,500 per person. For the period of September 2007 to August 2008, 86 new Arlington "at-risk" class members have been referred to DMRS for help with establishing conservatorship. To complete these cases, it can be estimated that the State will spend $129,000, not including the cost of state employees who help to get these cases organized. In addition, for those Arlington

class members, both existing and new, who need a professional conservator, there is the ongoing cost of that contracted service. The approximate cost in West TN for these services from ComCare was $201,787 in fiscal year 2007-2008, and is estimated to be $286,200 in fiscal year 2008-2009. These contract figures include both class and non-class expenditures, and historically, this service has been funded 100 percent with state dollars.

13. The State spends substantially more providing services to Arlington class members than for identically situated mentally retarded individuals in the statewide waiver. The average waiver costs per day over the past several years are as follows:

Fiscal Year	Arlington Waiver	Statewide Waiver
2004-05	$436.73	$201.09
2005-06	$433.28	$203.73
2006-07	$436.16	$220.81
2007-08	$434.51	$226.44

As of June 30, 2008, there were 284 individuals billed through the Arlington waiver. If these 284 individuals were served at the average cost per day of the main waiver ($226.44) rather than the average cost per day of the Arlington waiver ($434.51), the State would save approximately $59,091.88 per day per enrollee, or over $21.5 million annually. Significantly, this difference does *not* include the additional costs the Court's orders have required the State to incur, identified in ¶¶ 3-12 above, that are paid by the State outside the Medicaid waivers.

14. All told, compliance with the Court's remedial orders in this case is costing the State of Tennessee upwards of $30 million per year over and above what the State would be spending if Arlington class members were treated the same way as otherwise identically situated mentally retarded persons who are served by the statewide waiver.

15. The State plans to implement many of the provisions of the Court's remedial orders even if the Court vacates all outstanding injunctive relief and dismisses this case. In particular, the State intends to proceed with the closure of ADC. The State will also proceed with the plan to build 12 ICF/MR homes in the community (with 4 beds each for a total of 48 beds) to accommodate some of the individuals transitioning out of ADC. The total cost of these 12 ICF/MR homes in West Tennessee is estimated to be $11,520,000 (provided by state dollars and bonds), including the planning phase in fiscal year 2005-2006 through the continued construction phase in the current fiscal year 2008-2009. The current fiscal year budget contains $3.3 million in state funds for debt service for the construction of additional ICF/MR homes in West Tennessee, if needed. The State also intends to proceed with the plan to open a Resource Center for mentally retarded persons in West Tennessee.

I certify under penalty of perjury that the forgoing is true and correct.

Executed at Nashville, TN this 29th day of August, 2008.

Stephen H. Norris

Stephen H. Norris