

setting appropriate to the needs of qualified individuals with disabilities.” See 28 C.F.R. § 35.130(d) (emphasis added). Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, imposes similar obligations.

2. In *Olmstead v. L.C.*, 527 U.S. 581 (1999), the U.S. Supreme Court held that the ADA is violated when a state places people with mental illness in “unjustified isolation.” *Id.* at 597. The Court also held that a person with a mental illness may sue the state for failing to ensure that he or she is placed “in the most integrated setting appropriate to [his or her] needs.” and that undue institutionalization of a person with a mental illness is discrimination by reason of disability under Title II of the ADA. *Id.* at 587.

3. This action is brought to enforce these mandates. Rather than comply with these laws, Defendants serve Plaintiff’s constituents in “unjustified isolation” in settings that are not integrated, namely Chelsea Place Care Center (“Chelsea Place”), Bidwell Care Center (“Bidwell”), and West Rock Health Care Center (“West Rock”). In these nursing homes, individuals with mental illness are needlessly segregated and inappropriately warehoused.

4. Chelsea Place, Bidwell, and West Rock offer little or no rehabilitative treatment or discharge planning to promote integration into the community. As chronicled in articles in *The New London Connecticut Day*, Chelsea Place, Bidwell, and West Rock and other similar nursing facilities lack adequate staffing, psychiatric treatment, and activities and programming, and often fail to meet minimum health and safety standards. Kenton Robinson, *Thousands With Psychiatric Disabilities Locked Away In Nursing Homes*, THE DAY, Dec. 19, 2004, at 1; Robinson, *Many Mentally Ill in State are Housed Without Proper Care*, THE DAY, August 7, 2005, at 1.

5. Individuals with mental illness are left to languish in these facilities while equally

affordable and more integrated community-based settings exist or could be made available. More integrated, community-based settings would more appropriately meet the needs of individuals with mental illness who are currently residing in these nursing facilities.

6. Individuals with mental illness are required to live in Chelsea Place, Bidwell, and West Rock solely because of the lack of community-based alternatives, such as supportive housing.¹ In administering their programs, services and activities, Defendants have chosen to fund expensive institutional care in nursing homes rather than less costly care in integrated settings that would better meet these individuals' needs. Because of Defendants' failure to develop and fund community-based alternatives, individuals with mental illness often have nowhere to go but a nursing home. Indeed, many individuals with mental illness must choose between residence in a nursing home or homelessness.

7. Defendants have violated Title II of the ADA and Section 504 of the Rehabilitation Act by failing to assure that their programs, activities, and services are administered to individuals with mental illness in the most integrated setting appropriate to their needs. Instead, they have isolated and institutionalized individuals with mental illness at Chelsea Place, Bidwell, and West Rock in violation of Title II of the ADA and Section 504 of the Rehabilitation Act.

8. Plaintiff's claims for violation of Title II of the ADA, 42 U.S.C. §§ 12131, 12132, are asserted against the individual Defendants only. Plaintiff does not assert claims against the State of Connecticut for violation of Title II of the ADA.

¹ "Supportive housing," as used in the Complaint, refers to programs that enable individuals with mental illness to live in their own apartments or homes; these individuals receive an array of supports and services tailored to their preferences and needs.

9. Plaintiff’s claims for violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, are asserted against both the State of Connecticut and the individual Defendants. The only claims asserted against the State of Connecticut are claims under Section 504.

Parties

10. Plaintiff, the State of Connecticut Office of Protection and Advocacy for Persons with Disabilities (“OPA”), is an authorized protection and advocacy agency under the Protection and Advocacy for Individuals with Mental Illness Act (“PAIMI”), 42 U.S.C. § 10801, *et. seq.* OPA is also responsible for providing protection and advocacy services to individuals with disabilities pursuant to Conn. Gen. Stat. § 46a-7 to 11. OPA has statutory authority to pursue legal, administrative and other appropriate remedies to ensure the protection of individuals with mental illness who are or will be receiving care and treatment in the state of Connecticut. 42 U.S.C. § 10805.

11. OPA is pursuing this action to protect and advocate for the rights and interests of residents of Chelsea Place, Bidwell, and West Rock, and those at risk of entry into these facilities, who are “individuals with mental illness” as that term is defined in 42 U.S.C. § 10802. These individuals are OPA constituents.

12. These constituents each have a significant mental illness and reside in or are at risk of entering “facilities” rendering care and treatment for mentally ill individuals, as that term is defined in 42 U.S.C. § 10802.

13. These constituents have significant mental illnesses that substantially limit their ability to perform major life activities, such as self care, working, and interaction with others. They also have a record of such mental illnesses, and are regarded by Defendants as having such

mental illnesses. They are therefore individuals with disabilities for purposes of the ADA and the Rehabilitation Act. 42 U.S.C. § 12102, 29 U.S.C. § 705(20).

14. These constituents have each suffered injuries, or are at risk of suffering injuries, that would allow them to bring suit against Defendants in their own right.

15. Defendant, the State of Connecticut, is responsible for operating its programs, services, and activities in conformity with the Americans with Disabilities Act and the Rehabilitation Act. Each individual Defendant is also responsible for operating programs, services, and activities in conformity with the ADA and the Rehabilitation Act.

16. Defendant Thomas A. Kirk, Jr., Ph.D. is the Commissioner of the Department of Mental Health and Addiction Services (“DMHAS”). DMHAS is responsible for providing a network of effective and efficient mental health and addiction services that foster self-sufficiency, dignity and respect. As the state’s mental health authority, DMHAS operates, funds and coordinates inpatient and community-based mental health services, including residential services, for adults 18 and older. It is responsible for delivery of all state-operated or -funded mental health and addiction services. DMHAS manages the state’s behavioral health general funds, state-administered general assistance dollars, and the Community Mental Health Services block grant. It is responsible for the screening, evaluating, and monitoring of persons with a mental illness in or at risk of entry into Connecticut nursing homes. Defendant Kirk is sued in his official capacity only.

17. Defendant Patricia A. Wilson-Coker is the Commissioner of the Department of Social Services (“DSS”). DSS provides services to individuals with disabilities who need help in maintaining or achieving self-direction, self-reliance, and independent living. DSS is one of Connecticut’s largest agencies, responsible for administration of over one third of the state

budget, more than \$4 billion. DSS is the state agency responsible for administration of the Medicaid program, the Section 8 Housing Voucher Program, and Vocational Rehabilitation Services. DSS is required to ensure that people with mental illness are appropriately screened and maintained in nursing homes. Conn. Gen. Stat. §17b-262. Defendant Wilson-Coker is sued in her official capacity only.

18. Defendant J. Robert Galvin, M.D., M.P.H., is the Commissioner of the Connecticut Department of Public Health ("DPH"). DPH is the state agency responsible for regulating nursing home facilities in the Connecticut. Conn. Gen. Stat. § 19a-490, et seq. Defendant Galvin is sued in his official capacity only.

19. The State of Connecticut is a public entity subject to the requirements of Title II of the ADA, 42 U.S.C. § 12131. DMHAS, DSS and DPH are public entities subject to the requirements of Title II of the ADA, 42 U.S.C. § 12131.

20. The State of Connecticut is a recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. DMHAS, DSS and DPH are recipients of federal funds subjecting them and the State of Connecticut to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

Jurisdiction and Venue

21. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

22. Venue in the District of Connecticut is proper under 28 U.S.C. § 1391.

23. Declaratory and injunctive relief are sought under 28 U.S.C. § 2201 *et seq.*

Facts

Individuals with Mental Illness in Nursing Homes

24. When the State of Connecticut (“state”) closed and downsized state hospitals, it failed to develop the supports and services, including residential services, that individuals with mental illness need to live in the community. FINAL REPORT OF THE MENTAL HEALTH CABINET, December 21, 2004, at 4 (“Connecticut downsized and closed state mental hospitals that tended to warehouse patients ...Savings derived from closures were not reinvested to create an effective community-based mental health safety net.”).

25. As a result, many individuals with mental illness now live in nursing homes, in which they are needlessly isolated, segregated, and institutionalized.

26. More than 2,700 individuals with serious mental illness live in nursing homes in Connecticut. The majority (53%) are under the age of 65. Admissions to nursing home of individuals with serious mental illness are growing at a rate of between five and ten percent per year. FINAL REPORT OF THE MENTAL HEALTH CABINET, December 21, 2004, at 5.

27. Serving individuals with mental illness in nursing homes “is neither humane nor recovery-oriented.” FINAL REPORT OF THE MENTAL HEALTH CABINET, December 21, 2004, at 12.

28. “If community-based services are not [made] available, children and adults with mental illness will continue to fill expensive, inappropriate, and non-therapeutic settings such as nursing homes or simply go untreated.” FINAL REPORT OF THE MENTAL HEALTH CABINET, December 21, 2004, at Introduction by Lt. Gov. Kevin B. Sullivan, p. 2; *see also id.* at 12 (nursing homes “are the only option[] for many”).

29. It costs the state approximately \$50,000 to \$80,000 per year for the care and treatment of an individual with mental illness in a nursing home. This is far more than it would cost the state to provide care in a more integrated, community-based setting.

30. Individuals with mental illness are frequently placed in nursing homes solely to obtain mental health care that could easily be provided in an integrated, community-based setting. Often, these individuals do not have a significant physical health problem.

31. Defendants routinely approve and fund care of individuals with mental illness in nursing homes such as Chelsea Place, Bidwell, and West Rock when such individuals are capable of receiving and would prefer receiving care in a more integrated, community-based setting.

32. Some nursing homes, including Chelsea Place and Bidwell, are locked or have locked psychiatric units. Residents cannot leave or go outside without permission. Often, an escort is required. Individuals with mental illness are placed in locked settings although there is no judicial determination that they are dangerous to themselves or others.

33. Most residents with mental illness remain in nursing homes for years because they lack the opportunity to obtain services in more integrated, community-based settings.

34. Defendants do not ensure, consistent with *Olmstead*, that individuals with mental illness in nursing homes have the option of being served in a more integrated, community-based setting. More than a decade after the effective date of the ADA, and more than six years after *Olmstead* was decided, Defendants have yet to develop or implement a comprehensive and effectively working plan that identifies individuals with mental illness who are needlessly in nursing homes and helps them move to more integrated settings.

35. Defendants have long been aware, through reports of state agencies, the press, and other sources, of the unnecessary isolation, segregation, and institutionalization of individuals with mental illness in nursing homes, including in locked settings.

Chelsea Place, Bidwell, and West Rock

36. Chelsea Place is a 234-bed skilled nursing facility located in Hartford. In 2002, Chelsea Place converted unit 2C into a locked, secured psychiatric unit. Approximately 22 residents with mental illness live in the locked unit. Upon information and belief, at least 25 other individuals with mental illness live in Chelsea Place. These residents may leave the building only if granted a pass.

37. Bidwell is a 156-bed skilled nursing facility located in Manchester. It is a locked facility. Both of Bidwell's floors, each with about 75 residents, are locked. The second floor is a locked psychiatric unit. Upon information and belief, at least 85 residents of Bidwell have mental illness.

38. West Rock is a 90-bed intermediate care nursing facility in New Haven. The facility is unlocked, but is surrounded by a perimeter fence. Residents cannot leave without permission. Upon information and belief, at least 70 of the residents have mental illness.

39. Chelsea Place, Bidwell, and West Rock are institutions with characteristics similar to those of a psychiatric hospital. They place many limitations on residents' autonomy and privacy. Residents live a highly regimented lifestyle, spending most of their days in a few rooms among a great many other individuals with disabilities. They must abide by the nursing homes' restrictive rules and policies.

40. Chelsea Place, Bidwell, and West Rock are loud and impersonal. Announcements about meals, medications, phone calls, events, and administrative matters are constantly

broadcast into all rooms over an intercom system. The common areas have televisions, which are almost always on.

41. Chelsea Place, Bidwell, and West Rock provide very few recreational or other activities aimed at helping residents gain independence. Cigarettes are distributed in limited numbers and at designated times. Residents spend hours watching television in a common room or waiting for the designated smoking break. Some residents are able to attend activities outside the facility; however, at the end of the day, they return to Chelsea Place, Bidwell, and West Rock.

42. Residents of Chelsea Place, Bidwell, and West Rock have virtually no privacy. Residents are not allowed to have personal telephones. Payphones are located in the common TV rooms, hallways, or lounges, where anyone can overhear conversations. Chelsea Place, Bidwell, and West Rock have policies limiting the use of the telephone.

43. The lack of privacy makes it difficult for residents to exercise their rights. When they make phone calls, they risk having their conversation overheard by staff and other residents. Many are fearful that if an advocate calls them at the facility, staff will find out and retaliate.

44. Residents of Chelsea Place, Bidwell, and West Rock have little contact with members of the community outside the facility. Usually, trips out of the facility are conducted in groups escorted by staff. Chelsea Place, Bidwell, and West Rock all have curfews and set visiting hours. In Bidwell and Chelsea Place, residents may not have visitors in their rooms.

45. Residents of Chelsea Place, Bidwell, and West Rock have almost no control over their personal space. Most residents of Chelsea Place, Bidwell, and West Rock share a bedroom and bathroom with one to three other people. Residents are not allowed to choose their own

roommates except under rare circumstances. There is almost no space for personal items.

Residents have extremely limited control over who has access to their rooms.

46. Residents of Chelsea Place, Bidwell, and West Rock are permitted to retain only a small “personal needs allowance” from their SSI checks. This allowance is currently \$57.00 a month, or a little less than \$2.00 per day. The remaining amount is paid to the nursing home. A resident’s privileges may be suspended if he or she borrows, loans, buys from or sells items to other residents.

47. In Chelsea Place, Bidwell, and West Rock, residents have very limited choice over what they eat and no choice over when they eat. No foods, liquids, or gifts can be brought into the facilities without being examined by nursing staff. Meals and medication are dispensed at specific times. At Bidwell and West Rock, all the residents on a given floor must eat together; the same is true for residents of Chelsea Place’s locked unit. West Rock and Bidwell have assigned seating in the dining room; residents may not choose with whom they eat. At Chelsea Place, Bidwell, and West Rock, residents are not allowed to keep most foods in their rooms.

48. Residents of Chelsea Place, Bidwell, and West Rock receive little or no education or information about the limited community-based alternatives to nursing homes that do exist. Discharge planning is not regularly conducted. Many residents fear that if they leave the nursing home, they will become homeless.

49. Chelsea Place, Bidwell, and West Rock provide little or no rehabilitative treatment that promotes independence and integration into the community. The facilities do not provide training in symptom management, medication management, shopping, cooking, housekeeping, money management, or using transportation or community services. The facilities provide limited social work services.

50. A contract psychiatrist visits Chelsea Place, Bidwell, and West Rock once a month.

51. Numerous DSS inspection reports of Chelsea Place, Bidwell, and West Rock have documented health, safety, and sanitation problems. Inspection reports have also documented a lack of treatment and discharge planning.

Locked Psychiatric Units in Chelsea Place and Bidwell

52. More than 100 individuals with mental illness live in locked units at Chelsea Place and Bidwell. Many have no treatment or discharge plans. Individuals often remain in locked units for years.

53. Residents of the locked units at Chelsea Place and Bidwell are subject to highly restrictive “behavior management” programs in which they earn “privileges” for compliance with institutional and staff rules. Residents’ freedom to leave the units depends largely on staff’s assessment of how well they comply with institutional rules. If they do not participate in structured activities, or if they violate a rule, such as bringing food in their rooms, they can lose “privileges.”

54. Professional standards require that behavior management programs for individuals with mental illness be individualized and rely primarily on rewards rather than punishments. The behavioral management programs at Chelsea Place and Bidwell are not individualized, rely primarily on punitive measures, and do not meet professional standards.

55. At Bidwell, residents of the locked unit are assigned to one of five “levels” or “Steps,” each with its own “privileges.” While it can take months to “earn” a higher Step, a Bidwell resident’s current Step can be reduced at any time for infractions of Bidwell’s rules. At first, all residents are assigned to Step One, the most restrictive. Residents on Step One may not

leave Bidwell, although they can have supervised smoking breaks in the outdoor Gazebo and can participate in supervised walks. Step Two residents can leave the facility on recreation trips if accompanied by staff. Step Three residents can leave the facility with a third party, such as a family member, but only during daytime hours. Step Four residents can leave the facility overnight with a third party and be unsupervised at the outdoor Gazebo for up to one hour at a time. Step Five residents have unsupervised grounds passes, although they are subject to curfews and other restrictions. Step Five residents can also spend up to 21 nights away from the facility each year. All of these “privileges” are contingent on complying with unit rules and participating in scheduled groups or activities.

56. Residents of the locked unit at Chelsea Place are subject to a similar program, with three tiers. All new residents are placed on Tier I, the most restrictive level. Tier I residents are checked every 15 minutes, and are confined to the unit except for scheduled off-unit activities with staff. Tier I residents can smoke only during designated breaks with staff supervision. Tier II residents may leave the unit with family members, or other approved individuals, or to participate in activities with staff. Tier III residents may leave the unit unaccompanied and smoke without supervision, but staff may impose restrictions on these “privileges.”

Community-Based Services

57. Defendants do provide community-based services to many individuals with mental illness. With appropriate and individualized community-based services, those individuals are able to live with family, in their own apartment or home, or in supportive housing.

58. Many of the individuals to whom Defendants provide community-based services have mental illnesses and functional capacities that are the same as, or are similar to, the individuals living in Chelsea Place, Bidwell, and West Rock.

59. If provided community-based services, virtually all individuals with mental illness in Chelsea Place, Bidwell, and West Rock could live with family, in their own apartment or home, or in supportive housing.

60. Many individuals with mental illness living in Chelsea Place, Bidwell, and West Rock would prefer to live with family, in their own apartment or home, or in supportive housing. Some may need education and support in order to make an informed choice.

61. Each of these options – living with family, in one’s own apartment or home, or in supportive housing – would allow individuals who are currently in Chelsea Place, Bidwell, and West Rock to live and receive services in a more integrated setting. Each of these options would afford residents much more choice, freedom, and privacy, as well as the opportunity to maintain regular family relationships and to interact with and form friendships with people who do not have disabilities.

62. In supportive housing, individuals with mental illness are not required to live solely with other individuals who have a disability. They have friends of their own choosing and have visitors and telephone conversations at the times of their choice in the privacy of their homes. They go to stores to shop for food and other necessities. They may engage in social activities of their choice. They tend to these and other daily needs to the degree they are able, with supportive services. These programs are designed to foster independence and to enable

individuals to become as self-sufficient as possible. Unlike nursing homes, they are not institutional in character.

63. Individuals with mental illness live and receive services in Chelsea Place, Bidwell, and West Rock, primarily because there are insufficient community services, including supportive housing, to allow them to move to more integrated settings.

64. Many current residents entered Chelsea Place, Bidwell, and West Rock upon discharge from a psychiatric hospital. Upon discharge, they had nowhere else to live.

65. When individuals with mental illness are placed in Chelsea Place, Bidwell, and West Rock, opportunities for discharge, including discharge to supportive housing, are rare. There are long waiting lists for admission to supportive housing and other community-based programs that provide residential services.

66. Individuals with mental illness at Chelsea Place, Bidwell, and West Rock lack information about community-based alternatives and receive little assistance in moving to more integrated settings.

67. Residents are left to stagnate in these nursing homes. Often, they fear retaliation if they express a desire to leave.

Defendants' Administration of Programs, Services, and Activities

68. Defendants administer one or more systems of care for individuals with mental illness.

69. Defendants administer their programs, services, and activities in a manner that supports and encourages the needless isolation, segregation, and institutionalization of individuals with mental illness.

70. In providing services to individuals with mental illness, and in providing long-term care, Defendants have relied too heavily on nursing homes such as Chelsea Place, Bidwell, and West Rock.

71. Defendants have failed to develop and fund sufficient capacity in community-based programs, forcing into Chelsea Place, Bidwell, and West Rock scores of individuals with mental illness who could be served and would prefer to be served in more integrated settings.

72. Providing community-based services to individuals with mental illness at Chelsea Place, Bidwell, and West Rock would not be a fundamental alteration of Defendants' services for people with mental illness or of its long-term care services. The individuals with mental illness at Chelsea Place, Bidwell and West Rock could be served in more integrated settings at a cost equivalent to or less than Defendants' current costs. Defendants already provide, in community-based settings, all the types of services and supports these individuals need.

73. Each service and support currently provided to residents with mental illness at Chelsea Place, Bidwell, and West Rock could be provided in an integrated, community-based setting.

Count I

Violation of the Americans with Disabilities Act Mandate to Administer Services and Programs in the Most Integrated Setting

74. Plaintiff repeats the allegations of all of the above paragraphs as if fully set forth herein. This claim is brought against the individual Defendants only.

75. Plaintiff OPA's constituents are individuals with mental illnesses. They have mental impairments that substantially limit one or more major life activity, such as self-care and

interaction with others. They also have a record of such mental illnesses and are regarded by Defendants as having such mental illnesses.

76. Plaintiff's constituents reside in Chelsea Place, Bidwell, and West Rock, or are at risk of entry into such nursing homes. Plaintiff's constituents are qualified to participate in more integrated community-based programs that would meet their needs. Plaintiff's constituents are therefore qualified individuals with disabilities within the meaning of 42 U.S.C. § 12131(2).

77. Serving Plaintiff's constituents in more integrated settings can be reasonably accommodated.

78. Defendants Patricia A. Wilson-Coker, Thomas A. Kirk, Jr., and J. Robert Galvin, M.D., M.P.H., are responsible for the operation of public entities covered by Title II of the ADA. 42 U.S.C. §§ 12131(1)(A) and (B). Title II of the ADA prohibits Defendants from discriminating against individuals with disabilities in programs and activities. 42 U.S.C. §§ 12131, 12132.

79. The United States Department of Justice has promulgated regulations under Title II of the ADA stating that "a public entity shall administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." *See* 28 C.F.R. § 35.130(d). Such regulations further define "most integrated setting" as "...a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible." 28 C.F.R. pt. 35, App. A, p. 450.

80. Defendants are obligated under the ADA to administer Connecticut programs in a manner that makes services and programs available in the most integrated setting for individuals with disabilities.

81. Defendants have failed to meet this obligation. Defendants are instead requiring

hundreds of individuals to live and receive services in Chelsea Place, Bidwell, and West Rock, although these facilities are not the most integrated settings appropriate to their needs.

Count II

Violation of the Americans with Disabilities Act's Prohibition on Using Methods of Administration that Subject Individuals with Disabilities to Discrimination

82. Plaintiff OPA repeats the allegations of all of the above paragraphs as if fully set forth herein. This claim is brought against the individual Defendants only.

83. Plaintiff's constituents reside in Chelsea Place, Bidwell, and West Rock, or are at risk of entry into such nursing homes, and are qualified to participate in more integrated community-based programs that meet their needs.

84. Title II of the ADA, 42 U.S.C. §§ 12131, 12132, prohibits Defendants from discriminating against individuals with disabilities.

85. Regulations implementing Title II of the ADA provide that:

a public entity may not, directly or through contractual or other arrangements, utilize criteria or other methods of administration:
(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or] (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities

28 C.F.R. § 35.130(b)(3).

86. Defendants, however, utilize methods of administration that have the effect of subjecting individuals with mental disabilities to discrimination. Defendants continue to use methods of administration that perpetuate the use of nursing homes, rather than facilitating the receipt of services in the most integrated setting appropriate to the needs of Plaintiff's

constituents. Such methods result in continued placement of Plaintiff's constituents in settings that are segregated and inappropriate.

Count III

Failure to Administer Services in the Most Integrated Setting Appropriate in Violation of the Rehabilitation Act

87. Plaintiff OPA repeats the allegations of all of the above paragraphs as if fully set forth herein. This claim is brought against all Defendants.

88. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, provides:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

89. Defendants are recipients of Federal financial assistance. DPH, DMHAS and DSS are programs receiving Federal financial assistance.

90. Defendants Patricia A. Wilson-Coker, Thomas A. Kirk, Jr., and J. Robert Galvin, M.D., M.P.H, respectively, are responsible for the operation of DPH, DMHAS and DSS.

91. Plaintiff's constituents who reside in Chelsea Place, Bidwell, and West Rock or are at risk of placement in such homes are qualified to participate in more integrated community-based programs that meet their needs.

92. Section 504 of the Rehabilitation Act requires Defendants to serve individuals with disabilities in the most integrated setting appropriate to their needs.

93. Serving Plaintiff's constituents in more integrated settings can be reasonably accommodated.

94. Defendants have violated Section 504 of the Rehabilitation Act by failing

to administer services to Plaintiff's constituents in the most integrated setting appropriate to their needs.

Count IV

Violation of the Rehabilitation Act's Prohibition on Using Methods of Administration that Subject Individuals with Disabilities to Discrimination

95. Plaintiff OPA repeats the allegations of all of the above paragraphs as if fully set forth herein. This claim is brought against all Defendants.

96. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 prohibits Defendants from discriminating against individuals with disabilities.

97. Regulations implementing Section 504 of the Rehabilitation Act provide that:

a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of disability; [or] (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons

45 C.F.R. § 84.4(b).

98. Defendants are recipients of Federal financial assistance. DPH, DMHAS and DSS are programs receiving Federal financial assistance.

99. Defendants Patricia A. Wilson-Coker, Thomas A. Kirk, Jr., and J. Robert Galvin, M.D., M.P.H., respectively, are responsible for the operation of DPH, DMHAS and DSS.

100. Defendants use methods of administration that have the effect of subjecting Plaintiff's constituents to discrimination. Defendants use methods of administration that perpetuate the use of nursing homes rather than facilitate the receipt of services in the most integrated setting appropriate to the needs of Plaintiff's constituents. Such methods result in continued placement of Plaintiff's constituents in settings that are segregated and inappropriate.

Prayer for Relief

WHEREFORE, Plaintiff requests the following relief:

- a. Declaratory and injunctive relief, including an order requiring that Defendants promptly take such steps as are necessary to enable Plaintiff's constituents to receive services in the most integrated setting appropriate to their needs;
- b. An award of prevailing party costs, including attorney fees;
- c. Such other relief as the Court deems appropriate.

Dated: February 6, 2006

Respectfully submitted,

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