

MAINE STATE LEGISLATURE

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STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-89-088

PAUL BATES, et al.,

Plaintiffs

v.

MARY MAYHEW, COMMISSIONER,
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, et al.,

Defendants

COURT MASTER'S PROGRESS
REPORT PURSUANT TO
PARAGRAPH 299

The following report covers the period from August 1, 2011 to February 1, 2012.

Termination of Active Supervision of Riverview Psychiatric Center.

On December 8, 2011, this Court terminated active supervision of Riverview Psychiatric Center subject to conditions with respect to the continuing enforceability of the consent decree and continued reporting of hospital operations. The order has been implemented without difficulty and the reporting process together with informal consultation provides adequate information to remain current with developments at the hospital. Despite the proposed reductions for the overall budget of the Department of Health and Human Services, generally, budget and staffing levels at Riverview have been maintained at their prior levels.

Supplemental Budget and Departmental Advocacy.

In response to an overrun in the Department's MaineCare expenditures, the Governor proposed a \$220,000,000 budget cut for the remainder of the biennium. As originally proposed the reductions would have impacted clients living in and receiving services at PNMI's, and would

also have eliminated non-categorical MaineCare coverage for childless adults. Although there are reasons to consider changes in the PNMI model, the proposal without amendment would have dislocated and disrupted services for 612 mental health clients living in mental health or mixed medical PNMI and a smaller but undetermined number of clients living in homes of more than eight beds. The system's heavy reliance on PNMI is demonstrated by the fact that more than 50% of the civil clients discharged from Riverview in 2011 were discharged to PNMI. After a few days of hearings, the Joint Committees rejected any immediate changes in the PNMI structure and agreed to seek the necessary expenditure reductions elsewhere.

The elimination or reduction of non-categorical MaineCare coverage, however, remains on the table and is a part of the budget that is now being considered by the full Legislature. During the budget hearings, the Department informed the Joint Committees that 492 individuals with severe and persistent mental illness were receiving mental health services by virtue of non-categorical MaineCare coverage. In recent action the Appropriations Committee proposed to continue the freeze on non-categorical coverage and limit the expenditure of State funds to \$40,000,000. Such action, if enacted, will minimize the impact on the 492 existing clients and will provide the time and opportunity to move as many clients as possible to categorical coverage. Persons with severe and persistent mental illness should at some point qualify for MaineCare on the basis of disability. As I completed this report, the Maine Senate approved the budget. Having previously been approved by the House, the budget should be on its way to enactment as an emergency measure. The supplemental budget for the second year of the biennium, however, remains on the legislative agenda and will presumably require only majority approval.

Although the Department has been in the awkward situation of seeking to balance its own budget while providing accurate information concerning the funding required for consent decree obligations, thus far it has made a fair presentation of the information and has reasonably complied with its duties under the protocol regarding Departmental advocacy.

Implementation of Additional Grant Funding.

As outlined in my last progress report, the biennial budget enacted in 2011 included an additional appropriation of \$995,000 for housing services for each year of the biennium and an additional \$4,664,250 for mental health services in the first year of the biennium for individuals not eligible for MaineCare. Although funding for the second year had been included in the Governor's recommended budget, the Legislature deleted the request and required the Department to report to the Joint Standing Committee on Appropriations and Financial Affairs and the Joint Standing Committee on Health and Human Services on the implementation of the first years funding. In addition, the Legislature required that I file recommendations concerning funding for FY 13. The Department has requested continued funding at the same level for the next year and the Department's report and my letter of recommendation are attached hereto as Exhibit A and B. The Legislature will address the request in the coming weeks, once it has concluded its current deliberations concerning budget reductions for FY12.

Despite the fact that time was lost as a result of a management change in the Office of Adult Mental Health Services that coincided with the grant funds becoming available, the Department has disbursed the funds effectively and the net result has been improved compliance with the terms of the consent decree. The demand for community integration services remains high and confirms the view that many people had refrained from seeking services when they

were known to be generally unavailable. The funding of medication management will require additional discussion with counsel, the Department and other interested parties in the coming months because of the complications created by the prevalence of clients seeking this service who are eligible for both MaineCare and Medicare and those who are eligible only for Medicare. All in all, the additional funding is moving the Department forward in the direction of compliance with community standards. Although the fiscal times are challenging, my priority in the coming weeks is to assist the Department in securing continued additional grant funding at the same level for FY13.

Increased Focus on Community Compliance Initiatives.

Recently, I reviewed with counsel a number of issues concerning consent decree compliance regarding the mental health services offered in the community. The goal is not only to focus more attention on performance in those areas that are least compliant with the performance and compliance standards, but also to consider whether there may be a better means of accomplishing the same end with reduced administrative burden. Tentatively, the issues identified for exploration include the following:

1. The reliability and efficacy of the system for collecting unmet needs data as opposed to the analysis of waitlist information.
2. The realignment of housing and treatment services. The consent decree plan approved in 2006 calls for the separation of housing and treatment with the exception of discrete residential treatment programs. Notwithstanding the fact that the elimination of PNMI's has been deferred for the time being, there is still a need to

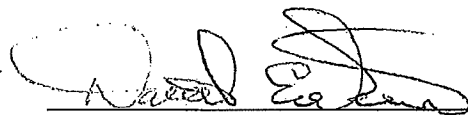
consider other options that do not involve the PNMI- blended rate for a combination of housing and treatment.

3. Availability of mental health treatment services, with particular emphasis on medication management and the barriers encountered by clients who are dually eligible for Medicare and MaineCare.
4. Timely assignment of Community Integration Workers.
5. Review of quality management system.
6. Guardianship worker ratios in the Office of Elder Services.
7. Narrowing the class and minimizing reporting requirements.

Together with counsel and members of the Department, I am in the process of scheduling a series of work sessions to address these issues and will report more fully, either by way of recommendations or progress report.

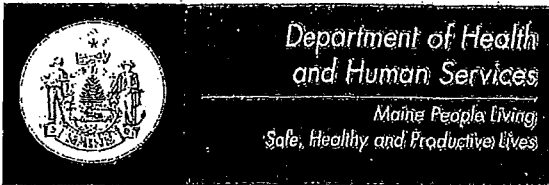
The goal in the coming months is for the mental health system to weather the financial storm, continue to serve its vulnerable clientele, and remain on a path of progress in achieving compliance with the consent decree.

Dated: February 24, 2012



Daniel E. Wathen Court Master

EXHIBIT A



Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Department of Health and Human Services
Commissioner's Office
221 State Street
11 State House Station
Augusta, Maine 04333-0011
Tel: (207) 287-3707
Fax (207) 287-3005; TTY: 1-800-606-0215

February 7, 2012

Senator Richard W. Rosen, Chair
Representative Patrick S. A. Flood, Chair
Members, Joint Standing Committee on
Appropriations and Financial Affairs
#100 State House Station
Augusta, ME 04333-0100

Senator Earle L. McCormick, Chair
Representative Meredith N. Strang Burgess, Chair
Members, Joint Standing Committee on Health
and Human Services
#100 State House Station
Augusta, ME 04333-0100

Dear Senators Rosen and McCormick, Representatives Flood and Strang Burgess and Members of the Joint Standing Committees on Health and Human Services and Appropriations and Financial Services:

Below is a summary regarding the implementation of fiscal year 2011-12 funding for mental health services, including housing, for individuals not eligible for MaineCare pursuant to Public Law 2011, c. 380, Part XX.

During the biennial budgeting process for fiscal years 2011-12 and 2012-13, the Department of Health and Human Services (DHHS) submitted a funding request, as part of the Governor's biennial budget proposal, to meet mental health service and housing needs of individuals not eligible for MaineCare. The request, made in order to conform with Consent Decree requirements to provide services to people with mental illness, was based on a June 25, 2010 Progress Report to the Court from the court master in *Bates v. DHHS* (the so-called AMHI Consent Decree case). The funding request was for an allocation of \$4,664,250 to restore prior mental health services for non-MaineCare clients and \$995,000 in additional funds for housing through the Bridging Rental Assistance Program (BRAP) in FY '12 and FY '13. The final appropriation was \$4,664,250 for mental health services and \$995,000 for housing in FY '12, and \$995,000 for housing in FY '13.

Public Law 2011, c. 380, Part XX, required the Commissioner of DHHS to report to the Joint Standing Committee on Appropriations and Financial Affairs and Committee on Health and Human Services no later than February 1, 2012 "regarding the implementation of fiscal year 2011-12 funding for mental health services for individuals not eligible for MaineCare and for housing services."

The attached report demonstrates how these "Additional Grant" (AG) funds for mental health services, including housing, were allocated by service, and the number of new people served over the first six months of FY '12.

Below are highlights of the details regarding use of Additional Grant funds in FY '12.

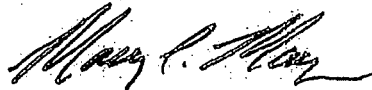
- 1,020 individuals have received a variety of mental health services with Additional Grant funds over the first six months of FY '12. Those services include community integration, assertive community treatment, daily living supports, medication management, and wraparound funds, as well as BRAP subsidies.

- Additional Grant funds have assisted in meeting the unique, previously unmet needs of 22 forensic individuals covered by the Consent Decree.
- A wait list remains for Community Integration (CI) services, despite 315 people having received this service in the first six months of FY '12. Community Integration is often the entry point into community mental health services and assistance with applying for MaineCare based on disability.
- Unfortunately, not all Additional Grant funds were encumbered by the beginning of the fiscal year. Funds for medication management services, for example, were encumbered in October. Thus, the 167 individuals who received those services reflect needs for only one quarter.
- Additional Grant contracts require mental health service providers to assist consumers in applying for MaineCare based on disability. Within the first six months, 38 people qualified to receive full MaineCare services for the foreseeable future based on disability.
- Flexibility in managing Additional Grant funds has enabled the Department to shift Additional Grant funding from one kind of service to another in order to meet needs evidenced by existing wait list and utilization data.

As noted above, the final appropriation included in PL 2011, c. 380 continued the appropriation of \$995,000 in fiscal year 2013, representing only the BRAP housing component of the initial request. The need for community mental health services for those not eligible for MaineCare has not decreased over the last year (see attached trend report from APS Healthcare). The Department requests the continued appropriation of \$4,664,250 to address the ongoing unmet need of those in the community. This proposal would continue to provide funding for mental health community services received in FY '12 into FY '13.

Public Law 2011, c. 380, Part XX anticipated that the Department's report to the Legislature would include recommendations from the court master. Department representatives have met with the court master, and understand that the Department's request is consistent with his recommendation. He has told the Department that he intends to write separately to the Committees.

Sincerely,



Mary C. Mayhew
Commissioner

MCM/klv

Attachments

cc: Daniel Wathan, Court Master
Guy Cousins, Acting Director, Office of Adult Mental Health



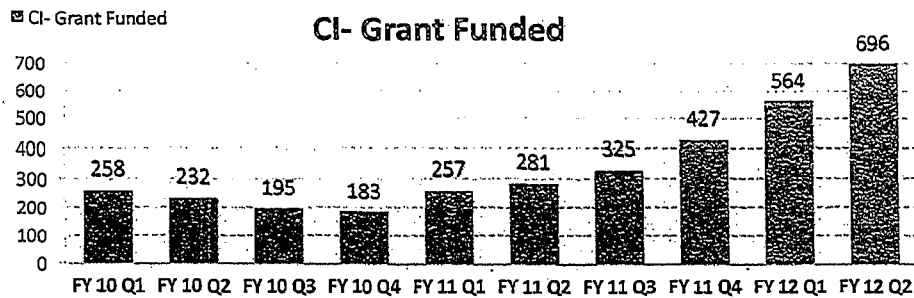
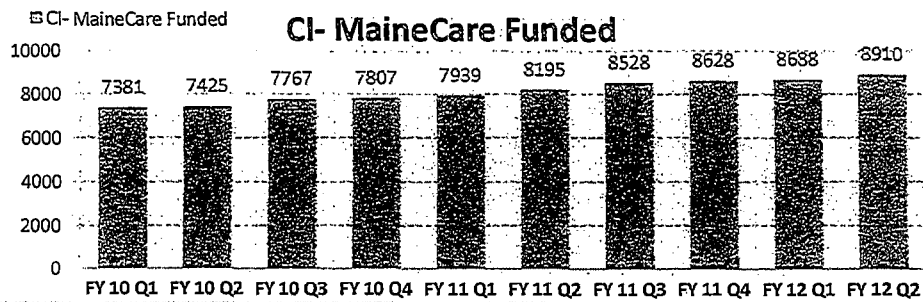
Table 1: The table and graphs below show how many people had an open authorization for the service on the last day of the quarter for CI, ACT, and DLSS Services.

CI, ACT, DLSS

Unique # of Members for Grant Funds

Unique # of Members for MaineCare

Authorization for Service on Last Day of Quarter	FY 10 Q1	FY 10 Q2	FY 10 Q3	FY 10 Q4	FY 11 Q1	FY 11 Q2	FY 11 Q3	FY 11 Q4	FY 12 Q1	FY 12 Q2
CI- MaineCare Funded	7381	7425	7767	7807	7939	8195	8528	8628	8688	8910
CI- Grant Funded	258	232	195	183	257	281	325	427	564	696
ACT - MaineCare Funded	873	743	694	681	682	677	701	617	628	629
ACT - Grant Funded	42	27	14	19	34	34	33	32	31	41
DLSS - MaineCare Funded	577	587	656	693	762	807	870	967	1017	1051
DLSS - Grant Funded	8	12	5	6	1	0	0	0	2	11



<i>Service Type</i>	<i>Number of Clients Served- 6 months</i>	<i>Initial Allocation</i>	<i>AG Fund Allocation Increased or decreased</i>	<i>Total Encumbered</i>	<i>AG Funds Remaining</i>	<i>Total AG funds for service area</i>
Community Integration	319	\$1,290,000.00	\$125,077.00	\$1,350,827.00	\$64,250.00	\$1,415,077.00
Assertive Community Treatment	7	\$215,000.00	-\$58,572.00	\$87,668.00	\$68,760.00	\$156,428.00
Daily Living Support Services	17	\$315,000.00	-\$15,827.00	\$253,782.00	\$45,391.00	\$299,173.00
Community Rehabilitation Services	1	\$0.00	\$13,572.00	\$13,572.00	\$0.00	\$13,572.00
BRAP	318	\$995,000.00	\$0.00	\$995,000.00	\$0.00	\$995,000.00
Medication Management	**167	\$1,100,000.00	\$0.00	\$1,050,796.00	\$49,204.00	\$1,100,000.00
WRAP	325	\$600,000.00	\$0.00	\$600,000.00	\$0.00	\$600,000.00
TOTAL PNMI FUNDS	33	\$1,080,000.00	\$0.00	\$971,192.00	\$108,808.00	\$1,080,000.00
TOTALS	1020	\$5,595,000.00	\$0.00	\$5,322,837.00	\$336,413.00	\$5,659,250.00

*WRAP "Clients Served" was determined by subtracting six month FY11 client utilization figures from FY12 WRAP client utilization figures

** two month data due to Contract encumbrances in October 2011

PIERCE ATWOOD

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February 8, 2012

Senator Richard W. Rosen, Chair
Representative Patrick S. A. Flood, Chair
Joint Standing Committee on Appropriations
and Financial Affairs
c/o Office of Fiscal and Program Review
5 State House Station
Augusta, ME 04333

Senator Earle L. McCormick, Chair
Representative Meredith N. Strang Burgess, Chair
Joint Standing Committee on Health
and Human Services
c/o Legislative Information
100 State House Station
Augusta, ME 04333

Re: Additional Grant Funding for Consent Decree Compliance

Dear Senators Rosen and McCormick, Representatives Flood and Strang Burgess and Members of the Joint Standing Committees on Health and Human Services and Appropriations and Financial Services:

The biennial budget enacted last spring included an additional \$5,659,250 in FY 2012 for mental health and housing services for those ineligible for MaineCare "in order to conform to the consent decree." For FY13 the budget included only the BRAP housing services for \$995,000. Part XX of the budget, however, required the Department to report to the Joint Standing Committee on Appropriations and Financial Affairs and the Joint Standing Committee on Health and Human Services by February 1, 2012 regarding the implementation of the additional FY2012 funding for mental health services. You now have the report of the Department at hand and in compliance with Part XX, I am pleased to provide my recommendation that the additional funding be continued for FY2013.

In reviewing the report of the Department, it is important to bear in mind that the implementation of the additional funding for FY 2012 was delayed by a change in the management at Office of Adult Mental Health Services. The data presented represents at best about five months of performance and in some instances such as medication management actually represents approximately two months of performance. Nonetheless, the results thus far are impressive.

The report of the Department and my own informal monitoring confirms that the wait lists for services have been reduced with the singular exception of community integration. We have long known that the wait lists for this primary and vital service were not accurate because of the general understanding on the part of providers and clients that community integration was not available unless you had MaineCare. Thus, we realized that there was a pent up demand for community integration and the report reflects that it is now being dealt with appropriately. It is important to recognize that

February 8, 2012

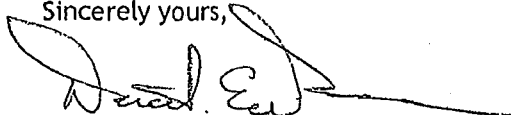
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community integration is the most basic service that the consent decree requires the Department to provide to those with severe and persistent mental illness. For the first time in many years we are living up to the obligation to provide clients with the assistance that they need if they are to link up with other mental health services in the community and apply for MaineCare based on their disability.

It is also noteworthy that the additional grant funds have led to a significant improvement in the ability of Riverview Psychiatric Center to move forensic clients into community placements as authorized by the court. Overall, the flexibility that the additional grant funding provides the Department in meeting the complex needs of a very vulnerable population is most valuable.

In my judgment, the results thus far demonstrate that the action taken by this Legislature in funding 2012 was an effective and reasonable response to the obligations of the Department under the Consent Decree and to the pressing needs of persons in the community with severe and persistent mental illness. The Department has demonstrated its commitment to use these funds to attain new levels of service and compliance. I urge you to continue the same level of additional grant funding for FY 2013. As the Department confirms, the needs of this group of citizens are not decreasing. I will be pleased to answer any questions that members of the committees might have and to provide any additional information that might be required.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Daniel E. Wathen", with a long horizontal flourish extending to the right.

Daniel E. Wathen

DEW/wt