

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

BETH ANN BROWN,)
et al.,)
)
PLAINTIFFS,)

v.)
)
TENNESSEE DEPARTMENT OF)
FINANCE & ADMINISTRATION, and)
WARREN C. NEEL, Commissioner,)
Tennessee Department of Finance &)
Administration,)
)
DEFENDANTS.)

**Civil Action
No. 3:00-0665
Judge Echols**

PEOPLE FIRST OF TENNESSEE,)
ET AL.)
)
v.)
)
C. WARREN NEEL, ET AL.)

**Civil Action
No. 3:01-0272
Judge Echols**

NOTICE OF PROPOSED SETTLEMENTS OF CLASS ACTION LAWSUITS

TO:

All Tennessee residents with mental retardation who are eligible for Home and Community Based Waiver services and have been placed on a waiting list or could have applied for waiver services but have not.

This Notice describes rights you may have under the settlement agreements of these two lawsuits. It also tells you the date and time of the Fairness Hearing, how to get more information, and how to object to the proposed Settlement Agreements if you think they are not fair.

PROPOSED SETTLEMENTS

I. These lawsuits raised issues about the (a) delay in receiving home and community based services after being placed on the waiting list, (b) the lack of available services, (c) the lack of adequate information about the home and community based services program, and (d) that potentially eligible individuals were being discouraged from applying for services.

1. The Settlement in the Brown case includes the following services that you may be eligible to receive:

1.1 Enrollment in a new Self-determination Waiver, there will be 600 slots in the first year and there will be 900 slots in the second year. This Self-determination Waiver will emphasize individual and family control and choice and will have a capped expenditure of \$30,000 per person per year in the first year and be at the amount approved by CMS for the remaining years consistent with the approved waiver application. Priority for enrollment will be based upon priority of need with those in the “crisis” category being served first. “Crisis” is a category of need which means the individual needs services immediately due to the most intense needs with one or more of the following criteria being met: (1) homelessness; (2) death or incapacitation of all available caregivers; or (3) immediate danger to self or others.

- 1.2 Enrollment in the existing Home and Community Based Waiver program if a person is in the “crisis” category or the moratorium ends. There currently is a moratorium on this waiver program placed by the Center for Medicare and Medicaid Services (CMS). This means only those who meet the “crisis” category may be enrolled in this program. For State fiscal years 2003-04, 2004-05, and 2005-06 the State will continue to enroll eligible individuals as provided in the improvement funding in the current annual budget and each of the two succeeding budgets in the amount of \$12 million.

- 1.3 If you do not get services under 1.1. or 1.2, consumer directed support services with a capped annual expenditure of \$2,280 for services to each individual who is on the waiting list in crisis, urgent, or active categories but not currently receiving services under the State’s Family Support program. The funding for this program will not exceed a total fiscal year annual expenditure of \$5 million. Consumer directed support could provide services such as respite, transportation, etc..

- 1.4 Targeted case management services if you are not yet enrolled in a waiver program. Targeted case management is intended to provide persons and their families with information about the waiver program and assistance as necessary to complete application forms, gather information and connect people to generic community services; provide follow-up and ongoing contact

and assistance as needed or requested; and provide referrals to advocacy and support groups as requested or required.

- 1.5 If the Self-determination Waiver under 1.1 has not started enrolling individuals by July, 2004, then you may be eligible for services with an annual capped amount of \$30,000 that will be paid for by the State. For each month until the Self-determination Waiver under 1.1 is implemented, the State will provide a total of \$500,000 per month in services to eligible persons under this program. Priority for enrollment will be based upon priority of need with those in the “crisis” category being served first.

2. Within two years following approval of this agreement Plaintiffs counsel and the State will meet and seek to reach agreement on expansion of services for the third, fourth and fifth years. Services will be expanded at a reasonable rate such that the waiting list will be eliminated or substantially reduced by December 31, 2009. If no agreement is reached for the third, fourth and fifth years expansion of enrollment and provision of services, a mediation conference may occur with the Magistrate Judge assigned to this case. Upon declaration of an impasse by the Magistrate Judge, the matter shall be set for a case management conference to set a scheduling order and enter a trial date.

3. The parties have agreed that individuals eligible for waiver services should be provided those services with “reasonable promptness”. For persons in the “crisis” category, “reasonable promptness” means that services will be started within 30 days of notification of eligibility. For persons not in crisis, “reasonable promptness” means that services will be initiated within 90 days of notification of eligibility. The State has agreed that it will provide monthly reports of progress and the Plaintiffs will monitor the implementation of this agreement.

4. The Settlement in the *People First* provides that the State will provide an ongoing public information campaign to inform persons who are eligible for Home and Community Based Waiver services of what services are available and how they may apply. The agreement also provides that the State will gather information about the numbers of persons who are eligible for waiver services from those agencies which provide services to persons with mental retardation. This information will be compiled quarterly to identify the numbers of eligible persons in each county and will be used to modify outreach efforts if warranted. The State will amend the Interagency Agreement to reflect that DMRS may provide waiver services to school age children and will notify the other agencies included in the current Interagency Agreement. Monitoring of this case will be done by the *Brown* case Plaintiffs.

HOW TO OBJECT TO THESE SETTLEMENT
AGREEMENTS IF YOU THINK IT IS UNFAIR

On _____ at _____ in Courtroom _____

Federal Building, 800 Broadway, Nashville, Tennessee, the Honorable Judge Robert Echols will conduct a hearing to determine the fairness of the proposed Settlement Agreements (“Fairness Hearing”). If you do not want to object to this proposed Settlement Agreements, it is not necessary for you to take any action. **If, however, you want to comment on the proposed Settlement Agreements or object to it as not being fair, you or your attorney on your behalf may file written comments or objections on or before _____, 2004.**

You are also entitled to participate in the Fairness Hearing.

Written comments and objections should be submitted to the Court at this address: Office of the Clerk, United States District Court for the Middle District of Tennessee, 800 Broadway, Federal Building, Nashville, Tennessee. You should also send a copy of your comments to the attorneys for each party at the addresses contained below.

HOW TO OBTAIN MORE INFORMATION

You can get a complete copy of the proposed Settlement Agreements by writing to Plaintiffs’ attorneys. You may also examine the Court papers filed in this case, which can be viewed at the Office of the Clerk for the United States District Court. If you have any questions or would like more information about this Notice, you may contact your own lawyer or Gary D. Housepian at (615) 298-1080, one of the lawyers for the Plaintiff Class in the Brown lawsuit, or

Jack Derryberry at (615) 244-0554, one of the lawyers for the Plaintiff Class in the People First lawsuit and at the addresses listed immediately below. Copies are also available at tpainc.org and wdtlaw.net.

FOR THE PLAINTIFF CLASS IN THE BROWN LAWSUIT:

GARY D. HOUSEPIAN
KENT E. KRAUSE
Tennessee Protection and Advocacy, Inc.
2416 21ST Avenue South
Nashville, TN 37212
(615) 298-1080
garyh@tpainc.org

FOR THE PLAINTIFF CLASS IN PEOPLE FIRST LAWSUIT:

JACK DERRYBERRY
Ward, Derryberry, & Thompson
JUDITH GRAN
EDWARD CONNETTE
EARLE SCHWARZ
1720 Parkway Towers
Nashville, TN 37219
(615) 244-0554
jderrybe@wdtlaw.net

FOR THE DEFENDANT STATE OF TENNESSEE FOR BOTH LAWSUITS :

DIANNE STAMEY DYCUS
Deputy Attorney General
Office of the Attorney General
Cordell Hull Building, 2nd Floor
426 5th Avenue North
Nashville, TN 37243
(615) 741-6420

/s/ _____
Clerk of the United States District Court
Middle District of Tennessee

Dated: _____

