

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

BETH ANN BROWN,)	
et al.,)	
)	
PLAINTIFFS,)	
)	
v.)	Civil Action
)	No. 3:00-0665
TENNESSEE DEPARTMENT OF)	Judge Echols
FINANCE & ADMINISTRATION, and)	
WARREN C. NEEL, Commissioner,)	
Tennessee Department of Finance &)	
Administration,)	
)	
DEFENDANTS.)	

PEOPLE FIRST OF TENNESSEE,)	
ET AL.)	Civil Action
)	No. 3:01-0272
v.)	Judge Echols
)	
C. WARREN NEEL, ET AL.)	

**STIPULATION OF SETTLEMENTS AND ORDER OF PROVISIONAL
APPROVAL OF SETTLEMENT AGREEMENTS**

PROCEDURAL BACKGROUND

Beth Ann Brown, et. al. v. Tennessee Department of Finance and Administration (“Brown”) is a class action filed on August 8, 2000 behalf of six individuals with mental retardation and other developmental disabilities that alleged that the Defendants are unlawfully depriving mentally retarded individuals of medically necessary care, resulting in class members inappropriate hospitalization in state psychiatric facilities, needless deterioration and regression

in health status, and loss of independence. Brown Plaintiffs seek declaratory and injunctive relief under 42 U.S. C. Section 1983 to remedy Defendants' alleged systemic violations of the Medicaid Act. On May 1, 2001, the Court certified a class in Brown under Federal Rule of Civil Procedure 23 (b)(2). The Brown class comprises mentally retarded Tennessee residents who are eligible for Medicaid services under the ICF/MR program pursuant to 42 U.S.C. Section 1396a et seq. or for a home and community based services (HCBS) waiver for the mentally retarded and developmentally disabled pursuant to 42 U.S.C. Section 1396n, and who request services under these programs, but who (1) are denied the opportunity to apply for such services; (2) apply for services under these programs and are denied; or (3) are placed on a waiting list for services under these programs. Having been certified under Rule 23 (b)(2), the Brown class is mandatory, and its members may not opt out of the action.

People First of Tennessee, et. al. v. Dave Goetz, et. al. ("People First") is an action filed on March 20, 2001 seeking Medicaid waiver services for the Plaintiffs and those similarly situated. Plaintiffs sought injunctive and declaratory relief under the following statutes: 42 U.S.C. Section 1983, to remedy Defendants' alleged violations of four Medicaid provisions, 42 U.S.C. Section 1396 et seq.; the Americans with Disabilities Act ("ADA"), 42 U.S.C. Section 12101 et seq., the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. Section 1401 et seq.; and the Rehabilitation Act of 1973, 29 U.S.C. Section 701, et seq. Ultimately, the court certified a sub-class to include: All mentally retarded individuals who are eligible for Medicaid waiver services and might apply for Medicaid waiver services but have not because of inadequate information about the program and/or being discouraged from applying or going through the pre-admission evaluation process.

The Court consolidated the two cases, Brown and People First, for pre-trial and discovery purposes. Additionally, counsel for all parties agreed to engage in settlement discussions with a mediator pursuant to a Court Order. The parties participated in facilitated settlement discussions over a period of months since May, 2003. Having reached agreements, the parties now seek the Court's approval of their Settlement Agreements, attached as Exhibit A for the Brown case and as Exhibit B for the People First case, and wish the Court to establish a procedure for providing notice to the Class and an opportunity for the Class to be heard concerning the fairness of the Settlement Agreements. Pursuant to Fed. R. Civ. P. Rule 23 (d), the parties through their respective counsel, stipulate that the Court should, and jointly move the Court to, enter an Order as follows:

1. The parties have stipulated that in the event that the Court refuses to enter any Order related to the Settlement Agreements or fails to approve the Settlement Agreements, then all provisions of the Agreements will be void and the Settlement Agreements shall be of no effect and shall not be considered a binding settlement agreement.

Based upon the above stipulation, statements of counsel for the parties and the entire record before the Court, the Court finds as follows:

The parties have tentatively agreed to a proposed settlement based on the Stipulation and the Settlement Agreements submitted to the Court. It appears to the Court that the Settlement Agreements were the result of extensive negotiations between the parties after discovery and other exchanges of information and discussions. Based on the stipulation, the terms of the Settlement Agreements, and a thorough review of the record and the controlling legal authority, the Court finds that the proposed Settlement Agreement appears reasonable and consistent with relevant law.

IT IS THEREFORE ORDERED that:

1. Subject to the hearing of any objections of class members to the proposed settlement embodied in the Settlement Agreement, the Agreements are hereby provisionally approved.

2. The form of Notice attached hereto as Exhibit C is hereby approved.

3. Within seven (7) days following entry of this Order, the State of Tennessee shall furnish to counsel for the other parties an electronic file containing the names and last known addresses of the following individuals: (a) all known members of the Class;

4. Within fourteen (14) days of the entry of this Order, the State will send the Notice of Proposed Class Action Settlement attached hereto as Exhibit C to all individuals identified above in ordering paragraph 3. These Notices will be sent by first class mail, postage pre-paid and the envelope containing the Notice shall include the notation "First Class Mail" and "Please Forward".

5. The State of Tennessee shall publish the Notice of Proposed Class Action Settlement in the form attached hereto as Exhibit C, one time in the Sunday edition of the *Commercial Appeal, Nashville Tennessean, Knoxville News-Sentinel, and Chattanooga Times* approximately 30 days before the date set for the Fairness Hearing. The Notice shall be the size of a one-quarter page advertisement.

6. Class members shall have up to and including ten (10) days prior to the date of the Fairness Hearing to file written objections to the proposed settlement. Any class member or his/her representative who files a written objection shall be entitled to participate in the Fairness Hearing to support their objection.

7. No particular form of objection is required. The Court Clerk is hereby ordered to receive and file any written document commenting upon any aspect of the proposed Settlement Agreements whether in the form of a pleading, letter, post card, facsimile, or e-mail and to enter any such communication on the Court's docket.

8. The parties have agreed to schedule a hearing to consider the fairness of the Mediation Settlement Agreement ("Fairness Hearing") approximately 60 days following the entry of this Order. Therefore, the Fairness Hearing shall be held at _____ on _____, 2004, before Judge Robert L. Echols in the United States District Court for the Middle District of Tennessee, at which time the Court shall consider the fairness of the Settlement Agreements and whether it should be approved.

9. Only class members have standing to object to the Settlement Agreements. Any class member may object to the Settlement Agreements by filing an objection and/or appearing at the Fairness Hearing. To be considered by the Court, however, any objection to the final approval of the Settlement Agreements must be timely filed in writing with the Clerk's office on or before ten (10) days prior to the date for the Fairness Hearing. If any attorney will be representing an individual objecting to the Settlement Agreements, the attorney shall file a Notice of Appearance with the Court and serve counsel for all parties on or before the same date.

10. If the settlement contemplated hereby is not consummated for any reason, this Stipulation, all documents executed or prepared, acts done and orders entered pursuant to it, shall be null, void, and of no force or effect whatsoever without further act of any party hereto and shall not be offered or received into evidence or construed as an admission by the Defendants of the validity of any claim asserted of any wrongdoing of any kind or as a waiver, abandonment, or release of any claim, position or defense.

11. The named parties shall not, directly or indirectly, in any way exercise, and they and all of them, hereby waive, all rights they, or any of them, may have to appeal from an Order of the Court entered pursuant to and consistent with this Stipulation and the settlement described in this Stipulation.

IT IS SO ORDERED this ____ day of _____ 2003.

Judge Robert L. Echols

AGREED TO THIS ____ DAY OF _____ 2003.

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