
Landmark Settlement for Individuals with Brain Injuries

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SPRINGFIELD [June 2] – Nearly 2000 individuals with brain injuries will be able to move out of nursing facilities and other institutions under a landmark settlement agreement signed today by state officials and attorneys for the plaintiffs.

The settlement resolves a class action lawsuit, *Hutchinson v. Patrick*, which was filed in US District Court in Springfield last year on behalf of five individuals, the Brain Injury Association of Massachusetts (BIA-MA) and the Stavros Center for Independent Living. The complaint charges that the Commonwealth is violating the Americans with Disabilities Act for failing to provide adequate community services.

“This is a historic moment for persons with brain injuries in Massachusetts, many of whom have been unnecessarily institutionalized in nursing facilities, often for decades,” said Steven J. Schwartz of the Center for Public Representation, lead counsel for the plaintiffs. “As a result of the settlement, close to 2000 persons with brain injuries finally will be able to live in integrated settings, nearer to their families and their home communities.”

Approximately 8000 people with brain injuries currently reside in nursing and rehabilitative facilities in Massachusetts. At least a quarter of them could

successfully transition to integrated community settings if services were available, according to plaintiffs' co-counsel, [Richard Johnston](#), a partner at Wilmer Hale Cutler Pickering Hale and Dorr.

"Today's agreement is a first in the nation for people with brain injuries and will serve as a model for other states," said Arlene Korab, Executive Director of BIA-MA.

The Centers for Disease Control report that 5.3 million Americans are living with disabilities as a result of traumatic brain injuries (TBI) – head injuries caused by external events, such as falls or accidents. Acquired brain injuries (ABI) – caused by internal medical events such as stroke, disease or poisoning – also are significantly prevalent: more than 700,000 Americans suffer new or recurrent strokes every year.

This case and the settlement agreement apply to Medicaid-eligible residents of nursing and rehabilitation facilities who have either kind of brain injury. It is the first lawsuit in the nation that seeks community services for persons with all forms of brain injuries, regardless of the cause.

Under the settlement agreement, which is still subject to court approval, the Commonwealth will create two new waiver programs designed to transition individuals with brain injuries from nursing facilities and other institutions to community residences. The programs must be approved by the federal government, which will pay half the cost of both programs. The first program, called the ABI waiver, will serve up to 300 individuals with acquired brain injuries who currently are living in nursing and rehabilitation facilities. The second, called the Community First Demonstration Project, will offer transitional services and provide community placements to 1600 persons with brain injuries in nursing

facilities. The programs will be implemented over several years, but should result in approximately 200-250 persons a year leaving nursing facilities.

“When I first learned about the issues being resolved, I was so happy, I filled up with tears,” Catherine Hutchinson, 55, the lead named plaintiff, wrote in a recent email. A mute quadriplegic as a result of a brain-stem stroke in 1996, she lived for more than a decade at the Middleboro Skilled Care Center. “I think about the residents [with brain injury] ... and I know what their empty lives are like,” wrote Hutchinson, who recently moved to The Boston Home, a specialized care facility in Dorchester.

The agreement also requires the Commonwealth to create a new system of community services for persons with brain injuries, including new policies and procedures, a new treatment planning process, a new appeal process for individuals and families, and new quality standards for community services. People in nursing facilities will be offered a choice to receive services in the most integrated setting appropriate to their needs, including their own homes and apartments, or shared living arrangements. In addition, the Commonwealth will establish an education and outreach initiative to inform persons with brain injuries and their families about the new waiver programs as well as the benefits of community living.

Korab applauded the courage of the named plaintiffs who “have opened the door for individuals with brain injury to live independently in the community.”

The majority of people with brain injuries spend weeks or months in acute care hospitals and rehabilitative facilities. Once the acute treatment ends, these individuals still need some level of assistance with personal care and activities of daily living rehabilitative care. However, due to the lack of

community-based options for continued rehabilitative care, most of them have no choice but to be admitted to nursing and rehabilitative facilities to have their basic needs met.

When the lawsuit was filed May 17, 2007, Hutchinson described her decade-long institutionalization as being “in prison for a crime I didn’t commit.” In a written statement, she added, “We must find a way to allow people like me to live as independently as possible. I should not have to fight the system when each day I must already fight to communicate, to be understood, make choices and express my feelings.”

The settlement agreement will provide transitional and community services to Hutchinson, the other named plaintiffs and all class members. “For them, the promise of the Americans with Disabilities Act will become a reality,” said Schwartz.

In addition to Hutchinson, originally from Attleboro, the other named plaintiffs are Raymond Puchalski, 59, a Millers Falls resident who has lived for three years at the Kindred/Goddard Hospital’s neurobehavioral unit in Stoughton; Glen Jones, 58, of Haverhill, who has resided at the Worcester Skilled Care Center since 1990; and Nathaniel Wilson, 55, of Springfield, who resides at Wingate of Wilbraham. A fifth named plaintiff, Jason Cates of Westfield, died last fall.

A preliminary hearing on the settlement agreement will be scheduled for mid-June before District Court Judge Michael A. Ponsor in Springfield. Judge Ponsor has been asked to set a final fairness hearing on the agreement for July 25, 2008.