

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

SUSAN J., *et al.*,

Plaintiffs,

v.

BOB RILEY, *et al.*,

Defendants.

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* **CIVIL ACTION NO.:**
* **2:00-cv-918-MEF-WC**
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SETTLEMENT AGREEMENT

The Defendants Bob Riley, Governor of the State of Alabama, and John Houston, Commissioner of the Alabama Department of Mental Health (the "Department"), and the Plaintiffs Tara L, Brichette (aka "Brishette") W, Krystal W, Rico C, Angie D, Beverly W, Paul B, and Susan J, and the personal representatives of each of them, (hereinafter collectively referred to as the "Parties"), do hereby agree as follows:

Whereas the above-styled litigation has been pending in the United States District Court since July 2000, and

Whereas, the Medicaid Home and Community Based Waiver Programs that are the subject of this litigation are programs designed by Congress to serve as an alternative to more costly and more restrictive institutional placements; and

Whereas, the Medicaid Home and Community Based Waiver Programs benefit both program participants and taxpayers, by allowing program participants to receive Medicaid reimbursement for certain covered services and thereby avoid institutionalization, and

Whereas the Parties desire to effect a settlement of all issues between them in order to avoid

the time and expense of additional litigation of this case at trial and on appeal,

Now, therefore, in consideration of the premises and of the mutual promises and agreements contained herein, the Parties hereto agree as follows:

1. The Alabama Department of Mental Health (DMH) will designate a statewide telephone number for use as the initial point of contact for consumers or those acting on their behalves, to request ID services under the Home and Community Based Waiver Program (“HCBW services”). Intake information will be taken and maintained by DMH to assure that applicants can be contacted and their status checked for the appropriateness of service delivery. DMH will not discourage a prospective applicant from applying for services; nothing herein shall prevent DMH from disclosing or explaining any requirements or limitations of the waiver programs. Service providers will be informed of this procedure and DMH will advertise the number on its website. Thereafter, applicants will be routed to the central point of entry for HCBW services for the county in which the consumer’s services are to be provided. DMH will also notify the applicant in writing at the time of initial contact about available administrative review options depending upon whether the individual is denied, placed into services or placed on its waiting list for services with contact information to the DMH Rights Protection and Advocacy Office.

2. DMH shall establish time standards to determine an applicant’s eligibility, which shall not exceed 90 days after receipt of a complete application. DMH shall notify applicants of these timelines in writing at the time the applicant first indicates his or her interest in applying for HCBW services. DMH shall also notify each applicant of the items required for a complete application.

3. When an individual applies for a HCBW service(s), DMH shall notify the applicant in writing of its hearing procedures.

4. DMH will notify applicants in writing of DMH's determination regarding the applicant's level of care (clinical eligibility) and its determination regarding each applicant's eligibility for HCBW services within not more than 90 days once a complete application for services has been received by DMH. Any reason for delay in determining an applicant's eligibility shall be documented.

5. In the event DMH determines an applicant is not eligible for HCBW services, DMH shall notify the applicant in writing of such determination, including the reasons for its determination, and of the applicant's right to a fair hearing with substantially the same information as in attachment A (Denial of Services Form).

6. All prior applicants whose application(s) for HCBW services were denied without receiving a notice of right to a fair hearing, and whose identity(ies) can be readily determined, shall be notified by the Department in writing that they may submit a new application for HCBW services. The notice shall include contact information of the DMH Rights Protection and Advocacy Office.

7. Applicants for HCBW services who have been approved to be placed on the Department's waiting list for said services, but who have not been enrolled in the Department's HCBW program(s), shall be provided a written "notification of eligibility" form informing them: 1.) that they have been placed on the waiting list for each service group requested, and 2.) that, should they dispute their status, they may seek review with their respective ID regional office and, if disputed thereafter, they may seek review with the ID Associate Commissioner (or her designee).

The "notification of eligibility" shall include contact information of the DMH Rights Protection and Advocacy Office.

8. The Department shall notify annually in writing all persons who have applied for HCBW services and who remain on the Department's waiting list of their status on the Department's waiting list.

9. Persons currently enrolled in the Department's HCBW program as of the date of this agreement, and who have been placed on the Department's waiting list for said services, shall be provided a written "notification of status" form informing them: 1.) of their status on the waiting list for each service group requested, and 2.) that, should they dispute their status, they may seek review with their respective ID regional office and, if disputed thereafter, they may seek review with the ID Associate Commissioner (or her designee). The "notification of status" shall include contact information of the DMH Rights Protection and Advocacy Office.

10. Persons enrolled in the Department's HCBW program who apply for new services, which services are in fact available under the HCBW program(s), and who are placed on the Department's waiting list for said services, shall be provided an annual written "notification of status" form informing them: 1.) of their status on the waiting list for each service group requested, and 2.) that, should they dispute their status, they may seek review with their respective ID regional office and, if disputed thereafter, they may seek review with the ID Associate Commissioner (or her designee). The "notification of status" shall include contact information to the DMH Rights Protection and Advocacy Office.

11. The term "status" as referred to in this agreement refers to whether the applicant has been determined by DMH to meet the level of care requirement for services for either of its waiver programs for which services are being sought.

12. The parties recognize that when a person is on the waiting list for services, a person's position on the waiting list may change frequently relative to other persons on the waiting list, as the circumstances of other persons change and as other persons are added to or removed from the waiting list. Nothing in this Agreement shall require the Department to provide a person on the waiting list with written notice of the person's position by number on the waiting list or of a change in a person's position on the waiting list.

13. With respect to the individual named Plaintiffs, Defendants will provide as follows:

Susan J.

Susan J. is in a HCBW slot under Alabama's Mental Retardation¹ waiver. The Department will reevaluate Susan's criticality for each service group for which Susan applied and inform in writing Susan's personal representative, Christine J., of the criticality. In the event Susan desires to dispute the criticality, she may do so in accordance with the procedures described in paragraph 10 of this Agreement.

Paul B.

Paul B. is in a HCBW slot under Alabama's Mental Retardation Waiver. The Department will reevaluate Paul's criticality for each service group for which Paul applied and inform in writing Paul's personal representative, Cathy B., of the criticality. In the event Paul desires to dispute the criticality, he may do so in accordance with the procedures described in paragraph 10 of this Agreement.

Rico C.

The Department will return Rico to the Department's waiting list for HCBW services. The Parties will cooperate to facilitate Rico's return to the Department's waiting list within 90 days.

¹ The Parties recognize the Department of Mental Health routinely employs the term "intellectual disabilities" instead of the term "mental retardation." However, because this litigation has employed the term "mental retardation" for many years and because one of the HCB Waivers subject to this litigation is the "Mental Retardation ('MR') Waiver," the term "mental retardation" will be employed in this Agreement.

Angie D.

Angie D. is in a HCBW slot under Alabama's Living At Home Waiver. Angie will remain on the Department's waiting list for residential services for long term planning purposes.

Tara L.

The Department will reevaluate Tara's criticality for each service group for which Tara applied and inform in writing Tara's personal representative, Belinda L., of the criticality. In the event Tara desires to dispute the criticality, she may do so in accordance with the procedures described in paragraph 7 of this Agreement.

Beverly W.

Beverly W. will be permitted to submit a new application for HCBW services and will have the same rights as any other applicant for HCBW services.

Brichette W.

The Department will reevaluate Brichette's criticality for each service group for which Brichette applied and inform in writing Brichette's personal representative, Samuel W., of the criticality. In the event Brichette desires to dispute the criticality, she may do so in accordance with the procedures described in paragraph 7 of this Agreement.

Krystal W.

Krystal W. is in a HCBW slot under Alabama's Living at Home Waiver. The Department will reevaluate Krystal's criticality for each service group for which Krystal applied and inform in writing Krystal's personal representative, Kathy W., of the criticality. In the event Krystal desires to dispute the criticality, she may do so in accordance with the procedures described in paragraph 10 of this Agreement.

Nothing in this paragraph is intended to limit or restrict any other rights the individual named Plaintiffs may have under Federal and State law and/or the terms of this Agreement.

14. Nothing in this Settlement Agreement denies any person applying for HCBW services, or receiving HCBW services, the full range of rights otherwise applicable under the Medicaid Act. The procedures agreed to in this Settlement Agreement are not an admission that applicants for ID services are entitled to or have a right to the notices or procedures described, under any applicable federal statute or regulation.

15. Defendants shall pay attorney fees to Plaintiffs' attorneys in the following manner: The Alabama Disabilities Advocacy Program (ADAP), acting as designated liaison counsel for this purpose, shall submit to the State of Alabama an Internal Revenue Service Form W-9. Within sixty days following the full execution of this Settlement Agreement and the receipt by the State of Alabama of the Form W-9, the State of Alabama shall issue a warrant for payment of \$250,000.00 to ADAP. The agreed sum of attorney fees to be paid may be filed under seal with this Court. The agreed sum is intended to, and shall, encompass all claims for attorneys' fees and costs by any attorneys, experts, or consultants for the Plaintiffs, and Plaintiffs' counsel shall assume sole responsibility for, and hold Defendants harmless from, the proper allocation and disbursement of this sum.

16. The Plaintiffs, for themselves and for their agents, servants, heirs, executors, administrators, personal representatives, and assigns, do hereby release and forever discharge Bob Riley, John Houston, the State of Alabama, the Alabama Department of Mental Health, and the boards, officers, representatives, employees, agents and assigns of each of them, together with any and all other persons, firms, or corporations jointly liable or who might be claimed to be jointly liable (none of whom admit any liability, but expressly deny any liability), from any and all claims, payments, penalties, demands, damages, costs, expenses, attorneys fees, liability, actions, causes of action, or suits of any kind or nature whatsoever, which the Plaintiffs now have or may hereafter have on account of, or arising out of any matter or thing which has happened, developed or occurred prior to the signing of this release, specifically including but not limited to, any and all claims arising out of or in any way related to any and all claims or counterclaims which were asserted, or which could have been asserted, in the above-styled civil action. It is understood and agreed by the Parties

that this release is full, complete and forever final as to any claims the Plaintiffs may have against Bob Riley and John Houston, the State of Alabama, the Alabama Department of Mental Health, and the boards, officers, representatives, employees, agents and assigns of each of them. The Plaintiffs and their attorneys specifically acknowledge that the above-referenced payment to the Plaintiffs' attorneys includes all amounts due from the Defendants for attorney's fees and other expenses of the Plaintiffs in the above-styled case.

17. The Parties agree that they have entered into this Agreement for the sole purpose of reaching a full and final compromise, adjustment, and settlement of all claims which were or could have been asserted in the above-styled civil action, to avoid the burden, expense, delay and uncertainties of litigation. It is specifically understood, acknowledged, and agreed by the parties hereto that this Agreement effects a compromise of disputed claims and that the payment to the Plaintiffs' attorneys referenced herein is not to be construed in any way as an admission of liability on the part of Bob Riley, John Houston, the State of Alabama, the Alabama Department of Mental Health, or any other person or persons acting or claiming to act on behalf of any of them, by all of whom liability is expressly denied.

18. The Parties agree that they shall not seek appellate review, mandamus review, or reconsideration of any order heretofore entered in this litigation, except that the parties may move the court to decertify the subclasses should they agree that decertification is in the best interest of absent class members.

19. It is further understood and agreed by the Parties that, upon the execution of this Agreement, the Parties shall file a joint motion requesting the Court (1) to decertify the existing plaintiff classes and (2) to dismiss the remaining claims of the individual plaintiffs with prejudice,

each party to bear its own costs, on the grounds that the Parties have reached a full and complete settlement of the issues presented in such lawsuit.

20. The Plaintiffs and their personal representatives represent and acknowledge that they are each over nineteen (19) years of age, that they have carefully read the terms of this agreement, that they have fully and completely discussed the contents hereof with their attorneys, that they fully understand the contents hereof, and that they execute this agreement as a free and voluntary act with full knowledge and understanding of its contents and effect. Plaintiffs, and/or their personal representatives, acknowledge and warrant that they have authority to enter into this agreement.

21. The Parties acknowledge that this Agreement sets forth the entire agreement of the Parties hereto and that all prior statements, representations, and covenants are merged herein. The Parties agree that no representation about the nature and extent of any allegation made by any other party or any attorney or agent of any party, has induced her or him to execute this Agreement, and that this Agreement may not be amended or modified except by a subsequent written agreement executed and approved by all persons in the same manner as this Agreement.

22. The Parties declare that they have not heretofore assigned to any other person, corporation, entity, or party all or any portion of any claim or claims that they may now have, may have had at any time heretofore, or may have at any time hereafter, arising from or pertaining to any matter referred to in this Agreement.

23. The Parties agree that this Agreement shall be construed and enforced under the laws of the State of Alabama, that it is a private contract between the parties, and that any action or proceeding arising from or relating to this Agreement must be brought in the Circuit Court for Montgomery County, Alabama. The Agreement shall be enforceable on such terms for ten years

from the date of this Agreement. Nothing in this Agreement shall operate to preclude any person not bound by this Agreement from filing a separate, original action to vindicate alleged rights that otherwise are addressed in this Agreement.


ATTORNEY FOR PLAINTIFF

ATTORNEY FOR DEFENDANTS

Approved:

TROY KING
ATTORNEY GENERAL OF ALABAMA

The eight named Plaintiffs' signature pages have been omitted from this Settlement Agreement for confidentiality purposes.