

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JOAN BZDAWKA, et al.,

Plaintiffs,

v.

Case No. 04-C-0193

MILWAUKEE COUNTY, et al.,

Defendants.

NOTICE OF PROPOSED SETTLEMENT AGREEMENT

PLEASE READ THIS NOTICE CAREFULLY IF YOU ARE:

- A MILWAUKEE COUNTY FAMILY CARE PARTICIPANT WHO LIVES IN AN ADULT FAMILY HOME (ALSO CALLED AN "AFH") OR A COMMUNITY BASED RESIDENTIAL FACILITY (ALSO CALLED A "CBRF")
- A PERSON IN MILWAUKEE COUNTY WITH DISABILITIES WHO IN THE FUTURE MAY BE ELIGIBLE FOR FAMILY CARE AND TO LIVE IN AN AFH OR CBRF WITH FAMILY CARE FUNDING
- A FAMILY MEMBER, GUARDIAN, OR POWER OF ATTORNEY FOR ANY PERSON DESCRIBED ABOVE

THE MATTERS EXPLAINED IN THIS NOTICE WILL NOT IMMEDIATELY INCREASE OR REDUCE BENEFITS RECEIVED BY ANY FAMILY CARE PARTICIPANT.

ALL FAMILY CARE PARTICIPANTS WILL CONTINUE TO RECEIVE NEEDED AND APPROPRIATE SERVICES FOR WHICH THEY ARE ELIGIBLE.

SEE SECTION III. BELOW. FOR INSTRUCTIONS ABOUT WHOM YOU CAN CONTACT FOR MORE INFORMATION ABOUT THE MATTERS EXPLAINED IN THIS NOTICE.

I. WHAT THIS NOTICE IS ABOUT.

This notice is about a lawsuit concerning certain rights of Milwaukee County residents with disabilities who are now or may in the future participate in the Family Care program. Family Care is a program providing home and community-based support services to persons with disabilities. In Milwaukee County, Family Care is administered by the Milwaukee County Department on Aging (also called "MCDA") through its Care Management Organization (also called the "CMO"). The state Department of Health and Family Services (also called "DHFS") provides funding for Family Care and oversees operation of Family Care by MCDA and the CMO.

This lawsuit was filed in 2004. Judge Lynn S. Adelman, from the United States District Court for the Eastern District of Milwaukee, is presiding over the lawsuit.

Judge Adelman certified the lawsuit as a "class action." This means that the lawsuit involves the rights of all persons in the "class" identified by Judge Adelman, even if those persons are not participating directly in the lawsuit. The persons in the class are called the "class members" or the "plaintiffs." The class identified by Judge Adelman is:

Disabled Milwaukee County residents who are now, or will in the future, be eligible to reside in a Family Care funded community-based residential facility ("CBRF") or adult family home ("AFH").

In the lawsuit, the plaintiffs claimed that their legal rights were violated because Milwaukee County and DHFS were not providing enough funding for Family Care members who lived or wished to live in a CBRF or a AFH.

The other side of the lawsuit, called the "defendants," consists of Milwaukee County, DHFS, and DHFS Secretary Kevin Hayden. The defendants deny that the plaintiffs' legal rights were violated as claimed in the lawsuit.

The lawyers for the class members and the defendants have negotiated a Settlement Agreement. This means that the lawsuit will end without a trial or a decision by Judge Adelman about the claims made by the plaintiffs, if the settlement is approved. Instead, the lawyers for the class members and the defendants have agreed about certain actions that MCDA, the CMO, and DHFS will take to ensure that Family Care in Milwaukee County meets applicable requirements. Some information about the Settlement Agreement is provided in Section V, below. Information about how you can obtain a copy of the Settlement Agreement or further information about the Settlement Agreement is provided in Section III, below.

The lawyers have asked Judge Adelman to approve the Settlement Agreement. Further information about this process is provided in Section II, below. Judge Adelman has approved the contents of this notice and its dissemination to class members and other interested persons.

II. JUDGE ADELMAN WILL HOLD A HEARING ABOUT THE PROPOSED SETTLEMENT AGREEMENT, AND YOU MAY ATTEND THE HEARING, SPEAK AT THE HEARING, OR SUBMIT WRITTEN COMMENTS TO THE JUDGE BEFORE THE HEARING.

Judge Adelman has scheduled a hearing to consider whether to approve the Settlement Agreement. This hearing is scheduled as follows:

DATE: Friday, October 19, 2007
TIME: 1:30 p.m.
PLACE: United States District Court for the Eastern District of Wisconsin
517 East Wisconsin Avenue, Courtroom 390
Milwaukee, Wisconsin 53202

PLEASE NOTE: THIS LAWSUIT, THE SETTLEMENT AGREEMENT, AND THE OCTOBER 19 HEARING DO NOT CONCERN ANY INDIVIDUAL CLASS MEMBER'S CASE THAT IS PENDING IN COURT, OR IN AN ADMINISTRATIVE PROCEEDING. THIS LAWSUIT, THE SETTLEMENT AGREEMENT, AND THE OCTOBER 19 HEARING CONCERN ONLY THE OPERATION OF THE FAMILY CARE PROGRAM IN MILWAUKEE COUNTY AS A WHOLE.

Before the hearing, class members (or other persons on their behalf) may submit written comments regarding the Settlement Agreement for Judge Adelman to consider. Instructions on how to submit written comments appear in Section IV, below.

Class members and other persons are welcome to attend the hearing. You do not have to make a reservation in order to attend the hearing.

Judge Adelman, in his discretion, may permit some class members (or other persons on their behalf) to speak during the hearing about the Settlement Agreement. Instructions on how to ask Judge Adelman for permission to speak at the hearing appear below in Section IV.

III. HOW TO OBTAIN A COPY OF THE SETTLEMENT AGREEMENT OR MORE INFORMATION ABOUT THE CASE.

Class members (or other persons on their behalf) may obtain a copy of the Settlement Agreement from DHFS's internet site, at <http://www.dhfs.state.wi.us/LTCare>. A paper copy of the Settlement Agreement may be obtained, at no charge, by contacting Attorney Robert Pledl of the Pledl Law Office. Attorney Pledl is one of the lawyers for the class members. His telephone number is **(414) 225-8999**.

Class members (or other persons on their behalf) who have questions about the Settlement Agreement or would like more information about the lawsuit also may contact Attorney Pledl at **(414) 225-8999**.

You may also review the materials that the parties have filed with the Court by going to the Office of the Clerk of Court at the United States District Court for the Eastern District of Wisconsin in Milwaukee, which is in the United States Courthouse at 517 East Wisconsin Avenue, Room 362, Milwaukee, Wisconsin. To review materials in the public record in this case, refer to Case No. 04-C-0193. Persons with accounts on the Court's PACER system may access many case filings electronically, subject to the standard applicable fees, at http://www.wied.uscourts.gov/pacer_information.htm.

IV. HOW TO SUBMIT COMMENTS TO JUDGE ADELMAN OR REQUEST PERMISSION TO SPEAK AT THE OCTOBER 19 HEARING.

Any class member (or other persons on his or her behalf) who wishes to submit written comments that support or object to the Settlement Agreement, must send or deliver a letter to the Clerk of Court at the following address:

Clerk of Court
United States District Court
Eastern District of Wisconsin
517 East Wisconsin Avenue, Room 362
Milwaukee, WI 53202

All letters must be **received** by the Clerk of Court no later than **4:30 p.m., Tuesday, September 25, 2007**. All letters must be signed, and must include the name, address, and telephone number of the person submitting the letter. All letters should indicate that they are being submitted in Case No. 04-C-0193. The Clerk of Court will forward all letters received to Judge Adelman. Copies of all letters also should be sent by the writer to both Attorney Pledl and Attorney Maureen McGlynn Flanagan at the addresses provided at the end of this Section IV.

Any class member (or other persons on their behalf) who wishes to speak at the October 19 hearing must request permission from Judge Adelman by submitting a letter to the Clerk of Court. These letters also must be **received** by the Clerk of Court no later than **4:30 p.m., Tuesday, September 25, 2007**. All letters must be signed, and must include the name, address, and telephone number of the person submitting the letter. All letters should indicate that they are being submitted in Case No. 04-C-0193. The Clerk of Court will forward all letters received to Judge Adelman. Copies of all letters also should be sent by the writer to both Attorney Pledl and Attorney Maureen McGlynn Flanagan at the addresses provided at the end of this Section IV.

Judge Adelman will decide who can speak at the hearing. Please be assured that Judge Adelman will consider all letters whether or not permission is granted to speak, and whether or not the letter writer attends the October 19 hearing.

The addresses at which copies of all letters should be sent to Attorney Pledl and Attorney Flanagan are:

Robert Theine Pledl
Pledl Law Office
1110 North Old World Third Street, #670
Milwaukee, WI 53203

Maureen McGlynn Flanagan
Wisconsin Department of Justice
Post Office Box 7857
Madison, WI 53707-7857

V. INFORMATION ABOUT THE SETTLEMENT AGREEMENT.

If Judge Adelman approves the Settlement Agreement, then MCDA, the CMO, and DHFS will commit to take certain actions over a two-year period to help insure that Family Care in Milwaukee County meets applicable requirements.

The most important parts of the Settlement Agreement are summarized below. For further details, such as applicable deadlines, please review the Settlement Agreement online or by requesting a paper copy from Attorney Pledl as discussed in Section III above.

(A) Commitments of the Milwaukee County Department on Aging and the CMO

1. The CMO will provide annual training to care managers about when notices of intended adverse action must be sent to Family Care participants. This information also will be incorporated into related training materials.
2. The CMO will make reasonable efforts to support the enactment of Governor Doyle's budget proposal to provide funding for an independent advocacy program for Family Care participants.
3. The CMO will expand its annual audit review process for CBRF providers to include actual salary and wages, staff turnover rates, occupancy, and further details regarding cost and wage structures.
4. The CMO will review audited financial statements and contracts for multifacility, corporate providers of 3-4 bed AFHs, including actual salary and wages, staff turnover rates, occupancy, and further details regarding cost and wage structures.
5. In connection with CBRF and AFH provider 2008 rate setting, the CMO will consider data from provider surveys released in March 2007. The CMO will retain its discretion to establish the rate-setting methodology and negotiate provider rates, subject to supervisory review by DHFS.
6. The CMO will complete provider network adequacy reviews twice a year, beginning with one review in calendar year 2007. These reviews will include needs assessments of future Family Care participants and where they are living in Milwaukee County. The results of these reviews will be provided to the development and/or land use planning departments of all Milwaukee County cities, towns, and villages. The CMO will retain its current right to terminate contracts with providers whose costs are not competitive.
7. In connection with provider rate-setting for calendar years 2008 and 2009, MCDA will provide CBRF, AFH, and day services providers the factors taken into account in developing the rates offered those providers. MCDA will post a summary of these factors on its website.
8. The CMO will start a formal process of soliciting input from CBRF, AFH, and day services providers that will be considered to the extent that it is relevant in future rate setting.
9. At least once annually in calendar years 2007, 2008, and 2009, the CMO will invite all Milwaukee County municipalities to provide input on affordable CBRF, AFH, and other housing for

Milwaukee County Family Care participants, and will encourage the development of such housing throughout Milwaukee County.

10. The CMO will work with the MCDA Resource Center to provide all nursing homes located in Milwaukee County with informational materials about the alternate residential options available through the Family Care program, and will provide contact information for persons who wish to discuss other options available to them.

(B) Commitments of the Wisconsin Department of Health and Family Services

1. DHFS will issue written guidance reiterating that a Family Care participant may contest the choice of the residential or day services provider proposed by the CMO, through the Family Care grievance procedures or a fair hearing. The written guidance will note that the standard in resolving these disputes is whether the proposed plan would provide care, treatment, or supports that are insufficient to meet the participant's needs or outcomes, or are provided in a setting that is unnecessarily restrictive or less integrated than is appropriate to the participant's needs. It will state the importance of following the notice procedures required by the Wisconsin Administrative Code and the Family Care contract. DHFS will provide a draft of its written guidance to the plaintiffs' lawyers and certain public interest law firms, and will accept comments from them before finalizing the written guidance. When complete, the written guidance will be posted on the DHFS website.
2. DHFS will develop additional informational materials explaining the Resource Allocation Decision ("RAD") method used in the Family Care program to help participants identify personal outcomes, after which a participant's care management team then works with the participant and/or the participant's authorized representatives to find the most cost-effective way of achieving those personal outcomes via a service plan that is both reasonable and effective. The materials will include an explanation that Family Care participants who enter CBRFs and AFHs are not and should not be automatically disqualified from participating in day programming services outside their residences, and that it is appropriate to use the RAD to determine whether the outcomes of individual Family Care participants who reside in CBRFs and AFHs can not be met without access to outside day programming services. DHFS will provide a draft of its informational materials to the plaintiffs' lawyers and certain public interest law firms, and will accept comments from them before finalizing the informational materials. When complete, the informational materials will be posted on the DHFS website. The informational materials also will be provided to administrative law judges and other persons who review Family care grievances.
3. If the CMO's 2008 annual certification application to DHFS includes submission of any revised form notices, DHFS will provide copies of any revised form notices to the plaintiffs' lawyers and certain public interest law firms, and will accept comments from them regarding the revised form notices. DHFS will retain sole discretion to determine whether or not to certify the CMO for 2008, and to determine whether to require the CMO to make any changes in the CMO's revised form notices.
4. If the Family Care independent advocacy program included in Governor Doyle's 2007-09 budget proposal is established, DHFS will require the independent advocacy program to provide semi-annual statistical reports about referrals received by the independent advocacy program. These reports will be posted on the DHFS website.
5. DHFS and Secretary Hayden will continue to support Governor Doyle's budget proposal to create and fund an independent advocacy program for Family Care participants. If funding is included in the 2007-09 budget passed by the legislature, DHFS will take steps to implement the program promptly.

6. DHFS will work with the CMO to enhance openness of the provider rate-setting process for rate years 2008 and 2009 by exploring alternate rate-setting methods for CBRF and AFH providers.
7. DHFS will issue written guidance reiterating the importance of appropriate and adequate pre-transfer planning so as to identify and minimize potential effects on a Family Care participant transferring from one residential setting to another. DHFS will provide a draft of its written guidance to the plaintiffs' lawyers and certain public interest law firms, and will accept comments from them before finalizing the written guidance. When complete, the written guidance will be posted on the DHFS website.
8. DHFS will assist MCDA and its existing Placement Team in implementing additional practices to enhance planning for safe and effective residential moves for Family Care participants, assess moves before they occur to identify potential harmful effects on participants, and develop strategies for minimizing those effects.
9. DHFS will conduct a one-time review of Milwaukee County Watts review procedures and pursue any corrective action as determined appropriate by DHFS. A copy of the final report, any corrective action plan, and corrective action compliance reports will be provided to plaintiffs' counsel.
10. DHFS will direct its external quality review organization to include in the care plan review process consideration of whether a particular Family Care participant would be more appropriately placed in a less restrictive/more integrated residence, and of whether the individual would prefer to move to a less restrictive/more integrated facility.

(C) **Agreement Regarding Day Programming:** The plaintiffs and defendants agree that Family Care participants who enter CBRFs and AFHs are not and should not automatically be disqualified from participating in day programming services outside their residences. They further agree that it is appropriate to use the RAD to determine whether the outcomes of Family Care participants who reside in CBRFs and AFHs cannot be met without access to outside day programming services.

(D) **Enforcement:** If the parties disagree about whether the defendants are complying with the Settlement Agreement, the parties must first try to resolve the disagreement through negotiation with each other. If negotiations do not succeed, then the plaintiffs' lawyers may ask the Court to resolve the disagreement.

(E) **Attorney Fees:** If successful, the kinds of claims that are involved in this lawsuit would entitle the plaintiffs to reasonable attorney fees and costs. The parties have negotiated, separately from the remainder of the settlement agreement, a compromise of the claim for attorneys' fees and costs submitted by the plaintiffs' lawyers. Under the Settlement Agreement, plaintiffs' lawyers, who include lawyers from the Pledl Law Office, of Milwaukee, Wisconsin, and the not-for-profit organization National Health Law Program, Inc. of Chapel Hill, North Carolina, would receive a total of One Hundred and Thirty Thousand Dollars (\$130,000.00) as compensation and to reimburse their expenses incurred during this 3 1/2-year-old lawsuit.