

35671

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED
2009 DEC -4 PM 2:01
CLAYTON S. ELLIOTT
CIRCUIT COURT
KANAWHA COUNTY

SHAWN SHUMBERA, LINDA JUDD,
individually, on behalf of all others similarly
situated, and by her next friend,
CAROLE JUDD,

Plaintiffs,

v.

Civil Action No. 07-C-1807
Judge Tod J. Kaufman

MARTHA WALKER, in her capacity as
Secretary, West Virginia Department of
Health and Human Resources,

Defendant.

ORDER

Before the Court is Defendant Department of Health and Human Resources' Rule 59(e) Motion to Alter or Amend Judgment, filed November 9, 2009, in which Defendant Department of Health and Human Resources ("DHHR") moves the Court to amend its finding that Mr. Shawn Shumbera "is a young man with mental retardation" and all the conclusions of law that stem from that finding. Plaintiff Mr. Shumbera responded to Defendant's Motion on November 24, 2009. Defendant DHHR filed its Reply of Department of Health and Human Resources on December 3, 2009.

It is undisputed that Mr. Shumbera is a *Medley* class member. This means that, at least at some point in the past, the DHHR recognized that Mr. Shumbera suffered from mental retardation. In its findings of fact, the Court simply meant that Mr. Shumbera had been diagnosed with mental retardation, not that Mr. Shumbera's most recent diagnosis was exclusively that of mental retardation.

Nonetheless, this finding of fact was but one of many in the Court's logical journey to its

conclusions of law. As counsel for the DHHR surely knows, MR/DD Waiver services are not limited to only those who suffer exclusively from mental retardation. Rather there are a number of other qualifying disabilities that, when combined with a minimum of three deficiencies in major life areas, qualify applicants for MR/DD Waiver services.

Because the Court remains of the opinion that Mr. Shumbera showed that he is entitled to MR/DD Waiver services, the Court must DENY Defendant DHHR's Motion to Alter or Amend Judgment.

This case remains DISMISSED from the docket of the Circuit Court.

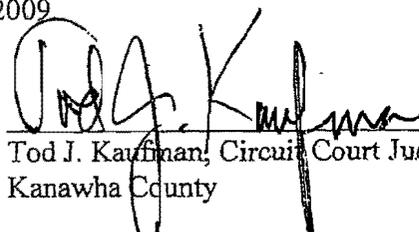
The clerk of the court shall distribute copies of this Order to all counsel of record:

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Melissa Stacy, Esquire
WV EMS TSN
4921 Elk River Road
Elkview, WV 25071

Enter this Order the 4th day of December, 2009



Tod J. Kaufman, Circuit Court Judge for
Kanawha County

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 4th
DAY OF December 2009
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA