UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM G., AND WALTER W., et al.,

Plaintiffs,

v.

GEORGE PATAKI, in his official capacity as Governor of the State of New York; SHARON CARPINELLO, in her official capacity as Acting Commissioner of the New York State Office of Mental Health; WILLIAM GORMAN, in his official capacity as Commissioner of the New York State Office of Alcohol and Substance Abuse Services; and BRION TRAVIS, in his official capacity as Chairman and Chief Executive Officer, New York State Division of Parole,

COMPLAINT

INTRODUCTION

Plaintiffs, by their attorneys, as and for their complaint, allege on knowledge as to their own acts, and on information and belief as to all other matters, as follows:

1. Plaintiffs and the class they seek to represent (collectively, "Plaintiffs") are needlessly incarcerated in New York City's jails, awaiting an opening in a treatment program for their serious and persistent mental illness and chemical addiction. Their incarceration is harmful, costly, and discriminates against Plaintiffs by virtue of their disabilities, or the severity of their disabilities, in violation of both Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. § 794.

2. Plaintiffs have been charged with violating conditions of their parole or post-release supervision, for which they are confined by the State of New York in a New York City

jail, usually on Rikers Island, pending disposition of their parole violation charges. (Such individuals are sometimes referred to as "parole detainees"). Typically, they have been charged with technical or minor violations. Parole hearing officers appointed by defendant Brion Travis pursuant to NY Executive Law §259-d (McKinney 2001), with the agreement of parole specialists (who represent the Division of Parole in parole proceedings) and other professionals, have concluded that Plaintiffs should be placed in a residential treatment program rather than imprisoned for their violations. However, because of Defendants' failure to provide an adequate number of treatment programs, the programs that do exist have virtually no openings. As a result, Plaintiffs have spent many months—sometimes longer—needlessly languishing in jail awaiting a community placement. When programs are unavailable to Plaintiffs for extended periods, Plaintiffs are transferred to State-run facilities to serve additional prison time, or they are released without getting the treatment that State officials have determined is appropriate. Without treatment, Plaintiffs are at greater risk of re-incarceration.

3. The lengthy waits experienced by Plaintiffs are in sharp contrast to similarly situated parole detainees with histories of alcohol or substance abuse (hereinafter "substance abuse" or "chemical addiction") but no, or minor, mental illnesses, who are offered a treatment disposition in lieu of incarceration. Such individuals remain in jail for only days, or at most weeks, after parole hearing officers conclude that they should be released to treatment programs for their substance abuse. This is because State officials have ensured a sufficient supply of treatment programs for parole detainees who need substance abuse treatment but who have less severe or no mental illnesses.

BACKGROUND

4. Plaintiffs have serious mental illnesses, such as schizophrenia, bi-polar disorder or major depression. They also have a history of substance abuse. New York has a network of

treatment programs for individuals with mental illness and histories of substance abuse, often referred to as MICA programs, i.e., programs that serve and treat individuals suffering from mental illness and chemical addiction and offer supervised housing programs. Such programs are supervised and funded by the New York State Office of Mental Health, Office of Alcohol and Substance Abuse Services, and Division of Parole. These agencies also supervise and fund similar programs for individuals with a history of substance abuse but who have not been diagnosed with a serious mental illness.

5. In many cases, the conduct which leads to charges of a parole violation is a direct result of an individual's substance abuse history or mental illness. In certain instances, State officials will determine that a parole violator should be placed in treatment in lieu of serving a jail sentence, and there are systems in place for making such treatment dispositions.

6. Although State officials have determined that participation in a treatment program is preferable to a jail sentence, Plaintiffs must often remain in jail indefinitely awaiting an opening, because too few programs exist to meet their needs. Moreover, many of the programs that the State has created or funded unreasonably refuse to serve or accommodate individuals whose mental illness, like Plaintiffs, is severe and persistent.

7. Instead of funding the community placements that Plaintiffs need, and that the parole hearing officers have found appropriate, New York uses its funds to "lease" beds for Plaintiffs at New York City jails. The State pays the City $34 per day for each parole detainee housed in a City jail, including Plaintiffs, and incurs significant other costs in connection with the incarceration of Plaintiffs. These funds, combined with other cost savings, could be used to fund adequately the community placements that Plaintiffs need.

8. Plaintiffs' experiences are symptomatic of a larger problem. In the last few decades, the criminal justice system in New York City has been flooded with individuals with

mental illness. More than 15,000 of the 110,000 inmates admitted annually to New York City jails have serious mental illness, which often co-exists with a history of substance abuse. Most have committed minor offenses. Few have received adequate services while in the community. Even when released after receiving treatment in jail, inmates find it difficult to secure appropriate community treatment. As a result, upon release, their psychiatric conditions deteriorate, and they are at great risk for ending up in emergency rooms or psychiatric hospitals, and/or being re-arrested and re-incarcerated. Many are forced into a "revolving door" of jail or hospitalization, release without adequate services, relapse for want of services, another imprisonment or hospitalization, release without needed services, relapse, and re-confinement. This cycle, which has gone on for decades for some class members, has tragic consequences for people with serious mental illness and their families, harms the entire community and imposes needless expense on the taxpayers of the State of New York.

9. To end the inappropriate institutionalization of Plaintiffs, this suit seeks declaratory and injunctive relief under Title II of the ADA, 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Plaintiffs ask this Court to direct Defendants to cease their unlawful and discriminatory practices, which result in Plaintiffs' incarceration in lieu of the treatment that State officials have determined is appropriate. Plaintiffs desperately seek, and would greatly benefit from, meaningful access to community treatment.

JURISDICTION AND VENUE

10. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

11. Plaintiffs seek declaratory and injunctive relief under 28 U.S.C. § 2201 et seq.

12. Venue in the Southern District of New York is proper under 28 U.S.C. §1391.

PARTIES

PLAINTIFF WILLIAM G.[1]

13. Plaintiff William G., aged 47, has schizophrenia, a serious and persistent mental illness. Mr. G has experienced serious psychiatric illness for at least 39 years. He also has a history of substance abuse.

14. Following a term of imprisonment, Mr. G. was paroled in October 2001. In January 2003, he was arrested and held on an alleged parole violation.

15. In or around June 2003, the hearing officer and parole specialist involved in Mr. G.'s case agreed that release to a MICA program is the appropriate disposition for Mr. G. Since that time, Mr. G. has been incarcerated at Rikers under the authority of the State, awaiting an opening in a MICA program. He is housed on a Mental Observation Unit ("MOU") at Rikers, where he is taking psychiatric medication and is segregated from the general population. Parole revocation proceedings have been convened and adjourned each month pending the identification of a suitable MICA program with an opening for Mr. G.

16. Mr. G. does not want to be released to the streets without intensive treatment. He believes he can be successful in the community with the structure and support of a residential program.

17. Mr. G. has had to wait months for an opening in a MICA program because he has a serious mental illness. If Mr. G. had a less severe mental illness, or had no mental illness, a community treatment program would have been available to him long ago.

18. Mr. G. continues to be incarcerated needlessly at Rikers, awaiting an opening in a MICA program.

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[1] This complaint is being filed with the last names of the named plaintiffs concealed from the public, inter alia, because of the sensitive and highly personal nature of the matters involved. Plaintiffs will disclose to and the Court their full identities, as soon as such disclosure is practicable.

PLAINTIFF WALTER W.

19. Plaintiff Walter W., aged 44, has major depression, a serious and persistent mental illness. Mr. W. has experienced psychiatric illness for much of his adult life. He also has a history of substance abuse.

20. Mr. W. was paroled from a term of imprisonment in October 1997. His parole was revoked, and subsequently restored in June 2002. His parole was revoked again in March 2003, after he was arrested on a parole violation warrant for attempted possession of a controlled substance. Mr. W. is incarcerated at Rikers under the authority of the State and is housed in the MOU, where he takes psychiatric medications and is segregated from the general population.

21. In May 2003, the hearing officer and parole specialist involved in Mr. W.'s case agreed that release to a MICA program is the appropriate disposition for Mr. W. Parole revocation proceedings have been convened and adjourned each month pending the identification of a suitable MICA program with an opening for Mr. W. The hearing officer has said that if no MICA program is available to Mr. W., he will be sentenced to a term of imprisonment in a State prison.

22. Mr. W. does not want to be released to the streets without intensive mental health and substance abuse treatment. He believes he can be successful in the community with the structure and support of a residential program.

23. Mr. W. has had to wait months for an opening in a MICA program because he has a serious mental illness. If Mr. W. had a less severe mental illness, or no mental illness, a community treatment program would have been available to him long ago.

24. Mr. W. continues to be needlessly incarcerated at Rikers, awaiting an opening in a MICA program.

25. Defendant George Pataki is the Governor of the State of New York, a public entity covered by Title II of the ADA, 42 U.S.C. § 12131(1). He is responsible for ensuring that New York operates its services, programs and activities in conformity with the ADA and the Rehabilitation Act. He is sued in his official capacity.

26. Defendant Sharon Carpinello is the Acting Commissioner of The New York State Office of Mental Health ("OMH"). OMH provides services and supports to individuals with mental illness, including those with histories of substance abuse. Along with other state agencies, OMH supervises and funds programs for individuals with mental illness who have histories of substance abuse. It is a public entity covered by Title II of the ADA and receives federal funds, making it subject to Section 504 of the Rehabilitation Act.

27. Defendant Carpinello is responsible for the operation and administration of OMH activities, and she is sued in her official capacity.

28. Defendant William Gorman is the Commissioner of The New York State Office of Alcohol and Substance Abuse Services ("OASAS"). OASAS provides services and supports to individuals with histories of substance abuse. Along with other state agencies, OASAS supervises and funds programs for individuals with mental illness who have histories of substance abuse. It is a public entity covered by Title II of the ADA and receives federal funds, making it subject to Section 504 of the Rehabilitation Act.

29. Defendant Gorman is responsible for the operation and administration of OASAS activities, and he is sued in his official capacity.

30. Brion Travis is the Chairman and Chief Executive Officer of the New York State Division of Parole (the "Division of Parole"). The Division of Parole supervises, and develops treatment plans for, parolees in the community. It pays New York City $34 per day, and incurs significant other expenses, for each parolee who is incarcerated in New York City jails, including

those at Rikers Island, for allegedly violating the conditions of parole. It is a public entity covered by Title II of the ADA, and receives federal funds, making it subject to Section 504 of the Rehabilitation Act.

31. Defendant Travis is responsible for the operation and administration of the activities of the Division of Parole, and he is sued in his official capacity.

32. At all relevant times, Defendants were state actors and acted under color of state law.

CLASS ACTION ALLEGATIONS

33. The named plaintiffs bring this action on their own behalf and on behalf of all other similarly situated persons pursuant to Fed.R.Civ.P.23(a) and (b)(2).

34. The plaintiff class consists of individuals with a serious and persistent mental illness and a history of substance abuse (including alcohol abuse) who are (a) incarcerated at State expense in New York City jails as parole detainees and (b) awaiting an opening in a MICA program.

35. The class satisfies the requirements of Fed.R.Civ.P. 23(a) and (b)(2).

a. Numerosity. The class, which consists of hundreds of individuals per year, is so numerous that joinder of all members is impracticable.

b. Commonality. There are questions of law or fact common to all named plaintiffs as well as to all members of the class. The questions include, inter alia:

(1) Whether Defendants violate Title II of the ADA and Section 504 of the Rehabilitation Act by excluding plaintiffs and class members from, and denying them the benefits of, community treatment alternatives to incarceration on the basis of their disabilities, or the severity of their disabilities?

(2) Whether Defendants violate Title II of the ADA and Section 504 of the Rehabilitation Act by failing to reasonably accommodate plaintiffs and class members in MICA programs?

(3) Whether Defendants violate Title II of the ADA and Section 504 of the Rehabilitation Act by failing to provide services to plaintiffs and class members in the most integrated setting appropriate to their needs?

(4) Whether Defendants violate Title II of the ADA and Section 504 of the Rehabilitation Act by utilizing methods of administration that exclude plaintiffs and class members from, or deny them the benefits of, community treatment alternatives to incarceration?

(5) Whether Defendants violate Title II by otherwise discriminating against plaintiffs and class members, by reason of their disabilities, or the severity of their disabilities?

c. Typicality. The claims of the named plaintiffs are typical of the claims of the class as a whole.

d. Adequate Representation. The named plaintiffs will adequately represent the interests of the class. The named plaintiffs have no interests adverse or in conflict with class members. Their counsel have extensive experience in class action litigation as well as litigation concerning the rights of people with mental disabilities.

e. Generally Applicable Grounds. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate declaratory and injunctive relief with respect to the class as a whole.

MICA PROGRAMS

36. MICA programs, which are supervised and funded by Defendants, provide intensive services, including intensive professional supervision and support.

37. In general, New York offers two types of MICA programs: "MICA Community Residences" and "Supported Housing." Both are far more effective than the treatment available in New York City's jails or New York State's prisons.

38. MICA Community Residences typically house 10-24 residents, each with a mental illness and a history of substance abuse. They are generally staffed 24 hours a day, seven days a week. Residents participate in day treatment, community meetings and other therapeutic activities.

39. Supported Housing programs place individuals into single or shared apartments located in buildings that also house people without mental disabilities, fostering community integration. Residents are provided individualized treatment services through interdisciplinary teams and are connected with other appropriate services such as MICA day treatment, group counseling, 12 step meetings, vocational rehabilitation, etc. Residents have access to one or more team members 24 hours a day, seven days a week. Highly trained case managers monitor residents' condition and progress.

40. Residents in MICA programs have opportunities to enjoy and participate in religious, cultural, commercial, and social activities in the community. Such opportunities greatly aid residents' rehabilitation. MICA programs encourage and facilitate residents' participation in these activities; residents are often unable to independently engage in such pursuits.

41. By contrast, institutionalization, in jail or a hospital, dramatically limits participation in community life. While incarcerated, Plaintiffs have extremely limited opportunities to develop social bonds, and to work, learn, and recreate.

42. MICA programs have high rates of success with individuals like Plaintiffs. By contrast, being institutionalized and shut off from normal activities of daily living, and denied

rehabilitative services has a serious negative impact on the condition of persons with mental illness, worsening their prognosis, reducing their level of functioning, and making it more challenging for them to benefit from treatment and rehabilitative services in the future.

SYSTEMIC DEFICIENCIES

43. Plaintiffs have serious mental illnesses, such as schizophrenia, major depression or bipolar disorder. Due to mental illness, Plaintiffs are substantially limited in one or more major life activities. Plaintiffs also have histories of substance abuse. For many, their substance abuse is a direct consequence of inadequately treated mental illness.

44. Plaintiffs are confined in New York City jails, most at Rikers Island, for allegedly having violated conditions of parole. Many have been confined for minor or technical parole violations, such as failing to report to a parole officer. Frequently, their parole officers initiate their arrest and their incarceration in an effort to help; the parole officers believe that, if Plaintiffs are arrested, this will facilitate their admission to a MICA program.

45. Plaintiffs are confined at the behest of the State of New York, pending a determination by hearing officers as to whether the parole violation allegations are founded and, if so, whether parole should be revoked or the conditions of parole changed. The hearing officers may change the conditions of parole by directing that the parolees enter a MICA program.

46. While in jail pending the outcome of parole proceedings, Plaintiffs receive treatment for their mental illness, and they sometimes receive treatment for past substance abuse. New York City jails dispense medication to inmates with mental illness; the jails also provide therapy and/or 24-hour medical supervision to a modest number of inmates. Several segregated

units within the City jail system provide substance abuse treatment services, including at least one unit that provides services to MICA patients.

47. While parole detainees are in jail, treatment professionals review their circumstances and may recommend that they receive appropriate treatment in residential programs in the community, rather than be re-imprisoned for parole violations or released without such services. Based on these professional recommendations, the hearing officers may determine that, in lieu of incarceration, parole detainees (a) may enter a program in the community, if and when openings become available, but (b) will remain in jail pending the identification of openings.

48. Treatment in lieu of incarceration has been recommended for Plaintiffs and approved by their respective hearing officers. Plaintiffs nonetheless remain imprisoned because too few MICA programs exist to meet Plaintiffs' needs. Consequently, Plaintiffs typically must wait six to nine months for placements, if they become available at all. Plaintiffs often make great sacrifices by waiting for programs, because they often do not receive credit for the time that they spend waiting. For some class members, this means that they wait months for a program only to be sentenced to prison (either because they have finally given up waiting for a program, or because hearing officers refuse to continue adjourning cases)—and ultimately serve more time than if they had never requested treatment. Also, many of the MICA programs that Defendants have created or funded unreasonably refuse to serve or accommodate individuals whose mental illnesses, like Plaintiffs', are severe and persistent.

49. These lengthy waits are in sharp contrast to similarly situated parole detainees with histories of alcohol or substance abuse but no, or minor, mental illnesses. Such individuals are incarcerated for only days, or at most weeks, after a hearing officer concludes that they should be released to treatment programs for their substance abuse. Similar shortages of

community treatment programs do not exist for those individuals suffering only from chemical addiction but who do not have a serious mental illness. Thus, Plaintiffs are being discriminated against, and needlessly incarcerated, solely by reason of their disabilities or the severity of their disabilities.

50. The implications of Defendants' discriminatory conduct are far reaching. Many parole detainees with serious mental illness who are candidates for treatment dispositions, aware of the long wait for admission to a MICA program, forgo asking for one, or decline to wait for a bed to become available. For these individuals, the typical prison "sentence" is less than plaintiffs' typical wait for openings in MICA programs. These individuals, perhaps understandably, choose a shorter period of incarceration over a MICA program they know they need. Other parole detainees decline treatment dispositions because they know that some people wait months for placements and, in spite of their patience, space never become available and they end up back on the streets. However, these choices often have grave consequences. Without the benefits of MICA programs, people with serious mental illness and a co-occurring substance abuse disorder are at high risk of relapsing following their release from incarceration. They often end up in emergency rooms, hospitals, jail and/or prison, harming themselves, and causing great expense to the taxpayers of the State of New York.

51. Still other parole detainees with serious mental illness and chemical addiction have been discharged from parole while waiting for openings in MICA programs. Without the benefit of MICA programs, they too are at high risk of relapsing. Upon release, they frequently end up in emergency rooms, hospitals, jail and/or prison, harming themselves and causing great expense to the taxpayers of the State of New York.

52. Plaintiffs strongly desire to enter a MICA program.

53. By using the monies spent to jail Plaintiffs, combined with other cost savings that would accrue from a greater investment in MICA programs, Defendants could adequately fund the community alternatives that State officials have deemed appropriate and that Plaintiffs require.

FIRST CLAIM FOR RELIEF
(VIOLATION OF THE ADA)

54. Plaintiffs repeat and reallege the above paragraphs.

55. This claim for relief is brought against all Defendants, in their official capacities.

56. Plaintiffs are individuals with disabilities within the meaning of 42 U.S.C. § 12131(2).

57. Plaintiffs are qualified to participate in MICA programs as an alternative to incarceration.

58. Title II of the ADA prohibits Defendants from excluding, denying and otherwise discriminating on of the basis of disability in public services, programs and activities. 42 U.S.C. §§ 12131, 12132; 28 C.F.R. § 35.130.

59. Unjustified segregation of individuals with disabilities is a form of discrimination prohibited by the ADA. Olmstead v. L.C., 527 U.S. 581, 597 (1999); 28 C.F.R. § 35.130(d). The ADA requires public entities to administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. *Id.*

60. Defendants are violating the ADA, inter alia, by:

a. excluding Plaintiffs from, and denying them the benefit of, community-based programs because of their disabilities, or the severity of their disabilities.

b. requiring Plaintiffs to live and receive services as institutionalized inmates in jails, although jail is not the most integrated setting appropriate to their needs;

c. failing to reasonably accommodate Plaintiffs' need for MICA programs;

d. discriminating against Plaintiffs, on the basis of their disabilities, or the severity of their disabilities, with respect to access to MICA and other community based programs that treat substance abuse; and

e. using methods of administration that result in the needless incarceration of Plaintiffs, and discrimination against Plaintiffs, based on their disabilities, or the severity of their disabilities.

61. Plaintiffs have no adequate remedy at law.

SECOND CLAIM FOR RELIEF
(VIOLATION OF THE REHABILITATION ACT)

62. Plaintiffs repeat and reallege the above paragraphs.

63. This claim for relief is brought against all Defendants, in their official capacities. Defendants are recipients of Federal financial assistance or are responsible for the operation of programs that receive federal financial assistance.

64. Plaintiffs are individuals with disabilities within the meaning of 29 U.S.C. § 705(20). Plaintiffs are qualified to participate in a MICA program as an alternative to incarceration.

65. Section 504 of the Rehabilitation Act prohibits Defendants from excluding, denying and otherwise discriminating on of the basis of disability in public services, programs and activities receiving federal financial assistance. 29 U.S.C. § 794.

66. Unjustified segregation of individuals with disabilities is a form of discrimination prohibited by the Rehabilitation Act. Olmstead, 527 U.S. at 597; 42 U.S.C. § 12201. The Rehabilitation Act requires public entities to administer programs, services and activities in the most integrated setting appropriate to the needs of individuals with disabilities.

67. Defendants are violating the Rehabilitation Act, inter alia, by:

a. excluding Plaintiffs from, and denying them the benefits of, community-based programs because of their disabilities;

b. requiring Plaintiffs to live and receive services as institutionalized inmates in jails, although jail is not the most integrated setting appropriate to their needs;

c. failing to reasonably accommodate Plaintiffs' need for MICA programs;

d. discriminating against Plaintiffs, on the basis of their disabilities, or the severity of their disabilities, with respect to access to MICA and other community based programs that treat substance abuse; and

e. using methods of administration that result in the needless incarceration of Plaintiffs, and discrimination against Plaintiffs, based on the severity of their disabilities.

68. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs request that this Court:

a. Assume jurisdiction over this case;

b. Certify this case to proceed as a class action pursuant to Fed.R.Civ.P. 23(b)(2);

c. Issue declaratory relief that Defendants have violated Plaintiffs rights under the ADA and the Rehabilitation Act;

d. Enjoin Defendants from continuing to violate Plaintiffs' rights under the ADA and the Rehabilitation Act;

e. Award Plaintiffs reasonable costs, litigation expenses, and attorneys' fees pursuant to 29 U.S.C. § 794a(b), and 42 U.S.C. §§ 1988 and 12205; and

f. Award Plaintiffs such additional relief as may be just, proper and equitable.

Dated: October 20, 2003

Respectfully submitted,

Shari L. Steinberg (SS-3393)
David M. Lubitz
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
The Chrysler Building
405 Lexington Avenue
New York, NY 10174
(212) 973-0111

and

3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500

CO-COUNSEL:
Ira Burnim
Ellen Harris
Tammy Seltzer
JUDGE DAVID L. BAZELON CENTER FOR
MENTAL HEALTH LAW
1101 15th Street, N.W., Suite 1212
Washington, DC 20005-5002
(202) 467-5730

Susan Hendricks
Michelle Maxian
Kenneth Stephens
THE LEGAL AID SOCIETY
1 Battery Park Plaza, 28th Floor
New York, NY 10004
(212) 577-3300

Heather Barr
URBAN JUSTICE CENTER
466 Broadway, 10th Floor
New York, NY 10012
(646) 602-5600