

BANGOR DAILY NEWS

Adults with disabilities sue LePage, DHHS over service delays



Linda Coan O'Kresik

Paul LePage

By Jackie Farwell, BDN Staff

Posted Jan. 29, 2013, at 2:25 p.m.

AUGUSTA, Maine — A group of adults with autism and intellectual disabilities have filed a lawsuit against Gov. Paul LePage and two Maine Department of Health and Human Services officials for failing to provide housing and other services mandated under the state's Medicaid program.

The lawsuit was filed Monday in Kennebec County Superior Court on behalf of 18 men and women who were placed on waiting lists for services. The suit seeks class action status and names LePage, DHHS Commissioner Mary Mayhew and Ricker Hamilton, director of the DHHS Office of Aging and Disability Services, as defendants.

The plaintiffs are eligible for residential care, day programs and other support services under MaineCare, the state's Medicaid program, according to the complaint. They are among more than 1,000 adults with autism and intellectual disabilities that the state, strapped for resources, has placed on waiting lists for those services.

The waiting lists date to 2008.

The state has deemed many of the plaintiffs "priority one," or most urgently in need of services, because they're at immediate risk of abuse, neglect or exploitation, according to the complaint. Some of them have been waiting for services since 2009 and several are vulnerable to victimization, the complaint said.

"They've been waiting while in a documented state of need for a long time," said Gerald Petruccelli, a Portland attorney representing the plaintiffs.

A DHHS spokesman declined to comment on the suit, saying it's the department's practice not to comment on pending litigation.

One plaintiff, a 23-year-old woman with mental retardation, is effectively homeless after her mother decided last fall that she no longer could handle the stress of caring for her daughter, according to the complaint. The woman, on the wait list since March 2010, is at "severe risk of abuse and exploitation," according to the complaint.

The complaint lists the plaintiffs by name. Two filed the suit on their own behalf, while the rest were represented by guardians. The Bangor Daily News is not publishing the names to protect the plaintiffs' privacy and safety.

Another plaintiff, a 20-year-old woman with autism, mental retardation and a seizure disorder, requires two support staff because she hurts herself and behaves aggressively, according to the complaint. She also wanders at night. After it became unsafe for her mother to care for her alone, the woman was placed in temporary housing that no longer will be available by mid-2013, according to the complaint.

"They do need awake care round the clock, many of them," Petruccelli said. "Many of them have self-injurious behaviors that need to be monitored and prevented. Many of them are simply incapable of dealing with some of the ordinary tasks of daily life without help."

The suit alleges that the state violated federal Medicaid law by failing to fund all of the roughly 4,300 slots for services for adults with autism and intellectual disabilities, which is required under the state's MaineCare plan. The state has refused or failed to make 277 open slots available in a timely manner, the complaint said.

The suit seeks permanent injunctive relief ordering LePage, Mayhew and Hamilton to fund all of the slots for services and implement a plan to expand the delivery of community support services. The suit also seeks to award the plaintiffs attorneys' fees and other costs of litigation.

"We're quite optimistic, because on the core point there's a lot of precedent around the country that failing to fill slots that are already in your state plan is just illegal," Petruccelli said. "You have to do it."

In his biennial budget released earlier this month, LePage proposed spending \$6.7 million over the next two years to remove 85 people from the wait lists and into services.

The state's administration of the program fails to protect the health and welfare of individuals entitled to services and also violates federal law protecting people with disabilities, according to the complaint.

MaineCare defines an intellectual disability as a diagnosis of mental retardation that manifested during a person's developmental period.

Adults with autism and intellectual disabilities in Maine are entitled to services as a result of a court order that came in the wake of a scandal and class-action lawsuit involving patients at the former Augusta Mental Health Institute.

For residents who do receive services, the state has "established arbitrary, invalid, and inappropriate procedures for determining which individuals should be moved off the wait lists in what order," the complaint said. "Defendants' procedures are fundamentally flawed and incapable of accurately assessing and

determining the scope of services for recipients.”

As of September 2012, the network of providers that delivers residential and support care had 59 vacant beds that could have been taken by wait-listed individuals, the complaint alleged. Providers also have reported that they could develop about 50 shared-living arrangements within a day and up to 25 more within a month if the state would pay for the services, the complaint claimed.

In the most dire cases involving a risk of violence, abuse or neglect, wait-listed residents are sent temporarily to crisis facilities. But nearly all of the beds in the crisis system are full, risking residents' safety, the complaint alleged. Residents who manage to receive crisis treatment are routinely “recycled,” or discharged and readmitted through the system in a “revolving door,” the complaint said.

Hamilton said last April that his office was reviewing the waiting lists to ensure that adults with intellectual disabilities and autism were prioritized correctly and matched with appropriate services.

The plaintiffs and their guardians recognize that the waiting list problem dates back years and agreed litigation was the only way to ensure individuals receive the services they are entitled to and need, Petrucci said.

<http://bangordailynews.com/2013/01/29/health/adults-with-disabilities-sue-lepage-dhhs-over-service-delays/> printed on August 16, 2013