

FILED
Court Administrator

STATE OF MINNESOTA

JUN 20 2011

DISTRICT COURT

COUNTY OF RAMSEY

By BH Deputy

SECOND JUDICIAL DISTRICT

Case Type: 14 Other Civil

In Re Temporary Funding of Core Functions of
the Executive Branch of the State of Minnesota

Court File No. 62-cv-11-5203

**AFFIDAVIT OF BRUCE H. NELSON IN SUPPORT OF
INTERVENORS' PETITION FOR TEMPORARY FUNDING OF
GOVERNMENT ASSISTANCE PROGRAMS FOR PERSONS WITH DISABILITIES**

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

Bruce H. Nelson being duly sworn, on oath says:

1. I am an adult resident of the State of Minnesota, and make this Affidavit on the facts and circumstances to the best of my knowledge and recollection.

2. I am the chief executive officer of the Association of Residential Resources in Minnesota, a Minnesota non-profit corporation ("ARRM").

3. ARRM is an association of 150 providers (the "Members"). Our mission is "the advancement of community-based services that support people with disabilities in their pursuit of meaningful lives."

4. Our Members are organizations that provide residential and/or program services to thousand of Minnesotans with brain injuries, autism, mental illness and developmental and physical disabilities. In particular, they provide 24-hour care services to disabled Minnesotans through intermediate care facilities for developmental disabilities and four disability waivers from the Minnesota Department of Human Services ("DHS").

5. Intermediate care facilities for persons with developmental disabilities (“ICFs/DD”) are residential facilities. They are licensed as a supervised living facility under Minnesota Statutes §144.50 through §144.58 to provide services, including room and board, to persons who have development disabilities or related conditions. There are ICFs/DD in sixty-two counties in the State and each facility serves between four to sixty-four persons. In its most recent forecast, DHS estimates that there will be an average of 1,732 Minnesotans receiving ICFs/DD services on a monthly basis in fiscal year 2012.

6. The Minnesota Department of Human Services has set forth certain criteria to determine whether a person is eligible for ICFs/DD services. Among other things, the person must have a developmental disability or relate condition, as well as substantial limitations in present functioning, manifested as significantly sub-average intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior. The person must also require a 24-hour plan of care. ICFs/DD are required to provide a continuous active treatment program that includes outcome-based services in response to the specific and identified needs of each person, as set forth in an individual service plan. At a minimum, these services must do the following:

- Be based upon the needs, preferences and personal goals of the disabled individual;
- Be consistent with the principles of the least restrictive environment and self-determination;
- Provide opportunities for the disabled individual to participate in the community; and
- Provide functional skill development, reduced dependency on care providers and opportunities for the disabled individual to develop decision-making skills.

7. As referred to in paragraph 4, our Members also provide services under four disability waiver programs through DHS. The waiver programs providing funding for home and

community based services for disabled individuals. Persons are eligible to receive services through one of the waiver programs if they are eligible for Medical Assistance and meet the criteria for ICFs/DD services or other institutional levels of care, such as nursing homes or hospitals, and have the ability to make an informed decision for home and community based services instead of ICFs/DD services or other institutional care. The four waiver programs are:

- *Community Alternates for Disabled Individuals ("CADI") Waiver.* These waiver services are for individuals with disabilities who require the level of care provided by a nursing facility. In its most recent forecast, DHS estimates that there will be an average of 17,380 Minnesotans receiving CADI waiver services on a monthly basis in fiscal year 2012.
- *Developmental Disabilities ("DD") Waiver.* These waiver services are for individuals with developmental disabilities or a related condition who need the level of care provided by an ICF/DD. In its most recent forecast, DHS estimates that there will be an average of 15,435 Minnesotans receiving DD waiver services on a monthly basis in fiscal year 2012.
- *Traumatic Brain Injury ("TBI") Waiver.* These waiver services are for individuals with acquired or traumatic brain injuries who need the level of care provided in a nursing facility that provides specialized services (such as cognitive and behavioral supports) for individuals with brain injuries or who require a neurobehavioral hospital level of care. In its most recent forecast, DHS estimates that there will be an average of 1,441 Minnesotans receiving TBI waiver services on a monthly basis in fiscal year 2012.

- *Community Alternative Care ("CAC") Waiver.* These waiver services are for individuals who are chronically ill or medically fragile and thus require the level of care provided by a hospital. In its most recent forecast, DHS estimates that there will be an average of 344 Minnesotans receiving CAC waiver services on a monthly basis in fiscal year 2012.

8. The services our Members provide through ICFs/DD and the waiver programs are wide-ranging. Some clients require help with life-sustaining and basic physical care needs, such as dressing, bathing and toileting, and/or other day-to-day activities, such as community integration or meal preparation. However, a large number of our Members' clients are medically fragile or have several behavioral issues – both of which require constant supervision. For example, a person dependent on a ventilator or with a tracheotomy for oxygen must have a caregiver, who is able to respond within one-to-two minutes in the event of an airway plug or mechanical failure. Lack of staff or a staff shortage would be life threatening in these instances. In addition, a large number of our Members' clients require immediate behavioral intervention to prevent them from injuring themselves or their roommates. An inability to maintain the level of supervision required, which would result from a lack of funding, would put the client and his/her roommates at serious risk of physical harm.

9. The state government (with federal Medicaid participation) is the primary, and in almost all cases, the only source of funds for payment of the services provided by our Members. With rare exception, every cent of funding for ICFs/DD is through Medical Assistance and virtually every cent for waiver services are also covered by Medical Assistance. The funding needed for room and board under the waiver programs is provided by the State of Minnesota under the Group Residential Housing program.

10. The services provided to disabled Minnesotans by our Members and paid for through Medical Assistance and the Group Residential Housing program were determined by the Honorable Gregg E. Johnson, chief judge of the Ramsey County District Court, in 2005, as critical and essential services provided by the State.

11. Our Members have evaluated the options available to handle an immediate cessation of Medical Assistance and Group Residential Housing payments and none of them are viable. Our Members are dependent upon Medical Assistance and the Group Residential Housing payments to provide their programs and services. If the government shutdown were to occur, our Members would not have the funds necessary to pay for staff that provide services to the thousands of disabled Minnesotans, who depend upon these services for their care and livelihood. Very few of our Members have sufficient cash reserves to continue paying caregivers, who account for 75 percent of all Member expenditures, beyond one payroll period. Our Members are also concerned that a shutdown would affect receipt of payment for June billings, as well, which, if true, just adds to the dire financial situation a government shut-down would place our Members in.

12. In the event of a government shutdown, our Members would initially look to lenders for assistance, but I believe only a few of our Members would be able to secure any sort of bridge financing from a lender given the credit markets and the fact that our Members would not have a stream of payments from Medical Assistance to secure the financing request. Members would also look to family members to care for their loved ones, but few families have the resources and time needed to provide the appropriate level of care. Members would look to nursing homes, hospitals and other institutions to maintain the needed services for their clients, but nursing homes are likely to be similarly affected by a cessation in Medical Assistance

payments and hospitals, typically, do not have the capacity to taken on these individuals as patients. Finally, our Members' only real option is to look back to the counties and the State of Minnesota, particularly through DHS, who are required by the federal Medicaid program to assure the protection and provision of these services and programs to our Members' clients, to directly provide this care to our Members' clients in lieu of paying for the provision of these services. I do not believe that DHS or the counties have the necessary infrastructure to ensure the direct provision of these services and programs.

13. Simply put, without the funding provided through Medical Assistance and the Group Residential Housing program, our Members would be forced to close their intermediate care facilities and other group homes, as well as suspend all home and community-based services operated under the disability waiver programs. Our Members would be forced to suspend all life support and care programs and other services, thereby putting their clients in the real risk of life-threatening danger. Our Members have explored every conceivable option in the event the government shutdown were to affect the provision of the services our Members provide to the state's most vulnerable citizens. There are no realistic or viable options. If no provision is made for continued payment of these programs and services in the event of a government shutdown, it is very likely that these programs and services will end, at least until funding is reinstated. As a result, thousands of Minnesotans relying upon these services and programs would be irreparably harmed.

FURTHER YOUR AFFIANT SAYETH NOT


Bruce H. Nelson

Subscribed and sworn to before me
this 20th day of June 2011.


Notary Public

