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Court Administrator

STATE OF MINNESOTA

DISTRICT COURT

JUN 20 2011

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

By DH Deputy

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

**PETITION IN INTERVENTION
OF ASSOCIATION OF RESIDENTIAL RESOURCES IN MINNESOTA,
MINNESOTA DEVELOPMENT ACHIEVEMENT CENTER ASSOCIATION,
AND MINNESOTA HABILITATION COALITION, INC.**

Petitioners Association of Residential Resources in Minnesota (“ARRM”), Minnesota Development Achievement Center Association (“MnDACA”), and Minnesota Habilitation Coalition, Inc. (“MHC”), petition the Court as follows:

1. ARRM is an association of 150 providers (“ARRM Members”).
2. ARRM’s mission is “the advancement of community-based services that support people with disabilities in their pursuit of meaningful lives.”
3. ARRM 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”).
4. 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 developmental 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. MnDACA is one of the largest provider groups in the state of Minnesota, with about 65 member (the “MnDACA Members”).

5. MnDACA’s mission is “an association of agencies which promotes public policy to strengthen members’ abilities to provide quality services to citizens with developmental disabilities in Minnesota.”

6. MnDACA’s Members are licensed through the Department of Human Services (“DHS”) to provide day training and habilitation, supported employment and adult day services (collectively, the “DTH Services”) to adults with developmental disabilities to help them develop and maintain life skills, participate in community life and engage in proactive and satisfying activities of their own choosing, including the following services: (a) supported employment and work-related activities and non-vocational supports; (b) community integrated activities, including the use of leisure and recreation time, discovering connections and volunteering; (c) supervision, training and assistance in the areas of self-care, communication, socialization and behavior management; (d) training in community survival skills, money management and therapeutic activities and empowering other choice-making skills that increase adaptive living skills of a person; and (e) transportation services for non-medical purposes to enable persons to participate in the services listed above.

7. MHC is an association of 34 providers, all of whom, like the members of MnDACA, provide DTH Services to adults with developmental disabilities (the “MHC Members”).

8. MHC's mission is "to impact legislation and public policy as they affect training and habilitation agencies in Minnesota, and to strengthen the ability of member agencies to provide community integration services for people with development disabilities."

9. The members of ARRM, MNDACA and MHC provide services under four disability waiver programs through DHS (the "State Waiver Programs"). The State Waiver Programs provide funding for home and community based services for disabled individuals. The four State 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.

10. With rare exceptions, the state government (with federal Medicaid participation) provides all funding for the State Waiver Programs and Medical Assistance is, in most cases, the only source of funding for the services provided by ARRM Members, MnDACA Members and MHC Members to Minnesotans with disabilities.

11. Medical Assistance provides all funding for services provided to individuals living in intermediate care facilities for developmentally disabled adults, except for their room and board.

12. The funding for room and board for disabled individuals living in intermediate care facilities comes from the State of Minnesota under the Group Residential Housing program.

13. Without payments from Medical Assistance, Group Residential Housing and other state programs, the members of ARRM, MnDACA and MHC will not have the funds required to pay the staff who provide services necessary for the care and livelihood of thousands of disabled Minnesotans, or to pay the other fixed and operating costs necessary for the provision of these services.

14. Very few of ARRM Members, MnDACA Members and MHC Members have sufficient cash reserves to continue paying their operating expenses in the event of a government shutdown, including the wages of caregivers, beyond a one to two week period.

15. Without payments from Medical Assistance, Group Residential Housing funding and other state programs, ARRM Members will be forced to close intermediate care facilities, as well as suspend all home and community-based services operated under the disability waiver programs.

16. Without payments from Medical Assistance and other state programs, ARRM Members, MnDACA Members, and MHC Members will 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.

17. The members of ARRM, MnDACA and MHC have explored every conceivable option in the event the government shutdown were to affect the provision of the services these organizations provide to the state's most vulnerable citizens. There are no realistic or viable options.

18. 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, leaving the State's most vulnerable citizens with limited options and without the care, assistance and other support they need for their health and safety.

19. The Minnesota constitution requires each of the six executive branch Constitutional Officers specified in Article V (the Governor, Lieutenant Governor, Attorney General, Secretary of State, and State Auditor) to perform certain core functions that are an inherent part of their Offices.

20. Performance of the Constitutional Officers' core functions may not be abridged.
21. Failure to fund core functions nullifies the constitutional offices, which contravenes the Minnesota Constitution.
22. The core functions of the executive branch arise from the State and Federal Constitutions, and from the federal government under the Supremacy Clause of the United States Constitution.
23. The Minnesota Constitution provides that "government is instituted for the security, benefit and protection of the people. . . ." Article I, Section I.
24. The United States and Minnesota Constitutions guaranty Minnesota citizens the right to due process before deprivation of life, liberty, or property. U.S. Const. Amendments III and IV; Minn. Const. Article I, Section 7.
25. The Bill of Rights in the United States and Minnesota Constitutions guaranties Minnesota citizens a wide range of rights. U.S. Const. Amendments I – IX; Minn. Const. Article I.
26. The rights and privileges guaranteed by the United States and Minnesota Constitutions will be infringed if the executive branch and its agencies do not have sufficient funding to discharge their core functions as of July 1, 2011.
27. The State of Minnesota has entered agreements with the United States government to participate in a variety of programs, including the Medicaid Program.
28. Core functions include functions required by the State under a federal contract or federal law.

29. Under its agreements with the United States government, and under the Supremacy Clause of the United States Constitution, Article VI, funds paid under the Medicaid Program must continue.

30. The services provided by ARRM, MnDACA, and MHC under the State Waiver Programs and through intermediate care facilities are core functions.

31. In 2001 and 2005, when a budget was not passed funding state government, this Court issued orders directing that core functions, including the services provided by ARRM, MnDACA, and MHC under the State Waiver Programs, ICFs/DD or otherwise, be performed, and that the State continue to pay for them after the start of the new fiscal years.

32. The core functions of the executive branch, including Medical Assistance Payments, through the State Waiver Programs, ICFs/DD or otherwise, must be funded adequately for the executive branch to meet its obligations under the United States and Minnesota Constitutions, and under federal law.

33. The State treasury contains ample funds to continue the core services provided by ARRM, MnDACA, and MHC.

WHEREFORE, Association of Residential Resources in Minnesota, Minnesota Development Achievement Center Association, and Minnesota Habilitation Coalition, Inc. request an Order:

a. Directing that the executive branch of the Minnesota State government and its executive officers must undertake the core functions required by the United States and Minnesota Constitutions, and by the federal government.

b. Directing that the services provided by ARRM, MnDACA, and MHC under the Medicaid State Waiver Programs are core functions.

c. Directing that the State of Minnesota shall timely pay for services provided by ARRM, MnDACA, and MHC under the State Waiver Programs and through intermediate care facilities or otherwise paid by Medical Assistance and Group Residential Housing, until a budget funding these programs is in effect.

d. Awarding any other relief the Court deems just and equitable.

Dated: 20 June 2011

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ACKNOWLEDGMENT

Petitioners, through their attorney, acknowledge that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties under Minn. Stat. § 549.211, subd. 3.

