

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BEVERLY LAMBERSON, AS	:
ADMINISTRATRIX OF THE	:
ESTATE OF MELINDA	:
LAMBERSON REYNOLDS,	: CIVIL ACTION
DECEASED,	: NO. 09-CV-1492
<i>Plaintiff</i>	:
	: (Judge Munley)
<i>v.</i>	:
	: Electronically Filed
COMMONWEALTH OF	:
PENNSYLVANIA, <i>et al.</i> ,	:
<i>Defendants</i>	:

PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Beverly Lamberson (“plaintiff”), as Administratrix of the Estate of Melinda Lamberson Reynolds, Deceased (“Reynolds”), by her attorneys, respectfully moves this Honorable Court to grant partial summary judgment in favor of plaintiff, and against defendants, pursuant to Rule 56 of the Federal Rules of Civil Procedure, with respect to the invalidity of defendants’ Methadone Prohibition Policy, and its application to Reynolds, and in support thereof, represents as follows:

1. Chronic addiction to opioid drugs is a disability, *i.e.*, a physical or mental impairment that substantially limits one or more major life activities of affected individuals, as defined in the Americans With Disabilities Act, 42 U.S.C. §12102(1)(A), and the Rehabilitation Act, 29 U.S.C. §705(9);

2. Methadone maintenance treatment, *i.e.* long-term treatment of such individuals with the drug Methadone to assist them in refraining from use of illegal opioid drugs, is a safe and effective treatment for chronic addiction to opioid drugs;

3. Defendant Pennsylvania Department of State (“DoS”) receives federal financial assistance within the meaning of the Rehabilitation Act, 29 U.S.C. §794;

4. Defendant DoS and its subsidiary divisions and Boards including defendant Pennsylvania Bureau of Professional and Occupational Affairs (“BPOA”), defendant Pennsylvania Division of Professional Health Monitoring Programs (“PHMP”) and defendant Pennsylvania Board of Nursing (“BoN”) are responsible for licensing of nurses in Pennsylvania;

5. From approximately 1993 until June 2008, defendants DoS, BPOA, PHMP and BoN, and the individual defendants including BPOA Commissioner Merenda and the defendant BoN members (the “individual defendants”), followed a policy and practice of excluding any person who suffered from chronic addiction to opioid drugs and who was receiving methadone maintenance treatment from participation in and from the benefits of their services, programs and activities relating to licensing of nurses in Pennsylvania (the “Methadone Prohibition Policy”);

6. Defendant PHMP adopted a Revised Policy relating to licensing and methadone maintenance treatment in approximately June 2008, but defendants DoS, BPOA, PHMP, BoN and the individual defendants continued thereafter to apply the pre-June 2008 Methadone Prohibition Policy to plaintiff's decedent Reynolds;

7. Defendants DoS, BPOA, PHMP, BoN and the individual defendants excluded Reynolds from participation in and from the benefits of their services, programs and activities relating to licensing of nurses in Pennsylvania, and from permission to work as a nurse, both before and after June 2008, based on the Methadone Prohibition Policy; and

8. To the extent that defendants' exclusion of Reynolds from participation in and from the benefits of their services, programs and activities relating to licensing of nurses in Pennsylvania, and from permission to work as a nurse, was based on the Methadone Prohibition Policy, such action was contrary to Section 504 of the Rehabilitation Act, 29 U.S.C. §794, and Section 12132 of Title II of the Americans With Disabilities Act, 42 U.S.C. §12132.

9. Plaintiff will respond in due course to any summary judgment motion that may be filed by defendants, but any such motion does not preclude determination of the limited issue posed by this motion for partial summary

judgment, which is the unlawfulness of defendants' application of the Methadone Prohibition Policy to Reynolds.

In support of this Motion, plaintiff incorporates herein by reference her Statement of Material Facts Pursuant To Local Rule 56.1 and supporting Appendix filed together herewith, and her supporting Brief.

WHEREFORE, plaintiff requests that the Court grant partial summary judgment in her favor, with respect to the invalidity of defendants' Methadone Prohibition Policy, as stated.

Respectfully.

/s/ Lawrence D. Berger

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Attorneys for Plaintiff

Dated: November 13, 2012

Certificate of Service

I hereby certify that Plaintiff's Motion for Partial Summary Judgment, Statement Of Material Facts Pursuant To Local Rule 56.1 In Support Of Motion For Partial Summary Judgment, and Appendix, were served on counsel of record through the Court's electronic docketing system (CM/ECF).

/s/ Lawrence D. Berger

Lawrence D. Berger

Dated: November 13, 2012