

## **FINAL REPORT**

August 2013

Grantor- Barbara McDowell and Gerald S. Hartmann Foundation

Grantee- The North Florida Center For Equal Justice, Inc.

By- Edward J. Grunewald, Executive Director

Date of Grant- September 2012

### **Introduction**

The North Florida Center For Equal Justice, Inc. is a 501 © (3) organization founded in 2007 and funded primarily by The Florida Bar Foundation grants. Through impact and class action litigation and appellate advocacy NFCFEJ provides legal services that will most effectively address the housing, consumer, individual rights and education problems that affect large numbers of residents in north Florida and throughout the state. NFCFEJ along with the Public Interest Law Center of the Florida State University College of Law and private counsel Matthew Dietz filed a class complaint in the USDC for the Southern District of Florida at 0:12-cv-60460-RSR seeking injunctive relief for all medically fragile children in the State of Florida alleging that the state discriminates against the children by unlawfully separating them or attempting to separate them from their families and communities by failing to provide federally mandated and medically necessary home and community-based services. The complaints were filed on behalf of children who are currently in nursing homes in the State of Florida and those children who are at risk of unnecessary institutionalization. The grant funds have been used to pay part of the litigation expenses charged by experts providing reports on evaluation of data necessary to prove the case.

### **Progress**

The case is ongoing and a reapplication recently was made to receive additional funding to continue assisting in funding litigation costs. Since the last report the court heard arguments on the motion for class certification and a decision is pending. Also since the last report the United States Department of Justice has filed a related case in the same court and consolidation with our case is now under consideration. In addition to the above class certification work during the course of the grant year NFCFEJ and co-counsel Matthew Dietz as well as The Public Interest Law Center at Florida State University Law School also successfully defended motions to dismiss, conducted discovery and responded to requests for discovery and successfully defended the freedom to speak by clients and their representatives, putative class members as well as protecting the confidentiality of our clients and putative class members where appropriate. As previously reported one expert we retained has already spent over 200 hours reviewing and analyzing data produced by the defendants in discovery and the

litigation team has been in communication with other substantive experts. NFCFEJ requested in the grant application to use the entire grant amount for litigation expert witness fees and actually did use all of the funds received from the foundation to pay ½ of the expert witness costs to date with co-counsel Matthew Dietz paying the other half. Also as previously reported NFCFEJ also was active in the litigation preparing discovery, appearing at numerous depositions on behalf of named plaintiffs and declarants around the state of Florida, arguing motions and successfully defending attempts by the defendants to limit access to putative class members.

Recently the court denied renewed motions to dismiss the action claiming mootness citing several policy changes, rule promulgations and other actions by the defendants in attempts to address some of the problems that medically fragile and medically complex children and their families are having in Florida. Unfortunately the defendants continued to miss the goal of the lawsuit, the goal being to have every child out of geriatric nursing facilities and placed in the most integrated, least restrictive environment possible, around family and friends if possible so they may have the best opportunity to flourish. By the end of September we expect to have a decision on class certification and/or an order allowing open complete discovery to further document the numbers of children who are in nursing facilities or at grave risk of being placed in a nursing facility.

NFCFEJ is grateful that the foundation generously assisted in funding part of the cost of one of our experts at a crucial step of the lawsuit. We are hopeful that class certification will be granted soon so the action can move forward and we remain hopeful to be eligible for consideration in the future for additional grants from the foundation. The electronic docket at the case number listed above provides a complete history of court action in the case. Please contact Ed Grunewald at 850-701-3980 or [egrunewald@nfcfej.org](mailto:egrunewald@nfcfej.org) for more information.