

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**L.S., by and through his next friend,
Sheila Davis,**

PLAINTIFF

VS.

CIVIL ACTION NO.: 3:10CV153-HTW-MTP

**GOVERNOR PHIL BRYANT, in his
official capacity; DAVID J. DZLELAK in
his official capacity as Executive Director
of the Mississippi Division of Medicaid;
RICK BARRY, in his official capacity as
Chair of the State Board of Mental
Health; and DIANA MIKULA, in her
official capacity as Executive Director of
the Mississippi Department of Mental
Health**

DEFENDANTS

ANSWER OF THE STATE OF MISSISSIPPI

Defendant The State of Mississippi (State) answers Plaintiff's Amended Complaint (Amended Complaint) as follows:

FIRST DEFENSE

The State asserts all defenses available to it under Federal Rule of Civil Procedure 12(b).

SECOND DEFENSE

Plaintiff's Complaint fails to state a claim against the State upon which relief can be granted.

THIRD DEFENSE

Plaintiff lacks standing under Article III of the United States Constitution.

FOURTH DEFENSE

The State asserts all defenses available to it under Title II of the ADA, 28 C.F.R. Part 35, and *Olmstead v. L.C.*, 527 U.S. 581 (1999), including the "fundamental alteration defense."

FIFTH DEFENSE

The relief Plaintiff seeks in his Complaint violates the principles of federalism.

SIXTH DEFENSE

Plaintiff failed to exhaust his administrative remedies.

SEVENTH DEFENSE

The State reserves the right to assert all immunities under state and federal law, including sovereign and Eleventh Amendment immunity.

EIGHTH DEFENSE

Plaintiff's requested injunctive relief is not reasonably practical.

NINTH DEFENSE

The Defendants plead all applicable statues of limitations.

TENTH DEFENSE

The Defendants are not persons for the purposes of 42 U.S.C. § 1983 and are entitled to dismissal of this action on the grounds of the absolute immunity provided by the Eleventh Amendment to the Constitution of the United States of America, and the doctrine announced in *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989) and its progeny.

ELEVENTH DEFENSE

The State asserts all affirmative defenses that are or may become available to it (upon further investigation or discovery) under Federal Rule of Civil Procedure 8(c). To the extent that the State has asserted it is unable to admit or deny any allegations in the Complaint, the State reserves the right to amend its Answer based on further, additional, or other knowledge or information.

Without waiving any of these defenses, the State responds to the Amended Complaint as follows:

INTRODUCTION

1. The allegations in paragraph 1 of the Amended Complaint are denied.

2. The State is without sufficient information to admit or deny the allegations in paragraph 2 of the Amended Complaint.

3. The American With Disabilities Act (ADA) and Section 504 of the Rehabilitation Act speak for themselves. The State denies Plaintiff's attempt to characterize them.

4. The allegations in paragraph 4 of the Amended Complaint are denied.

5. The allegations in paragraph 5 of the Amended Complaint are denied.

6. The allegations in paragraph 6 of the Amended Complaint are denied.

PARTIES

A. Plaintiff

7. The State admits that L.S. is nineteen years old. The State is without sufficient information to admit or deny the allegations in paragraph 7 of the Amended Complaint.

8. The State is without sufficient information to admit or deny the allegations in paragraph 8 of the Amended Complaint.

9. The allegations in paragraph 9 of the Amended Complaint are denied.

10. The State is without sufficient information to admit or deny the allegations in paragraph 10 of the Amended Complaint.

B. Defendants

11. The State admits that Phil Bryant is the Governor of the State of Mississippi and that he is sued in his official capacity. The statutes cited in paragraph 11 of the Amended Complaint speak for themselves. The State denies Plaintiff's attempt to characterize them.

12. The State admits that David J. Dzlelak is the Executive Director of the Mississippi Division of Medicaid, and that he is sued in his official capacity. The statutes cited in

paragraph 12 of the Amended Complaint speak for themselves. The State denies Plaintiff's attempt to characterize them.

13. The State admits that Rick Barry is the Chair of the State Board of health, and that he is sued in his official capacity. The statute cited in paragraph 13 of the Amended Complaint speak for itself. The State denies Plaintiff's attempt to characterize it.

14. The State admits that Diana Mikula is the executive Director of the Mississippi Department of Mental Health, and that she is sued in her official capacity. The statutes cited in paragraph 14 of the Amended Complaint speak for themselves. The State denies Plaintiff's attempt to characterize them.

15. The allegations in paragraph 15 of the Amended Complaint are so vague and non-specific that the State does not have sufficient information to admit or deny them.

JURISDICTION AND VENUE

16. The State admits that this Court has jurisdiction 28 U.S.C. § 1331. The remaining allegations in paragraph 16 of the Amended Complaint are denied.

17. The State admits that venue is proper pursuant to 28 U.S.C. § 1391(b). The remaining allegations in paragraph 17 of the Amended Complaint are denied.

STATUTORY BACKGROUND

A. The Americans with Disabilities Act and Section 504 of the Rehabilitation Act

18. Title II of the ADA and 28 C.F.R. § 35.130 speak for themselves. The State denies Plaintiff's attempt to characterize them.

19. The ADA and 28 C.F.R. § 35.130(d) speak for themselves. The State denies Plaintiff's attempt to characterize them.

20. 28 C.F.R. § 35.130(b)(7) speaks for itself. The State denies Plaintiff's attempt to characterize it.

21. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, speaks for itself. The State denies Plaintiff's attempt to characterize it.

22. The allegations in paragraph 22 of the Amended Complaint are denied.

23. The allegations in paragraph 23 of the Amended Complaint are denied.

STATEMENT OF FACTS

A. L.S. is an adolescent with a moderate intellectual developmental disability.

24. The allegations in paragraph 24 of the Amended Complaint are admitted.

25. The state is without sufficient information to admit or deny the allegations in paragraph 25 of the Amended Complaint.

26. The allegations in paragraph 26 of the Amended Complaint are admitted on information and belief.

27. The allegations in paragraph 27 of the Amended Complaint are admitted on information and belief.

28. The allegations in paragraph 28 of the Amended Complaint are denied.

29. The allegations in paragraph 29 of the Amended Complaint are denied.

B. Mississippi has distinct services systems for people with intellectual and developmental disabilities and people with mental illness.

30. The mission statement cited in paragraph 30 of the Amended Complaint speaks for itself. The State denies Plaintiff's attempt to characterize it.

31. The allegations in paragraph 31 of the Amended Complaint are admitted.

32. The allegations in paragraph 32 of the Amended Complaint are admitted.

33. The allegations in paragraph 33 of the Amended Complaint are admitted.

34. The allegations in paragraph 34 of the Amended Complaint are admitted.

35. The allegations in paragraph 35 of the Amended Complaint are admitted.

CAUSE OF ACTION

Americans with Disabilities Act and Section 504 of the Rehabilitation Act

36. The State adopts by reference its responses to the prior paragraphs.
37. The State adopts by reference its responses to the prior paragraphs.
38. The allegations in paragraph 38 of the Amended Complaint are admitted.
39. The allegations in paragraph 39 of the Amended Complaint are admitted.
40. The allegations in paragraph 40 of the Amended Complaint are denied.
41. The allegations in paragraph 41 of the Amended Complaint are denied.

REQUEST FOR RELIEF

The allegations in the Request for Relief of the Amended Complaint are denied.

Every allegation in Plaintiff's Amended Complaint that is not specifically and expressly admitted in this Answer is denied.

The State's Request for Relief

The State respectfully requests that Plaintiff's Amended Complaint be dismissed with prejudice, with each party to bear its own costs.

THIS, the 8th day of May, 2017.

Respectfully submitted,

PHELPS DUNBAR LLP

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CERTIFICATE OF SERVICE

I certify that on May 8, 2017, I electronically filed this document with the Clerk of the Court using the ECF system, which sent notification of such filing to all ECF counsel of record in this action.

/s/ James W. Shelson
JAMES W. SHELSON