

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )

8:08CV271

vs. )

**MEMORANDUM  
AND ORDER**

THE STATE OF NEBRASKA; )  
DAVE HEINEMAN, Governor )  
of the State of Nebraska, in his )  
official capacity only; CHRISTINE )  
PETERSON, Chief Executive )  
Officer, Nebraska Department )  
of Health and Human Services, )  
in her official capacity only; JOHN )  
WYVILL, Director, Division of )  
Developmental Disabilities, )  
Nebraska Department of Health )  
and Human Services, in his official )  
capacity only; RON STEGEMANN, )  
Chief Executive Officer, Beatrice )  
State Developmental Center, in his )  
official capacity only, )  
)  
Defendants. )

This case was closed after judgment was entered pursuant to a settlement agreement between the parties (filing [10](#)). An order related to the settlement agreement states that “the undersigned retains continuing jurisdiction over this case and the parties to construe and enforce the settlement agreement.” (Filing [9](#), at 2.)

The parties’ settlement agreement (filing [10](#)) provides that “John J. McGee, Ph.D., shall be appointed as the Independent Expert to monitor the State’s implementation of this Settlement Agreement,” and that Dr. McGee “shall submit monthly statements to the Court . . . detailing all expenses the Independent Expert

incurred during the prior month.” (Filing [10](#), at 4-5.) The agreement also permits payment to consultants who assist the independent expert.<sup>1</sup> The agreement allows parties seven business days from receipt of the independent expert’s monthly statements to file any comments or objections regarding the statements. (Filing [10](#), at 6.) After such comments or objections are submitted, the court is to review the matter and “order the clerk to make the appropriate payments” to the independent expert.

On March 24, 2010, independent expert John J. McGee, Ph.D., filed motions for reimbursement for professional services and expenses incurred by various consultants in the total amount of \$68,054.05—\$5,134.59 incurred by consultant John Williams<sup>2</sup> during January to May 2009 (filing [49](#)); \$2,400.00 incurred by consultant John Williams during June and July 2009 (filing [50](#)); \$23,221.44 incurred by consultant Marge Brown<sup>3</sup> of Life Project Consulting, LLC, during January to May 2009 (filing [51](#)); \$7,944.59 incurred by consultant Marge Brown during June and July 2009 (filing [52](#)); \$22,196.09 incurred by Macomb-Oakland Regional Center, Inc.,<sup>4</sup> from January to May 2009 (filing [53](#)); and \$7,157.34 incurred by Macomb-Oakland

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<sup>1</sup>“The cost of the Independent Expert, including the cost of any consultant to assist the Independent Expert, shall be borne by the State in this action. All reasonable expenses incurred by . . . any consultant, in the course of the performance of the duties of the Independent Expert . . . shall be reimbursed by the State.” (Filing [10](#), at 5.)

<sup>2</sup>The independent expert represents that Mr. Williams “assisted the IE in the evaluation of programs and services rendered by the State of Nebraska for citizens housed at the Beatrice State Developmental Center and/or in community programs.” (Filing [49](#), at 1.)

<sup>3</sup>The independent expert represents that Marge Brown performed the same function as Mr. Williams. (Filing [51](#), at 1.)

<sup>4</sup>The independent expert represents that the Macomb-Oakland Regional Center, Inc., performed the same function as Mr. Williams and Ms. Brown. (Filing [53](#), at 1.)

Regional Center, Inc., during June and July 2009 (filing [54](#)).

On April 2, 2010, the State of Nebraska filed objections to \$7,135.83 of the \$68,054.05 requested due to lack of supporting receipts. (Filing [55](#).) On May 3, 2010, the independent expert filed many of the missing receipts and, because some documentation was unavailable, the independent expert reduced his reimbursement requests and filed amended motions for reimbursement. (Filings [60](#), [61](#), [62](#).) The independent expert's revised requests for reimbursement are as follows: \$30,314.76 incurred by Marge Brown of Life Project Consulting, LLC, during January to July 2009 (filing [60](#)); \$29,313.71 incurred by Macomb-Oakland Regional Center, Inc., during January to July 2009 (filing [61](#)); and \$7,200.00 incurred by consultant John Williams during January to July 2009 (filing [62](#)).

Pursuant to the terms of the parties' settlement agreement, I shall grant the State of Nebraska seven business days, or until May 14, 2010, to file any comments or objections regarding the independent expert's revised requests, after which I shall review the matter and order the clerk to make the appropriate payments.

Accordingly,

IT IS ORDERED:

1. The motions for reimbursement (filings [49](#), [50](#), [51](#), [52](#), [53](#), [54](#)) filed by independent expert John J. McGee, Ph.D., shall be denied as moot for the reason that the independent expert has filed amended motions for reimbursement (filings [60](#), [61](#), [62](#)); however, the supporting documentation that was submitted with the now-moot motions (filings [49](#), [50](#), [51](#), [52](#), [53](#), [54](#)) shall be considered in the court's review of the independent expert's amended motions for reimbursement (filings [60](#), [61](#), [62](#));
2. The State of Nebraska shall file any desired comments or objections to

the independent expert's amended motions for reimbursement (filings [60](#), [61](#), [62](#)) on or before May 14, 2010, after which the pending motions shall be deemed submitted for decision.

DATED this 6<sup>th</sup> day of May, 2010.

BY THE COURT:

*Richard G. Kopf*

United States District Judge