

Litigation: Forced Institutionalization of a child is a violation of constitutional rights
By: Matthew Dietz

Disability Independence Group vindicates the constitutional rights for a mother with a disability who lost her child to governmental abuse.

In 2011, the State of Florida removed a child, Marie Freyre with a severe disability from her mother Doris Freyre's care because of Ms. Freyre's need for additional assistance to care for her child due to her own disability. Doris Freyre has a back injury consisting of six herniated disks from a car accident and because she suffers from carpal tunnel syndrome. For fourteen years, Ms. Freyre cared for Marie in her home with additional supports and caregivers that were provided to Marie by virtue of a Medicaid Waiver.



On March 16, 2011, the Hillsborough County Sheriff's Office received a "false" report that Plaintiff was not providing appropriate medical care for Marie. On March 21, 2011, as part of an investigation defendants Child Protective Investigator and the Children's Medical Services Nurse had a conversation where the nurse expressed concerns that Ms. Freyre could not provide care for her daughter in her home once the home health aide left for the day. There was no question that Marie needed to have 24 hour care, but Ms. Freyre had previously refused to sign the child voluntarily into a nursing home that could permanently provide that care.

On March 28, 2011, a multi-disciplinary meeting was held which included various persons from the state, the state attorneys, child protective services, and medical staff from the state. At this meeting (referred to as a "staffing") attendees expressed concerns about medical neglect of Marie and that Ms. Freyre was not physically able to care for Marie or Plaintiff to provide complete physical care for her daughter. The next day, the fateful decision was made to shelter Marie at Tampa General Hospital until a foster home could be secured.

On March 30, 2011, the State of Florida filed suit to put Marie in foster care because of medical neglect. Ms. Freyre denied that she neglected or abused her daughter and just needed additional help to care for her daughter because of her disability. The Court ordered that Marie be returned to her mother as soon as the State found home health care services from midnight to 7 a.m. to care for Marie.

Similar to medically fragile children across the state, and notwithstanding the Court's order, the state refused to provide the needed care and opted for institutionalization. The Nurse at Children's Medical Services advised the staffing team that Medicaid would not pay for 24 hour coverage so that they should not even attempt to apply or request the needed care. Instead the State of Florida filed a dependency petition in court based solely on Ms. Freyre's disability and her inability to care for her daughter and claimed that the best placement for Marie, is not with her mother, but in a nursing home where she can get the 24 hour supervision and care.

Notwithstanding that it is less expensive to provide the needed care for Marie at home, the staffing team applied for and was approved for additional funding to place Marie in a geriatric nursing home. The only nursing home with a bed for Marie was in Miami-Dade County. The staffing team hurried to get Marie into a nursing home across the state.

When Ms. Freyre was advised of the transfer she advised the social worker and the state's attempts to move Marie to a nursing home in direct contravention of the Court's Order. Ms. Freyre demanded a hearing in front of the court prior to Marie being moved. Ms. Freyre was ignored, and Marie was transferred across the state. As a result of the lack of care and treatment during transport and the wrongful separation of Marie from her mother, Marie became hysterical throughout the transport, became dehydrated, and was not administered her medications. Marie died soon after arrival at Florida Club Care in Miami.

Disability Independence Group was retained by Ms. Freyre to ensure that these tragic events would not happen to any other child in the future. On December 5, 2014, Federal District Court Judge James Whittemore denied the state of Florida and the child welfare employees' motions to dismiss and upheld Doris Freyre's claims that the state violated her rights under the Americans with Disabilities Act, the Rehabilitation act, section 1983 for violation of her right to care for her daughter, and under section 1985 for conspiracy to violate her constitutional rights.