



COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20004

August 23, 2007

VINCENT C. GRAY
 CHAIRMAN

The Honorable Adrian M. Fenty
 Mayor
 District of Columbia
 1350 Pennsylvania Avenue, N.W.
 Washington, D.C. 20004

Dear Mayor Fenty:

I have been informed the Office of the Attorney General is claiming a set-off of at least \$2.2 million against any judgment rendered against the District by virtue of the District's negligence in its care of a mentally ill patient at St. Elizabeths Hospital.

In May 2002, you, along with all of the other members of the Council of the District of Columbia, wrote to then Mayor Williams urging him not to authorize the imposition of liens in cases where the District is being sued for negligence. The members wrote that such "liens are hard to justify as a matter of public policy, public relations, and agency accountability."

In response to this letter, John A. Koskinen, then Deputy Mayor and City Administrator, wrote on May 20, 2002 that "the District will use its lien *only* defensively – that is, to protect the District's taxpayers from an unfair or excessive recovery sought by the estate representative and his or her lawyers *in situations in which recovery has already been obtained from a third party.*"

The matter at issue is fundamentally distinguishable from the only exception articulated by Mr. Koskinen for the District of Columbia asserting its lien – this is a case solely against the District of Columbia. There is no third party claimed to be at fault and therefore no third party from whom the District of Columbia can claim the Plaintiff received an "unfair" or "excessive" recovery.

It is alleged that Frank Harris, Jr., a St. Elizabeths Hospital patient, lost his eyesight and is permanently blind as a result of gouging out his own eyes at a time when he was required to be in four-point restraints (arms and legs secured) with one-on-one supervision. The District's lawyers defending the case, which is presently set for trial on October 15, 2007, have asserted a set-off for room and board for Mr. Harris from 1987 through December 31, 2005 in the amount of \$2,229,644.00. The set-off claim continues to grow after that date to present. During the course of the litigation, Mr. Harris' guardian was sent a bill for the room and board. Further, it is my understanding that the assertion of this set-off is the sole major impediment in the ability to settle the case.





VINCENT C. GRAY
CHAIRMAN

Accordingly, if the District is found to have been negligent in its care and treatment of Mr. Harris, then the District's lawyers, contrary to present District policy, will offset the "room and board" bill against any judgment rendered against the District.

This, too, would be "hard to justify as a matter of public policy, public relations, and agency accountability." Given your track record of requiring and enforcing agency accountability, I cannot imagine you would permit the set-off in the Harris case. I urge you to immediately instruct the city's attorneys to affirmatively disavow the District's intention to assert the set-off claim, to rescind the bill sent to Mr. Harris' guardian for room and board, and to reaffirm the District's policy of not asserting liens under such circumstances as presented in the Harris case. I await your response.

Sincerely,

Vincent C. Gray
Vincent C. Gray

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50



COUNCIL OF THE DISTRICT OF COLUMBIA
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

Phil Mendelson
Councilmember At-Large

Office: (202) 724-8064
Fax: (202) 724-8099

August 13, 2007

The Hon. Adrian M. Fenty
Mayor, District of Columbia
1350 Pennsylvania Avenue, NW
Washington DC 20004

RE: *Estate of Frank Harris, Jr. v. D.C.*

Dear Mayor Fenty:

I have been approached by plaintiff's counsel regarding the District government's claim that a Saint Elizabeths' patient owes over \$2.2 million for room and board. This is a legal strategy which I find offensive, and which councilmembers (including you) protested in May 2002 in connection with claims brought by the estates of six mentally retarded wards of the District who died in MRDDA homes. It is a strategy intended to discourage litigation against the District, for the bill can be paid only if the District is found to have been negligent.

The suit brought by the estate of Frank Harris, Jr. against the District concerns the care given to this St. Elizabeths patient, a schizophrenic. Mr. Harris managed to gouge his eyes out with his bare hands while under a physician's order to have constant one-to-one supervision and to remain in four-point restraints. As a result, he is permanently blind.

I understand that federal law and Medicaid policy allow the District to recover private assets that could have been used to offset the cost expended by Medicaid funds. Clearly, however, the District is entitled to use its discretion whether to pursue this approach.

It is not within the spirit of the Medicaid program, much less of fairness or common sense, for the District to: (1) provide negligent care; (2) pay damages as a result of that care; and (3) then receive full or partial reimbursement for its negligent care by reclaiming the damages. That would be the effect of the set-off being claimed by the District. I suppose the estate of Mr. Harris could litigate the claim, but this strikes me as mean-spirited: maybe the estate could win the civil suit, but their time and compensation will be used up through new litigation.

In February 2000, the District government took the position that the filing of a claim for reimbursement in a case such as this was ill-judged. In 2002, after protest by councilmembers, the District reaffirmed the position that the filing of set-off claims was not the right public policy. I urge you to again affirm this position, and to instruct the Attorney General to withdraw the \$2.2 million bill – a bill that can be paid only if the District is indeed found negligent in how it cared for Mr. Harris.

Sincerely,



Phil Mendelson