

Department of Justice has promulgated regulations under Title II stating that “a public entity shall administer services, programs, and activities *in the most integrated setting appropriate to the needs* of qualified individuals with disabilities.” *See* 28 C.F.R. § 35.130(d) (emphasis added). Similarly, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, provides that no person with a disability shall “solely by reason of his or her disability, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

2. In *Olmstead v. L.C.*, 527 U.S. 581 (1999) (“*Olmstead*”), the U.S. Supreme Court held that disability-based discrimination includes placing people with mental illness in “unjustified isolation.”

3. This action is brought to compel Defendants to comply with these mandates with regard to Plaintiffs and those similarly situated. Plaintiffs are currently housed in private, intermediate care nursing homes classified as Institutions for Mental Diseases (“IMDs”), which are designed to warehouse—often for private profit—large numbers of people with mental illness in a segregated setting.¹

4. Defendants have failed to assure that Plaintiffs, and those similarly situated, are placed in a more integrated setting where they could lead more independent and more productive lives within the community.

5. More than five thousand individuals with psychiatric disabilities live in privately-owned IMDs in Illinois. These IMDs house dozens and often hundreds of people into the same building. They needlessly warehouse large numbers of people who could be served at the same

¹ Institutions for Mental Diseases (“IMDs”) are defined by Title XIX of the Social Security Act, which prohibits federal Medicaid funding for IMD residents between 22 and 64 years old. *See infra* ¶ 15.

or less cost to the State in far more integrated settings in their communities. The nursing home structure of the IMDs deprives residents of countless liberties and choices most citizens take for granted, such as the opportunity to read a book in private, to choose what to have for dinner, to decide when to wake up in the morning, and to come and go when desired. The IMDs range from cold and institutional to chaotic, unclean and unsafe. Few provide adequate staffing, psychiatric treatment, therapeutic activities or social rehabilitation. People frequently stay in IMDs only because they have nowhere else to go, a result of the Defendants' longstanding neglect of its basic obligations under the ADA.

6. Plaintiffs, and those similarly situated, continue to languish in the segregated setting of the IMDs, despite the fact that equally affordable and more integrated residential settings exist and/or could be made available. Such residential settings would more appropriately meet Plaintiffs' needs.

7. Defendants have violated Title II of the ADA and Section 504 of the Rehabilitation Act by failing to assure that their services are administered to Plaintiffs in the most integrated setting appropriate to their needs. Instead, they have isolated and institutionalized Plaintiffs, and those similarly situated, in IMDs.

Nature and Statutory Basis of Action

8. This action includes claims for violation of Title II of the ADA, 42 U.S.C. §§ 12131, 12132, which prohibits state and local government entities from discriminating against individuals with disabilities.

9. This action also includes claims for violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, which prohibits recipients of federal funding from discriminating against individuals with disabilities.

Parties

10. Named Plaintiff Ethel Williams has been a resident of an Illinois IMD (Monroe Pavilion) for approximately thirteen years. Ms. Williams has been diagnosed with bipolar disorder. She is alert, active, and attends an occupational day program five days a week. Ms. Williams maintains close contact with her children and grandchildren. She also spends her weekends with her brother and sister-in-law, where she takes her medication independent of supervision.

11. Named Plaintiff Jan Wrightsell has been a resident of an Illinois IMD (Monroe Pavilion) since early 2002. Ms. Wrightsell has been diagnosed with schizophrenia and has a history of major recurrent depression. She is alert and active; in fact, she currently cooks for staff and fellow members of an occupational day program, which she attends five days a week. Ms. Wrightsell maintains close contact with her family, and has substantial prior work experience as a sales clerk. She is well-educated and enjoys reading, writing short stories and composing poetry. Interacting with animals and pets is one of her favorite leisure activities.

12. Named Plaintiff Donell Hall has been a resident of an Illinois IMD (Greenwood Care) for approximately twelve years. Mr. Hall has been diagnosed with bipolar disorder and schizophrenia. Mr. Hall is alert and active; in fact, he formerly served in the United States Army, from which he received an honorable discharge. He currently works at Anixter Center, a day program which he attends five days a week.

13. Named Plaintiff Edward Brandon has been a resident of an Illinois IMD (Wilson Care) for approximately two years. Mr. Brandon has been diagnosed with schizophrenia. Mr. Brandon is alert and active. Mr. Brandon currently works five days a week at the Anixter

Center, his day program, where he buses tables. He maintains close contact with his grandmother and a cousin.

14. Plaintiffs, and those similarly situated, are Illinois residents who have mental illnesses that substantially limit their ability to perform major life activities. They also have a record of such mental illnesses, and are regarded by Defendants as having such mental illnesses. They are therefore individuals with disabilities for purposes of the ADA and the Rehabilitation Act. 42 U.S.C. § 12102, 29 U.S.C. § 705(20).

15. Plaintiffs and those similarly situated are currently housed in intermediate care nursing homes classified by the Illinois Department of Healthcare and Family Services (“DHFS”) (formerly the Illinois Department of Public Aid) as “IMDs.” This classification is based on the fact that these are institutions with more than sixteen beds that are primarily engaged in providing diagnosis, treatment or care of persons with mental disabilities. 42 U.S.C. § 1396d(i). Federal law prohibits Defendants from receiving any federal Medicaid reimbursement for the care of IMD residents, aged 22 to 64, and Defendants must therefore pay for their IMD placements solely out of state funds. Virtually all IMD residents receive Supplemental Security Income (“SSI”). SSI recipients must contribute all but thirty dollars (\$30) of their monthly SSI checks directly to the IMD operators. DHFS funds the remaining expenses associated with Plaintiffs’ shelter and board at the IMD.

16. Defendant Rod Blagojevich is the Governor of the State of Illinois, a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1). Governor Blagojevich is ultimately responsible for ensuring that Illinois operates its service systems in conformity with the ADA and the Rehabilitation Act. 20 ILL. COMP. STAT. 2407/20(c). He is sued in his official capacity.

17. Defendant Carol L. Adams is the Secretary of the Illinois Department of Human Services (“DHS”), the state agency responsible for assisting Illinois residents in achieving self-sufficiency, independence and health to the maximum extent possible by providing integrated family-oriented services, promoting prevention and establishing measurable outcomes in partnership with communities. DHS advertises itself as Illinois’ largest agency, employing more than 15,000 people. It has an annual budget of nearly five billion dollars. DHS is a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1). DHS is the recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Carol L. Adams is responsible for the operation and administration of DHS and is ultimately responsible for ensuring that DHS provides services in conformity with the ADA and the Rehabilitation Act. 20 ILL. COMP. STAT. 2407/20(c). She is being sued in her official capacity.

18. Defendant Lorrie Stone is the Director of the Division of Mental Health (“DMH”), the division of DHS responsible for helping to maximize community supports and develop skills for persons with serious mental illness. DMH is responsible for administering mental health screening and assessment of individuals with mental disabilities considered for placement in nursing homes. DMH is responsible for the placement of individuals with mental illness in an appropriate facility or program. DMH is the recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. DMH is a public entity subject to the requirements of Title II of the ADA, 42 U.S.C. § 12131. Dr. Stone is responsible for the operation and administration of DMH and for ensuring that DMH, as the division of DHS responsible for providing residential and mental health services to people with mental illness, operates in conformity with the ADA and the Rehabilitation Act. She is being sued in her official capacity.

19. Defendant Eric E. Whitaker, M.D., is the Director of the Illinois Department of Public Health (“DPH”), the state agency responsible for licensing, regulating and inspecting all nursing homes, including IMDs, in the state of Illinois. DPH is responsible for certifying these facilities for participation in federal payment reimbursement programs. DPH is also responsible for ensuring that persons with mental illness are appropriately screened and placed in nursing homes, and receive discharge planning. 77 Ill Admin. Code §§300.4010, 300.4060; 210 ILL. COMP. STAT. 45/3-202.2. DPH is a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1). DPH is the recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. DPH’s regulations permit the placement of an individual with mental illness in a nursing home, including an IMD, “for a medical reason directly related to the person’s diagnosis of serious mental illness, such as medication management.” 77 Ill. Admin. Code § 300.4000(c). Dr. Whitaker is being sued in his official capacity.

20. Defendant Barry S. Maram is the Director of the Illinois Department of Healthcare and Family Services (“DHFS”), the state agency responsible for providing health care coverage for the citizens of Illinois and for administering medical assistance programs and other fiscal programs. DHFS funds IMDs for resident services, including assessment, care planning, discharge planning, and treatment. 89 Ill. Admin. Code §145.20, subchapter d; 305 ILL. COMP. STAT. 5/5-5.5. DHFS is a public entity covered by Title II of the ADA. 42 U.S.C. § 12131(1). DHFS is the recipient of federal funds subject to the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Barry S. Maram is responsible for operation and administration of DHFS and for ensuring that DHFS operates in conformity with the ADA and the Rehabilitation Act. He is being sued in his official capacity.

Class Action Allegations

21. The named Plaintiffs bring this action as a class action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

22. The class of individuals that the named Plaintiffs seek to represent consist of those persons in Illinois who (1) have a mental illness; (2) with appropriate supports and services, could live in the community; and (3) are institutionalized in privately-owned IMDs.

23. The class is so numerous that joinder of all Plaintiffs is impracticable. The exact number of individuals in the class is not known to Plaintiffs, but is believed to be in the thousands.

24. The claims of the named Plaintiffs are common to those of the class and raise common issues of fact and law, including, among others: whether Defendants adequately determine whether class members are eligible for community services; whether Defendants adequately inform IMD residents of their right to community services; whether Defendants are providing services to mentally ill individuals in the most integrated setting appropriate to their needs; whether Defendants have a comprehensive, effectively working plan for achieving that goal; whether Defendants efficiently administer a waiting list for community services that allows individuals to move out of IMDs and into more integrated settings at a reasonable pace; and whether Defendants violate the Americans with Disabilities Act and Section 504 of the Rehabilitation Act by failing to provide community-based services to qualified individuals.

25. Plaintiffs' claims that Defendants have failed to administer the state's mental health programs so as to provide services in the most integrated setting appropriate to their needs are typical of the claims of the class.

26. Plaintiffs will fairly and adequately protect the interests of the class because they suffer from deprivations identical to those of the class members and have been denied the same federal rights that they seek to enforce on behalf of the other class members, many of whom are unable to pursue claims on their own behalf as a result of their disabilities, their limited financial resources, and/or the actions of the Defendants to deprive them of their rights. Plaintiffs' interests in obtaining injunctive relief for the violations of their legal rights and privileges are consistent with and not antagonistic to those of any person within the class. Furthermore, Plaintiffs' counsel has extensive experience in the areas of class action litigation and civil rights laws concerning people with disabilities.

27. Defendants have acted or refused to act on grounds generally applicable to all members of the class by unnecessarily segregating class members. For example, Defendants have failed to inform class members of their right to community services, failed to provide them with services in the most integrated setting appropriate to their needs, and failed to provide services with reasonable promptness. Therefore, declaratory and injunctive relief with respect to the entire class is appropriate.

Jurisdiction and Venue

28. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 for civil actions arising under the laws of the United States and 28 U.S.C. § 1343 for actions arising under laws providing for the protection of civil rights.

29. Venue in the Northern District of Illinois is proper under 28 U.S.C. § 1391, as it is the judicial district in which a substantial portion of the events or omissions giving rise to these claims occurred.

30. Declaratory and injunctive relief are sought under 28 U.S.C. § 2201 *et seq.*

Background

31. Beginning in the late 1960s the State of Illinois began releasing thousands of individuals with mental illness from its psychiatric institutions. As this “de-institutionalization” progressed, however, the state failed to create and develop adequate community housing and community services for large numbers of “de-institutionalized” individuals. Instead, the state funneled funds to nursing home operators who profited from the large numbers of mentally ill individuals recently de-institutionalized. Throughout the 1970s and 1980s, nursing home operators opened up large facilities (“IMDs”) designed — often for profit — to house these individuals, oftentimes in settings nearly as segregated and restrictive as the state psychiatric institutions they had just exited. Today, individuals with mental illness continue to be discharged from psychiatric hospitals into these restrictive facilities, where they continue to be needlessly segregated from society-at-large. This segregation occurs under the supervision of state agencies which, rather than helping re-integrate these individuals back into their communities by funding community-based programming, endorse and fund the IMDs. These IMDs do not prepare their residents to live independently and deny residents privacy and control over their lives. In many cases, the choice for persons with mental illness is between residence in an IMD—and compliance with its restrictive and controlling environment—or homelessness.

32. Some fortunate individuals are discharged from psychiatric hospitals and placed in residential programs that are designed to help them achieve independence and manage their illness. Many others, however, like Plaintiffs and those similarly situated, are instead discharged to nursing homes, many of which are IMDs. In most Illinois nursing homes designated as IMDs, virtually all IMD residents have been diagnosed with mental illness.

33. Federal law prohibits Medicaid reimbursement to any individual who is older than 21 years of age and under 65 years of age and who is a resident of an IMD (42 U.S.C. § 1396d(a)(1), (2), (4)). Plaintiffs and class members who receive SSI are required to contribute all but thirty dollars (\$30) of their monthly SSI check directly to the IMD operators to be used for their shelter and board. DHFS funds the remaining expenses associated with Plaintiffs' support and housing at the IMD.

34. Thus, the State of Illinois is not reimbursed by the federal government for serving residents between the ages of 22 and 64 in IMDs. However, the State of Illinois would receive significant federal reimbursement for serving these same individuals in the community. If the current system were altered, the savings to the State of Illinois would be immense.

35. Defendants have failed to integrate the state's mental health system by failing to develop and fund community alternatives. Many IMD residents could be served in community-integrated settings; however, as a practical matter, the choice most residents face is either an IMD or homelessness. Because most of their money — including money earned by those working at jobs outside the IMDs — goes into the IMD operators' pockets, IMD residents have little to no hope to save enough money to move to any other place. Most residents of IMDs remain there for years, because they are provided few opportunities to obtain services in more integrated settings and because they are provided few rehabilitation services to enable them to become more independent within the surrounding community.

36. Instead of serving individuals with mental illness in more integrated settings, Defendants continue to fund and operate a mental health system that segregates these individuals and, in many cases, restricts their access to the outside world.

Facts

