

Disability Advocates Inc. v. Cuomo

New York State's
Olmstead Litigation



I: The DAI Litigation

- Filed in 2003 by Disability Advocates Inc. (DAI), a P&A legal advocacy organization.
- Sought to compel NY to provide supported housing to individuals with mental illness residing in, or risk of entry into, 28 “Impacted” Adult Homes in NYC.
- Impacted Adult Homes – large residences (over 120 beds) and at least 25 residents, or 25% of the resident population have a mental illness. (DAI’s Constituents)

History Of Adult Homes in NYS

- Adult Homes largely developed in early stages of deinstitutionalization.
- Licensed by NY's Department of Health.
- Many NYC Adult Homes contain large numbers of persons with mental illnesses.
- In 2002, a NY Times reporter won a Pulitzer Prize --described poor conditions/services.
- DAI complaint based upon Times findings.

DAI Litigation: The Legal Claims

The State has discriminated against DAI's Constituents in violation of:

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

DAI Litigation: The Decision

- 9/9/09: Court held that New York violated the ADA and Section 504 of the Rehabilitation Act by unnecessarily segregating people with mental illness in adult homes.
- The Court concluded that the State had failed to give people with mental illness in 28 NYC adult homes the opportunity to live in their own apartment with support services.

DAI Litigation: The Remedial Order

Specifically the Court held:

- **Virtually all MI adult home residents are eligible for supported housing;**
- **Virtually all MI residents wish to live in supported housing;**
- **The State is required to develop 4,500 supported housing beds over a three year period;**
- **The State has to ensure that residents who move have all health and mental health services in place before move;**
- **An enforceable “remedial order,” overseen by the Court;**
- **Appointment of a Court Monitor – Marti Knisely.**

Litigation: The Appeal

- State appealed to the U.S. Court of Appeals, 2nd Circuit.
- On February 23, 2011 the Court issued a “Temporary Stay” –
"The March 1, 2010 order of the United States District Court for the Eastern District of New York awarding declaratory and injunctive relief is temporarily STAYED pending further order of this Court. Until that time, no party is required to perform any act identified in the March 1, 2010 order. Any dispute related to the performance of this order shall be directed to this panel.
Opinion to follow."
- The Appeals Court has yet to issue an opinion.

Inconsistencies between Court Order and Olmstead decision

Court order required the Supported Housing providers to do clinical evaluations of residents of the Impacted Adult Homes.

Court order expanded the eligibility criteria for Supported Housing and determined that anyone with a “*mental illness*” is eligible, unless they have:

- severe dementia;
- a high level of skilled nursing needs;
- are likely to cause imminent danger to themselves or others.

Order requires virtually all AH residents to be provided with all necessary supports and services to live in independent apartments, but NY has a continuum of residential options, based upon clinical need and choice.

Things We have Learned Which May Assist Other States

- U.S. DOJ believes that unnecessary institutionalization is the **next area of major civil rights litigation.**
- Ass't AG Thomas E. Perez' Testimony Before the Senate on the ADA and Olmstead Enforcement “Our current approach...represents a paradigm shift. In the past we conducted much of our institutional investigatory work under our CRIPA authority by first asking whether the institutions... were safe, and whether the conditions of confinement were constitutional. First, we must ask whether there are individuals in those institutions who could appropriately receive services in a more integrated setting.”

www.justice.gov/crt/opa/pr/testimony/2010/crt-testimony-100622.html

Things We have Learned Which May Assist Other States - con't

- The DAI case –if not modified or overturned on appeal, and if taken to its logical extreme, stands for the proposition that every residential program for persons with disabilities, licensed, or (possibly) funded by the State, is obliged to move virtually all persons to the “most integrated setting” appropriate to their needs.
- The “most integrated setting” is defined to mean settings that “enable interactions with non-disabled persons to the fullest extent possible.”

Things We have Learned Which May Assist Other States- con't

Definition of “Scattered site” housing

Much discussion revolved around what %age of MI persons in a building would constitute scattered site housing versus another segregated institution.

DOJ and other plaintiffs pushed for 8-10% limit on persons with mental illnesses.

Illinois Williams v. Quinn case: DOJ supported settlement in which similar residences in Illinois in which 25+% of larger residences could be MI persons.

Things We have Learned Which May Assist Other States - con't

- Try to avoid appointment of a Court Monitor:
 - time intensive for senior agency staff,
 - lengthy meetings/negotiations,
 - extensive data collection,
 - reporting requirements- Monitor & Court,
 - expense w/o direct services,
 - problems, real or perceived, are yours to resolve for both Monitor and Court,