

MEMO

To: Office of Management and Budget
From: Brian Hartman, on behalf of the following organizations:

Disabilities Law Program
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens
State Council for Persons with Disabilities

Subject: Division of Substance Abuse & Mental Health FY 13 Budget
Date: November 2, 2011

Please consider this memo a summary of the oral presentation of Brian J. Hartman, Esq. on behalf of the Disabilities Law Program ("DLP"), Developmental Disabilities Council ("DDC"), Governor's Advisory Council for Exceptional Citizens ("GACEC"), and the State Council for Persons with Disabilities ("SCPD"). We are addressing one (1) aspect of DSAMH's budget, i.e., supported employment.

As you are probably aware, the DOJ-DHSS Settlement Agreement executed in July, 2011 includes commitments and timetables ensuring the availability of a wide array of support services to covered DSAMH clients. One of the services, supported employment, may not intuitively be viewed as correlated with diversion from psychiatric hospitalization. However, we would like to highlight its importance and underscore its role in diversion.

A presentation by the U.S. Department of Justice in March, 2011 is instructive [Attachment "A"] It notes that the non-employment rate for individuals with severe mental illness approaches 90% and that persons with psychiatric impairments constitute the largest and most rapidly growing subgroup of Social Security disability beneficiaries. At 11. On-the-job training is the most effective approach to learning actual job skills and the most natural context for developing long-term employment. At 17-18. In turn, a successful employment experience improves outlook and promotes emotional stability. Finally, supported employment "pays for itself", i.e., Medicaid costs are typically reduced by \$5,000 - \$15,000 once an individual is working and by the fourth year of participation in supported employment income taxes paid result in a net benefit to the government. At 20.

The Settlement Agreement [Attachment "B"] includes some ambitious targets, including the provision of supported employment to an additional 300 individuals during FY13. At 13. Meeting the FY13 target will require active collaboration with the DSAMH provider network (Connections; Horizon House; PSI) and the State Division of Vocational Rehabilitation.

In closing, we encourage the prioritization of funding to meet and surpass the FY13 supported employment benchmarks in the Settlement Agreement.

Thank you for your consideration of our comments.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

CIVIL ACTION NO:

SETTLEMENT AGREEMENT

I. Introduction

- A. The State of Delaware ("the State") and the United States (together, "the Parties") are committed to full compliance with Title II of the Americans with Disabilities Act ("the ADA"), 42 U.S.C. § 12101 and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. This agreement is intended to ensure the State's compliance with the ADA, the Rehabilitation Act, and implementing regulations at 28 C.F.R. Part 35, and 45 C.F.R. Part 84 ("Section 504"), which require, among other provisions, that, to the extent the State offers services to individuals with disabilities, such services shall be provided in the most integrated setting appropriate to meet their needs. Accordingly, throughout this document, the Parties intend that the principles of self-determination and choice are honored and that the goals of community integration, appropriate planning, and services to support individuals at risk of institutionalization are achieved.
- B. The United States Department of Justice ("United States") initiated an investigation of Delaware Psychiatric Center ("DPC"), the State's psychiatric hospital, in November 2007 and completed on-site inspections of the facility and community services in May 2008 and August 2010. Following the completion of its investigation, the United States issued a findings letter notifying the State of its conclusions on November 9, 2010.
- C. The State engaged with the United States in open dialogue about the allegations and worked with the United States to resolve the alleged violations of federal statutory rights arising out of the State's operation of DPC and provision of community services for individuals with mental illness.

F. Supported Employment and Rehabilitation Services

1. The State shall develop options for people to work or access education and rehabilitation services. The supported employment and rehabilitation services shall:
 - a. Offer integrated opportunities for people to earn a living or to develop academic or functional skills; and
 - b. Provide individuals with opportunities to make connections in the community.
2. Supported Employment and Rehabilitation Services Components
 - a. **Supported Employment**
 - * i. Supported employment is a service through which individuals receive assistance in preparing for, identifying, attaining, and maintaining integrated, paid, competitive employment. Among the services that a provider may offer is job coaching, transportation, assistive technology, specialized job training, and individually tailored supervision.
 - ii. Supportive employment providers will adhere to an evidence-based model for supporting people in their pursuit of and maintenance of work opportunities.
 - b. **Rehabilitation Services**
 - i. Rehabilitation services include education, substance abuse treatment, volunteer work, and recreational activities, and other opportunities to develop and enhance social, functional and academic skills in integrated settings. With respect to the State's application for Medicaid funding for such services, the definition at 42 CFR 440.130 shall take precedence over the definition listed herein and the explanation of Rehabilitation Services herein is for the purposes of enforcement of this Settlement Agreement only.

I. Supported Housing

1. By July 11, 2011, the State will provide housing vouchers or subsidies and bridge funding to 150 individuals. Pursuant to Part II.E.2.d., this housing shall be exempt from the scattered-site requirement.
2. By July 1, 2012 the State will provide housing vouchers or subsidies and bridge funding to a total of 250 individuals.
3. By July 1, 2013 the State will provide housing vouchers or subsidies and bridge funding to a total of 450 individuals.
4. By July 1, 2014 the State will provide housing vouchers or subsidies and bridge funding to a total of 550 individuals.
5. By July 1, 2015 the State will provide housing vouchers or subsidies and bridge funding to a total of 650 individuals.
6. By July 1, 2016 the State will provide housing vouchers or subsidies and bridge funding to anyone in the target population who needs such support. For purposes of this provision, the determination of the number of vouchers or subsidies and bridge funding to be provided shall be based on: the number of individuals in the target population who are on the State's waiting list for supported housing; the number of homeless individuals who have a serious persistent mental illness as determined by the 2016 Delaware Homeless Planning Council Point in Time count; and the number of individuals at DPC or IMDs for whom the lack of a stable living situation is a barrier to discharge. In making this determination, there should be due consideration given to (1) whether such community-based services are appropriate, (2) the individuals being provided such services do not oppose community-based treatment, and (3) the resources available to the State and the needs of other persons with disabilities. Olmstead v. L.C., 527 U.S. 581 at 607 (1999).

J. Supported Employment

1. By July 1, 2012 the State will provide supported employment to 100 individuals per year.
- * 2. By July 1, 2013 the State will provide supported employment to 300 additional individuals per year.
3. By July 1, 2014 the State will provide supported employment to an additional 300 individuals per year.

4. By July 1, 2015 the State will provide supported employment to an additional 400 individuals per year.
5. In addition, by January 1, 2012 all individuals receiving ACT services will receive support from employment specialists on their ACT teams.

K. Rehabilitation Services

1. By July 1, 2012 the State will provide rehabilitation services to 100 individuals per year.
2. By July 1, 2013 the State will provide rehabilitation services to 500 additional individuals per year.
3. By July 1, 2014 the State will provide rehabilitation services to an additional 500 individuals per year.

L. Family and Peer Supports

1. By July 1, 2012 the State will provide family or peer supports to 250 individuals per year.
2. By July 1, 2013 the State will provide family or peer supports to 250 additional individuals per year.
3. By July 1, 2014 the State will provide family or peer supports to an additional 250 individuals per year.
4. By July 1, 2015 the State will provide family or peer supports to an additional 250 individuals per year.

IV. Transition Planning

A. Assessment and Placement of People Currently in Institutional Settings

1. Each individual, now in or being admitted to DPC or an IMD, shall have a transition team including clinical staff and a representative of a community-based mental health provider.
 - a. Discharge planning shall begin upon admission.
 - b. Discharge assessments shall begin with the presumption that with sufficient supports and services, individuals can live in an integrated community setting.

EXCERPT

Samuel R. Bagenstos
Principal Deputy Assistant Attorney General
Civil Rights Division
United States Department of Justice

Remarks as Prepared for Delivery at
Case Western Reserve University School of Law
March 15, 2011

Olmstead Goes to Work

Thank you for that introduction. I'd also like to thank Dean Rawson and Professors Sharpe and Hoffman for inviting me to deliver this year's McKnight Lecture and hosting me on my visit here. Case Western Law School is a place where a lot of exciting things are happening. It's a pleasure to get to spend the day with you.

The title of my lecture is "*Olmstead* Goes to Work." My thesis can be simply stated: The Supreme Court's decision in *Olmstead v. L.C.*, which interpreted the Americans with Disabilities Act to prohibit the unnecessary institutionalization of people with disabilities, is of great relevance to the problem of non-employment of people with severe disabilities. This thesis may strike many of you as counterintuitive. *Olmstead* is most typically understood as addressing the question of *where* people with disabilities live—in institutions or the community. But *Olmstead* is in fact most crucially about *how* people with disabilities live—whether people with disabilities can lead integrated lives, with the same array of day-to-day choices, opportunities, and interactions that people without disabilities take for granted. As I hope to show, integrated, meaningful employment of people with

work helps break cycles of dependence. For people with mental illness, “working in one’s community is “central to recovery and,” according to many experts, “should be a major goal of the mental health system.” [Becker et al. 2006] For people with developmental disabilities, meaningful and integrated work teaches skills. For everyone, it provides the chance to earn money which can then be used to engage in whatever activities an individual chooses.

How to Take Olmstead to Work

Unfortunately, the employment rate for people with severe disabilities has remained stubbornly low. In 2010, only 35.3 percent of people with disabilities were working. [RRTC 2010 Statistical Compendium] Among people with severe mental illness in particular, the non-employment rate approaches 90 percent by some estimates. [ODEP] “People with psychiatric impairments constitute the largest and most rapidly growing subgroup of Social Security disability beneficiaries.” [Drake et al. 2009] According to a 2008 study published in the American Journal of Psychiatry, the lack of employment among people with serious mental illness imposes almost a \$200 billion annual drag on the economy. [Kessler et al. 2008]

Entire books have been written about the persistence of non-employment among people with disabilities. I, myself, have devoted a significant chunk of a book to that topic. But what is important here is that, even when they do have the opportunity to work, far too many individuals with severe disabilities today work in segregated settings. A recent report by the National Disability Rights Network

integrated employment opportunities for people with severe disabilities. Paul Wehman, one of the leading researchers in the area, explains that “[t]he goal of supported employment programs is to help people with the most significant disabilities to be successful in paid employment in the integrated work setting of their choice.” [Wehman et al. 2003] Supported employment programs do this by “help[ing] clients identify what kind of work they would like to do, find a job as quickly as possible, and succeed on the job or move to another job.” [Drake et al. 2009] As Wehman explains, supported employment rests on a number of key values:

- that “[e]veryone, regardless of the level or the type of disability, has the capability to do a job and the right to have a job”;
- that employment should occur “within the local labor market in regular community businesses”;
- that “[w]hen people with disabilities choose and regulate their own employment supports and services, career satisfaction will result”;
- that “[p]eople with disabilities should earn wages and benefits equal to that of co-workers performing the same or similar job”;
- that “[p]eople with disabilities should be viewed in terms of their abilities, strengths, and interests rather than their disabilities”;
- that “[c]ommunity relationships both at and away from work lead to mutual respect and acceptance”; and

- that “[p]eople with disabilities need to determine their personal goals and receive assistance in assembling the supports for achieving their ambitions.” [Wehman et al. 2003]

Crucially, supported employment reflects what might be called an “employment first” approach—when carried out according to the key principles of the model, “[t]he only requirement for admission to a supported employment program is a desire to work in a competitive job.” [Bond 2004] Rather than asking whether competitive work is consistent with a client’s disability or requiring extensive vocational training *before* an individual can find a job, the supported employment model builds on the client’s strengths and interests and seeks to place the client in competitive employment immediately while providing the necessary supports.

These supports include working with employers to find and mold appropriate jobs, job coaching, transportation, assistive technologies, specialized job training, and individually tailored supervision. “[S]upported employment assists people with the most severe disabilities so that they are able to obtain competitive employment directly—on the basis of the client's preferences, skills, and experiences—and provides the level of professional help that the client needs.” [Salyers et al. 2004] The money for these services can come from a number of sources, including state Medicaid and vocational rehabilitation funds.

Evidence from the implementation of supported employment programs in a number of states suggests that many people with disabilities—even quite severe disabilities—who currently receive services in congregate employment settings

could in fact work in the competitive market. A recent review of the literature found that there are no “specific client factors (such as diagnosis, symptomatology, age, gender, disability status, prior hospitalization, and education) that consistently predict better employment outcomes. In other words,” this review continued, “the literature provides no empirical justification for excluding any consumer from receiving supported employment services, based on the clinical or work history, ‘readiness,’ or any other factor commonly used as screening criteria.” [Bond 2004] And the evidence shows that supported employment is far more likely to result in durable employment in the competitive labor market than is pre-vocational training (up to three times more likely in some studies). [Salyers et al. 2004]

Again, this finding parallels what we have learned about institutionalization. For many years, the prevailing view was that it would not be safe or responsible to allow people with developmental disabilities or mental illness to leave state institutions until they first showed that they had learned sufficient self-care, behavioral, and other skills that they would need to live in a community environment. But evidence mounted that one best learns skills in the setting in which those skills are intended to be used, and the prevailing view shifted. Now most experts in the field will tell you that forcing a person to stay in an institution until he learns self-care and behavioral skills unnecessarily delays the acquisition of those skills at the same time as it unnecessarily prolongs the institutionalization—in many cases, for years. We now understand that the best way to promote positive behaviors or the acquisition of skills that are needed in the

community is to give individuals the opportunity to live in the community with appropriate supports to develop those behaviors and skills. It should not be surprising that, for many people, the same point holds true with respect to job skills.

Moreover, although supported employment has an initial cost for each client—as the job and attendant supports are set up—that cost in most instances declines over time. A meta-analysis of relevant studies “concluded that supported employment programs began to provide a net benefit to the taxpayer through the taxes paid by disabled individuals in competitive employment beginning in the fourth year of the supported employment program.” [Stefan 2010] Other studies conclude that wider implementation of supported employment could save the federal and state governments hundreds of millions in SSDI and SSI costs (as people with disabilities earn more money of their own) and Medicaid costs (because a client’s Medicaid costs tend to go down by between \$5,000 and \$15,000 per year after he transitions into work). [Drake et al. 2009] And once the cost of segregated employment is taken into account—a cost that, for each client, tends to remain stable over time—the fiscal case for wider adoption of supported employment becomes all that much stronger. Indeed, as Professor Stefan reports, a number of studies have “found that supported employment was consistently less costly than sheltered work if measured over at least a four-year period.” [Stefan 2010]

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