Judge Aspen Has Ruled - Now What?

In a ruling on July 21, 2014, District Judge Marvin E. Aspen denied our plaintiffs' motion for a preliminary injunction in which the plaintiffs, the Illinois League of Advocates for the Developmentally Disabled (IL-ADD), the Murray Parents Association (MPA) and certain individual plaintiffs sought to stop the process by which the state was going about the closure of Murray Developmental Center.

In our complaint, we, the plaintiffs, maintained that the state was not following federal law in the closure process, including not respecting guardian choice in the placement decision. Our first step was to seek a preliminary injunction to stop that process until the state was in compliance with federal law.

Relying upon the state's testimony that it was following the law, the judge denied our plaintiffs' motion for a preliminary injunction and declared that the closure process at Murray may continue. *But at the same time, the judge categorically affirmed certain vital rights of residents and guardians regarding the process of assessment and the choice of placement.* The ruling was based on the judge's acceptance of the state's witnesses' sworn testimony that the state would honor guardian choice as to the placement of their loved ones. The Court indicated that all choices (according to the state) were available to guardians including ICF/MR services provided in State Operated Developmental Centers (SODCs) and private Intermediate Care Facilities for the Developmentally Disabled (ICF/DDs). Implicit in the judge's decision is the affirmation that guardians have the right to choose an appropriate placement for their loved ones, and that guardians may reject a community placement like a Community Integrated Living Arrangement (CILA), of the sort that the state wishes all SODC residents to accept (that is, a community placement in a setting of four or fewer beds).

Choice and the Power of Guardians Has Been Affirmed!

Judge Aspen's reliance on the state's sworn testimony that choice will be honored and that all choices are available up to and including SODCs is an affirmation of the right of guardians to choose. Among the most critical Court findings:

- Guardians have the final decision making power, retaining the right to reject any community or other placement recommendation.
- Guardians have the right to reject assessment by CRA (also known as the ACCT process). CRA is a private entity retained by the state which has as its goal moving people to community settings of 4 or fewer beds.
- If guardians choose to pursue the CRA/ACCT process, they may reject that process at any time and may also reject the recommendations that come from the CRA/ACCT process.
- Guardians have the right to choose from the full range of placement options. Therefore, the guardian may ask for an SODC (a state operated facility like Murray, Kiley, Shapiro, etc.), ICF/DD (a private 24 hour care facility typically of 16 or more beds) or other home or community based option, including a traditional CILA (8 or fewer beds) or a CILA of the kind offered by CRA (4 or fewer beds).

Guardian choice has been affirmed in this ruling, not just for Murray, but for all SODC residents. As you know, the lawsuit was about the future of all SODCs and the right of guardians to choose appropriate placements for their loved ones. We have always believed that the state will seek to close other centers as well, but the Court's reliance on the state's testimony that it does not intend to close other SODCs will make further closures of SODCs difficult, if not completely unlikely in the near future.

Judge Aspen noted that even if guardians consent "not every SODC resident can be accommodated in the community, either because of the severity of their disabilities or because accommodation would not be cost-effective," and, the judge noted, "Defendants [i.e., the state] acknowledge that one size may not fit all and guardians must consent to final placement decisions." The judge observed that the Olmstead Court [U.S. Supreme Court] specifically noted that for some individuals, "no placement outside the institution may ever be appropriate." This is an extremely important acknowledgment for our guardians and their loved ones.

In summary, Judge Aspen's ruling categorically recognizes what parents and guardians have maintained from the first - guardians have the right to make the final placement decision! Further, in making the placement decision, guardians may reject the CRA/ACCT process and request assistance of the center staff in choosing an appropriate placement. The case is still open. We are considering our next steps.

YOU ARE NOT ALONE - HOTLINE- Questions about the ruling or other questions? You may contact Rita Burke, President of IL-ADD at 618-559-1790, John Haley, PFLC President at 708-848-9463 or Rita Winkeler, President of the MPA at 618-210-9678.

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On a side note:

Arbitration Order of Edwin H. Benn, Arbitrator, Relating Specifically to the Murray Closure Process

On July 23, 2014, Arbitrator Edwin H. Benn issued an order styled, In the matter of the Arbitration between the State of Illinois, Dept. of Human Services and AFSCME Council 31, relating to the Murray closure which, like Judge Aspen's order in federal court, recognizes the right of guardians to opt out of the CRA/ACCT process, and provides, significantly, that PAS agents (Pre-Admission Screening/Independent Service Coordination Agency) will make initial contact with guardians for all closure related activities, and that Murray Social Workers and Murray HPCs (Habilitation Program Coordinators) may now respond to transition questions of guardians when asked. It also indicates that Murray staff, are now permitted to give "their professional opinion as to the most appropriate needs and services for a specific individual and the identity of potential providers for that individual," while they must not discourage guardians from participating in the ACCT process or encourage guardians to resist transfer from MDC.