The Americans With Disabilities Act and Community-Based Treatment Law

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The U.S. Supreme Court, in its 1998 term, decided two cases related to the application of the Americans With Disabilities Act (ADA). In one, the court ruled that the ADA applies to inmates of state prisons (1). In the other, the court held that asymptomatic HIV disease was a covered disability within the statute (2). Because these cases were decided by the Supreme Court, they received considerable attention.

However, another series of cases in which the ADA was applied has received less notice. In these cases, lower federal courts have ruled that people with mental illnesses must be treated in community settings if professional judgment finds such treatment appropriate. These cases, to be discussed in this column, may auger the most important development in mental disability law in many years.

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity" (3). The regulations for implementing this provision require that the public entities administer their services, programs, and activities in the "most integrated setting appropriate to the needs of qualified individuals with disabilities" (4).

In enacting the ADA, Congress noted that society has tended to isolate and segregate individuals with disabilities, and it condemned such forms of discrimination as a serious social problem (5). The commitment of Congress to end discrimination against people with disabilities has been the basis of several federal court rulings in which attempts to institutionalize individuals whom clinical staff believe could be treated in integrated community settings were found to be violations of the ADA.

The first significant case that showed the implications of the ADA for choice of treatment setting was decided by the Third Circuit Court of Appeals in 1995 (6). In this case, a patient– called Idell S. in the court's documents– had been placed in a nursing home after she contracted meningitis, which left her partly paralyzed and reduced her ability to care for herself. The Commonwealth of Pennsylvania, which was responsible for her care, agreed that she was an appropriate candidate for an attendant care program that would enable her to live at home. However, the program lacked the resources to admit her.

The court of appeals, overturning a lower court's decision, held that the ADA entitled Idell S. to be treated in the attendant care program and that failure to treat her in that program constituted discrimination under the ADA. The court rejected arguments by the state that Idell S. was claiming a right to deinstitutionalization, something not required by the ADA. The court instead found that she was "merely claiming" that the failure to provide her with services for which she was otherwise qualified violated ADA's mandate to provide care in the "most integrated setting appropriate."

The court acknowledged that the ADA did not require that programs make "fundamental alterations" to accommodate persons with disabilities (7). The court found that ordering the state to admit Idell S. to the attendant care program would cause no alteration in the program's admission criteria, because the state's own clinicians had concluded that she met the criteria. The court also dismissed the assertion that Idell S. could not be accommodated because funds could not be shifted between the separate budget lines for nursing home and attendant care programs. The court held that the state, including all its branches, was bound by the ADA and that its "argument of inability to comply rings hollow."

Subsequent cases have reached similar conclusions. For example, a federal district court in Maryland ruled that the ADA entitled individuals confined in state institutions with traumatic brain injuries and other developmental disabilities to have access to community care (8). A district court in Pennsylvania ruled favorably for state psychiatric hospital patients with dual diagnoses of mental illness and mental retardation who sought treatment in the community (9).

More recently, the 11th Circuit Court of Appeals became the second federal court of appeals to rule that institutional care violates the rights of people with mental illness under the ADA when the clinical judgment is that community-based care is appropriate. In *L.C. v. Olmstead* (10), two individuals confined for psychiatric treatment in Georgia Regional Hospital brought suit alleging that they were being treated in a segregated environment in violation of the ADA. The district court granted summary judgment to the plaintiffs. The court of appeals upheld this ruling, saying

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that the state had violated a core principle underlying the ADA by confining an individual with a disability in an institutionalized setting when a community placement was appropriate. The court noted that "placement in the community provides an integrated treatment setting, allowing disabled individuals to interact with non-disabled persons– an opportunity permitted only in limited circumstances within the walls of segregated state institutions."

The court also rejected the state's argument that the plaintiffs had not suffered discrimination based on their disability because the community programs they wanted were not available to people without disability. The court said that failure to provide the integrated services constituted unlawful disability-based discrimination– even though nondisabled persons may not need the services– because such segregation perpetuated the plaintiffs' status "as second-class citizens unfit for community life." Finally, like the third circuit court, the 11th circuit court rejected the argument that funding was insufficient to permit the creation of community treatment for the plaintiffs.

In returning the case to the trial court for further proceedings, the 11th circuit court, like the third circuit, noted that the ADA did not require fundamental alterations to the nature of the program or service provided. The court appeared skeptical of the state's argument that granting the plaintiffs' claim would require fundamental alterations. The court observed that the state had not used all of the Medicaid funding it had available for community placements, that the state's executive branch had the authority to transfer funds between institutional and community programs, and that the plaintiffs had asserted that community treatment was less expensive. Perhaps most important, the court ruled that the ADA could require the expenditure of additional funds by the state unless the state could prove that such additional expenditures would be so unreasonable, "given the demands of the State's mental health budget, that it would fundamentally alter the service it provides."

In commenting on the implications of cases such as *L.C. v. Olmstead*, the court stated that a similar claim by a class of plaintiffs might pose more difficult questions under the ADA, because a class action might force substantial program alterations. Subsequent to the *L.C.* case, in *Kathleen S. v. Department of Public Welfare* (11), a district court has ruled that a class action on behalf of institutionalized persons with mental illness may result in relief under the ADA.

In *Kathleen S.*, a federal district court considered a claim by 255 individuals confined in Haverford (Penn.) State Hospital, now closed, that their confinement constituted illegal segregation under the ADA. The plaintiffs claimed that community placement was the most integrated setting appropriate to their needs and that a lack of capacity in community programs was an inadequate defense for their continued hospitalization.

The court found that the plaintiffs' claim would not cause a fundamental alteration in the state's mental health program because state law and policy were to provide treatment in the least restrictive environment. The court also rejected the state's fiscal arguments, concluding that the state had the authority to shift funds between programs and that the evidence introduced at trial had proved that community-based care was significantly less expensive than institutional care. Therefore, even in the context of a class action, the ADA could be used to cause the state to provide community-based care to people for whom such care was the most appropriate to their needs.

The U.S. Supreme Court has agreed to hear the *L.C.* case in its spring 1999 term. How it decides the case will do much to shape mental disability law over the next few years.

The principle that people with mental illness should be treated in the least restrictive environment has been one of the anchors of mental disability law over the last three decades. However, it lost much of its vitality as a litigation tool after 1982 when the U.S. Supreme Court issued its famous opinion in *Youngberg v. Romeo* (12), which directed the federal courts to defer to the judgment of institutional administrators. This opinion was criticized as substantially weakening the role of the federal courts in protecting disenfranchised persons (13). It was followed by several federal court opinions holding that the Constitution provided no right to community treatment (14,15).

However, the more recent cases discussed here, relying on the ADA, breathe new life into the principle that individuals with mental illness must be treated whenever clinically appropriate in the most integrated settings possible. The courts have taken seriously the congressional mandate established in the ADA to end discrimination and segregation on the basis of disability, and they have ordered the provision of community treatment in cases where such relief might not have been available on constitutional grounds. In fact, in one case, the court ruled against the plaintiffs on their constitutional claim– because it felt compelled to give broad deference to the judgment of the state defendants– but ordered the same relief under the ADA (9).

The willingness of the courts to order that funds be shifted within state budgets and that new funds be expended also suggests that the ADA may contain remedies that have been largely unavailable for nearly two decades under federal constitutional claims. Although states still have available the defense that such expenditures will force a "substantial alteration" in state programs, courts to date have been skeptical of that defense, even in the context of a class action lawsuit (11).

If the courts continue to reach similar conclusions and if Congress does not amend the ADA to eliminate such litigation, these cases also may have ramifications for persons with disabilities beyond institutional settings. An example might be an individual with mental illness, currently living in the community, who is on a waiting list for state-funded case management and other services that a treatment provider believes will help avoid involuntary hospitalization. The cases discussed here suggest that the ADA

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may support a claim that placing the person at risk for institutional care by failing to make such services available violates the ADA and that sufficient community capacity must be created to ameliorate the risk. Whether such a claim would be successful remains uncertain at this point, but in the cases discussed here the courts have been clear that the ADA is designed to eliminate segregated, institution-based treatment unless it is the most clinically appropriate alternative for the individual.

In short, the Americans With Disabilities Act has emerged as a powerful tool for individuals with mental disabilities who are most appropriately treated in community-based settings. If the Supreme Court affirms the *L.C.* ruling, the ADA may revitalize legal advocacy in an area that had appeared moribund but that will become a fundamental part of mental disability law in the future. ♦

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