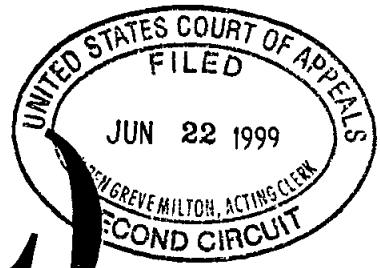

99-7572(L)

99-7586 (CON); 99-7588 (CON); 99-7604 (CON); 99-7618 (CON)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JUANA RODRIGUEZ, by her son and next friend, Wilfredo Rodriguez; AMELIA RUSSO; MARY WEINBLAD, by her daughter and next friend, Susan Downes; CHRISTOS GOUVATSOS; and SIDONIE BENNETT, individually and on behalf of all others similarly situated,

Plaintiffs-Appellees,

MOLLIE PECKMAN, by her son and next friend, Alex Peckman,

Intervenor-Plaintiff-Appellee,

-against-

CITY OF NEW YORK, IRENE LAPIDEZ, Commissioner Of Nassau County Department Of Social Services, COMMISSIONER OF THE WESTCHESTER COUNTY DEPARTMENT OF SOCIAL SERVICES, NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES, COMMISSIONER, SUFFOLK COUNTY DEPARTMENT OF SOCIAL SERVICES, and NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES,

Intervenors-Defendants-Appellants,

DENNIS WHALEN, Commissioner of the New York State Department of Health, and BRIAN WING, Commissioner of the New York State Office of Temporary Disability Assistance,

Defendants-Appellants.

BRIEF FOR THE COMMISSIONER OF THE WESTCHESTER COUNTY DEPARTMENT OF SOCIAL SERVICES

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PRELIMINARY STATEMENT

Intervenor-Defendant-Appellant Commissioner of the Westchester County Department of Social Services (hereinafter "Westchester County") submits this brief in support of an appeal from an Order of the United States District Court for the Southern District of New York (Scheindlin, U.S.D.J.) dated April 19, 1999, and entered on May 13, 1999, which, *inter alia*, ordered Westchester County as well as the other defendants below to include safety monitoring as a separate task on their Task Based Assessment (hereinafter "TBA") forms and calculate any minutes allotted for safety monitoring as part of the total personal care services hours authorized for both applicants and recipients of New York State Medicaid home care. (RA4489-RA-4612)[1].

It is Westchester County's position that the District Court, in so doing, abused its discretion by substituting its own judgment for that of the social services districts and thus, effectively changed the entire nature of personal care services.

[1] Numerical references preceded by the letters "RA" refer to the pages of the Record on Appeal.

STATEMENT OF APPELLATE AND SUBJECT MATTER JURISDICTION

Plaintiffs-Appellees are Medicaid recipients and eligible applicants (hereinafter "recipients") of personal care services throughout the State of New York. Plaintiffs-Appellees originally commenced this class action against the Commissioner of the New York State Department of Health[2] to challenge the design, implementation and use of task-based assessments ("TBA")[3] throughout New York State to determine the amount of personal care services provided to eligible Medicaid recipients. In addition, Plaintiffs-Appellees moved to permanently enjoin defendants from permitting further task-based assessments unless a social services district utilizes the new "task of safety monitoring"[4] in determining the amount of personal care to be

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[2] Since this action was commenced, the caption was changed to recognize that the former Commissioner of the New York State Department of Health, Barbara DeBuono was replaced by Dennis Whalen. In addition, the caption was also changed to reflect that Brian Wing, who was originally named in his capacity as acting commissioner of the New York State Department of Social Services, was now being sued in his capacity as the Commissioner of the New York State Office of Temporary Disability Assistance.

[3] Task-based assessments is a procedure by which a local social services district estimates the average amount of time a home care provider spends to provide each service.

[4] Pursuant to 18 N.Y.S.R.R. §505.14, personal care services means "assistance with personal hygiene, dressing and feeding, nutritional and environmental support functions and health-related tasks. In other words, personal care services is intended to assist recipients with the "safe" completion of specified daily household tasks. The concept of "safety monitoring as a separate task" was never specifically defined by the District Court. However, the implications of the District Court's decision is that "safety monitoring as a separate task" is intended to offer recipients supervision and/or monitoring as part of personal care services.

provided to the Medicaid applicants and recipients.

The jurisdiction of the United States District Court for the Southern District of New York was invoked pursuant to 28 U.S.C. §1343, 29 U.S.C. §794, 42 U.S.C. §1983, 42 U.S.C. §12101 *et seq.* and 42 U.S.C. §§1396 *et seq.*

By an opinion and order dated April 19, 1999, and entered on May 13, 1999, the United States District Court for the Southern District of New York (Scheindlin, J.) issued a permanent injunction and directed all of the defendants "to include safety monitoring as a separate task on their TBA forms, assess the need for safety monitoring as a separate task and calculate any minutes allotted for safety monitoring as part of the total personal care services authorized for applicants and recipients." (RA4489-RA4613)

The Defendant Dennis Whalen, Commissioner of the New York State Department of Health, filed a Notice of Appeal on May 17, 1999. (RA4618-20) Intervenor-Defendant Commissioner of the Westchester County Department of Social Services filed a Notice of Appeal on May 18, 1999. (RA4621-24) Intervenor-Defendants City of New York Department of Social Services and the Commissioner of the Suffolk County Department of Social Services filed their Notices of Appeal on May 19 and May 21, 1999, respectively. (RA4625-33)

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred in finding that defendants' use of TBA forms violates the requirements of the federal Medicaid Act (42 U.S.C. § 1396a), the Rehabilitation Act (29 U.S.C. § 794) and the Americans with Disabilities Act (42 U.S.C. § 12132)?

The District Court erred in finding that defendants' use of TBA forms violate the requirements of the federal Medicaid Act (42 U.S.C. § 1396a), the Rehabilitation Act (29 U.S.C. § 794) and the Americans with Disabilities Act (42 U.S.C. § 12132).

2. Whether the District Court abused its discretion by issuing a permanent injunction which directed all of the defendants to (1) include safety monitoring as a separate task on their TBA forms, (2) assess the need for safety monitoring as a separate task and (3) calculate any minutes allotted for safety monitoring as part of the total personal care services authorized for applicants and recipients of Medicaid home care?

The District Court abused its discretion by issuing the aforementioned permanent injunction because it changed the basic nature of personal care services and improperly interfered with the discretion of the social services agencies that had not abused their discretion in determining the "amount, nature and manner of providing medical assistance".

STATEMENT OF THE CASE

Under New York State law, the "amount, nature and manner of providing medical assistance" provided to Medicaid recipients is determined by each local social services district. New York State Social Services Law ("SSL") sections 62(1) and 365-a. In other words, each district uses its own discretion to manage its programs in accordance with the guidelines of Federal and State law and regulations. SSL 62(1), 365-a and 18 N.Y.C.R.R. section 505.14.

There are various programs utilized throughout the State of New York to provide for the care of Medicaid recipients. (RA1268). One type of program provides personal care services to certain qualified[5] Medicaid recipients. (RA1263). Specifically, personal care services assist individuals with personal hygiene and environmental and nutritional support tasks in order to maintain them in their homes. (RA1263). For example, personal care services include assisting Medicaid recipients with daily activities such as cooking, feeding, dressing, bathing, shopping, cleaning, or toileting. (RA1263). Personal care services are only available to certain Medicaid

[5] According to 18 N.Y.C.R.R. §505.14(a)(4), to be a qualified individual, the patient's medical condition must be stable and the patient must be self-directing.

recipients where it is medically necessary in order to maintain the health and safety of the recipient in the home. (RA1263).

In order to be eligible for personal care services, the recipient must be medically stable and generally self-directing.[6] (RA1263). In other words, the recipient must be able to make decisions concerning daily living activities and understand the consequences of those decisions, or have someone available to assume direction of the recipient's care. (RA1263). Each local social services district has the discretion to determine which individuals qualify for these types of services. (RA1266-67).

Once an individual is determined to qualify for personal care services, the amount and type of personal care services actually provided to a Medicaid recipient is based on the identified tasks which a personal care aide can perform. (RA1267). Task-based assessments ("TBA") analyze the various needs of personal care services recipients and specify the amount of time needed to safely assist the recipients with each particular task. (RA1270). For example, the time necessary to safely bathe a patient, either in bed, tub or shower (as

[6] Pursuant to 18 N.Y.C.R.R. §505.14(a)(4)(ii), the term "self directing" means that he/she is capable of making choices about his/her activities of daily living, understanding the impact of the choice and assuming responsibility for the results of the choice." Patients who are nonself-directing, and who require continuous supervision and direction for making choices about activities of daily living shall not receive personal care services, except if supervision and direction is provided by another source.

appropriate) is considered to be a task for which personal care services is offered. Typically, the amount of time required for a home care provider to perform a task is drawn from standard estimates which are based upon the district's experience in handling many home care patients. The TBA plans generally permit the assessment of time to vary from scheduled estimates in order to accommodate individual cases which deviate from the average. (RA1270).

Many local social services districts utilize TBA programs to reduce the wasteful expenditure of limited Medicaid funds by avoiding "down time," periods when an attendant is present at the home but not assisting a patient with recognized personal care needs. (RA1271-72).

In an effort to provide the most appropriate and cost effective means of delivering personal care services to its Medicaid recipients, the Westchester County Department of Social Services ("WCDSS") began utilizing TBAs on or about August 1990, to determine the level and type of care required of Medicaid eligible home care recipients. (RA1725). However, WCDSS only uses TBAs after it has made its own determination that a particular individual is an appropriate candidate for personal care services. (RA1732). In other words, the individual determined by WCDSS to be medically stable and generally self-directing is eligible for personal care services. (RA 1780-81).

On February 3, 1997, plaintiffs sought a temporary restraining order and preliminary injunction enjoining New York State Department of Social Services (hereinafter "NYSDSS") and the local social services districts from using their task based assessment (hereinafter "TBA") programs to determine the type of care and type of tasks to be performed by personal care aides for Medicaid recipients. (RA51-55)

Plaintiffs-Appellees requested that the District Court enjoin the implementation of TBAs throughout all of New York State because of allegations that certain local social services districts were inflexible in the services they allow, and as such jeopardized the health and safety of Medicaid recipients. (RA51-55)

The WCDSS opposed the request for an injunction since it would unjustifiably require WCDSS to amend its determinations without any evidence whatsoever for the proposition that Westchester County inappropriately administered the TBA program in the first instance. (RA312-20)

The United States District Court held a hearing on the preliminary injunction from April 15, 1997 through June 18, 1997. (RA393-RA2039)

After the hearing on the preliminary injunction, the District Court issued an Order dated August 4, 1997, and subsequently amended on August 21, 1997, that (1) the plaintiffs

had not proved that the TBA Program was systemically flawed and that it resulted in arbitrary assessments on a systemic level; and (2) that the failure to provide safety monitoring as a separate task violated the federal Medicaid Act. The District Court also ordered *inter alia*, that the WCDSS include safety monitoring as a separate task, and calculate any minutes allotted for safety monitoring as part of the total personal care services hours authorized, for all recipients. (RA3964-RA4020).

All parties appealed this Amended Order to the United States Court of Appeals for the Second Circuit. (RA4021-4065) The Second Circuit vacated the preliminary injunction on the grounds that the District Court had misapprehended the requirement of "imminent irreparable harm" and remanded the matter back to the District Court for further proceedings. (RA4290-4307)

Upon remand, the parties requested further discovery and settlement negotiations regarding another aspects of plaintiffs' actions - that relating to the span of time claim. (RA4489-95) Upon the agreement of all the parties and the District Court, the two issues (*i.e.*, the "safety monitoring" claim and the "span of time" claim) were bifurcated and the District Court rendered its final Opinion, Order and Judgment on the issue of safety monitoring on April 19, 1999. (RA4489-95) Specifically,

the District Court granted the plaintiffs' request for permanent injunctive relief to provide safety monitoring to cognitively impaired individuals. (RA4489-4549) The District Court determined that Medicaid Law includes individuals who require "safety monitoring" among "categorically needy persons", and that the comparability provision of the Medicaid Act requires that the medical assistance offered such individuals should not be less than that offered to other "categorically needy" individuals. *Id.* Additionally, the District Court determined that it had the authority to enforce the Medicaid Law by comparing the level of services provided to one recipient with those given to another and determining whether those services were, in fact, comparable, in light of the provisions of Medicaid Law, the American with Disabilities Act and the Rehabilitation Act. *Id.* The District Court concluded that safety monitoring was necessary to determine the amount of personal care services to be afforded mentally impaired individuals. *Id.* The District Court concluded that only upon its issuance of the permanent injunction would mentally impaired individuals be assured that they would be receiving comparable personal care services as those provided to physically impaired individuals. *Id.*

It is from this Decision, Order and Judgment that the Commissioner of the Westchester County Department of Social Services now appeals to this Honorable Court.

A SUMMARY OF THE ARGUMENT

The United States District Court abused its discretion by issuing a permanent injunction against all of the defendants, including the Westchester County Department of Social Services, directing the inclusion of safety monitoring as a separate task for personal care services.

In its Opinion and Order dated April 19, 1999, the District Court justified issuing the permanent injunction by improperly interpreting the provisions of the Medicaid Act, the Rehabilitation Act and the Americans with Disabilities Act to require that all individuals, regardless of their medical condition, be provided with exactly the same services. In addition, District Court incorrectly interpreted legal precedent which mandated a different conclusion. As will be discussed in further detail below, the record did not support a finding that personal care services were denied to qualified individuals who were diagnosed with mental, rather than physical, impairments. The record also did not illustrate that any of the defendants acted in an arbitrary or capricious manner in violation of the Medicaid Act, the Rehabilitation Act or the Americans with Disabilities Act so as to justify the District Court's interference in the administration of the personal care services program. Therefore, the Commissioner of the WCDSS respectfully requests that this Honorable Court vacate the District Court's

issuance of the permanent injunction, and reverse the Opinion, Order and Judgment dated April 19, 1999 and entered on May 13, 1999, in its entirety.

ARGUMENT

The District Court Abused Its Discretion by Unnecessarily Substituting Its Judgment Over That of the Social Services Districts Regarding The Administration of Personal Care Services Program.

The decision to utilize task based assessments to determine the hours necessary for personal care services is a discretionary administrative decision made by each of the local social services districts, including the Westchester County Department of Social Services. In reviewing such an administrative decision, a District Court is limited to deciding whether the action is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law. *Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc.*, 467 U.S. 837, 844, 81 L.Ed.2d 694, 104 S.Ct. 2778 (1984); *Visser v. Taylor*, 756 F.Supp. 501 (D.Kan. 1990). If there is a reasonable basis for the administrative decision, then a Court should defer to the administrative agency's determination. *See generally, Multicare Medicare Center v. State of Washington*, 768 F.Supp. 1349 (W.D.Wash. 1991). A Court is not empowered to substitute its judgment for that of the agency. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416, 91 S.Ct. 814, 28 L.Ed.2d 136 (1971).

The District Court in the instant case, at the behest of the Plaintiffs-Appellees, has substituted its own judgment for that of the defendants by changing the basic nature of personal care services and ordering the defendants to comply with an entirely *new* method of assessing personal care services. In order to justify its actions, the District Court developed a *novel* interpretation of the Medicaid Law and the Americans with Disabilities Act, and completely disregarded legal precedent established by the United States Supreme Court and this Honorable Court. Consequently, this Court should clearly reverse the District Court's decision in its entirety.

The District Court Misinterpreted the Comparability Provision of the Medicaid Act to Require All Recipients Receive the Same Services.

Title XIX of the Social Security Act, popularly referred to as the Medicaid Act, authorizes grants to States to provide medical and rehabilitative assistance to the poor, elderly and disabled. The purposes of the statute are to provide a supplementary health benefits program, to establish an expanded program of medical assistance and to increase benefits to those who qualify for assistance. (S.Rep. No. 89-404 at 1 (1965), reprinted in 1965 U.S. Code Cong. & Admin. News (1943)).

The Medicaid Act has given New York State and the local social services districts the broad and unambiguous authority to

develop and administer home care programs. Specifically, the Medicaid statute "confers broad discretion on the States to adopt standards for determining the extent of medical assistance, requiring only that such standards be 'reasonable' and 'consistent' with the objectives of the Act". *Beale v. Doe*, 432 U.S. 438, 53 L.Ed.2d 464, 97 S.Ct. 2366 (1977); *Jennie Kuppersmith v. Dowling*, 1999 N.Y. LEXIS 212 (N.Y. March 25, 1999).

In 1990, the Medicaid Act was amended to include personal care services as part of the home health services benefits. *See* Omnibus Budget Reconciliation Act of 1990. The United States Department of Health and Human Services - the agency responsible for administering and interpreting Medicaid laws - noted that the objective of the home care program is "to provide States maximum flexibility in tailoring their Medicaid programs to meet the needs of recipients while also setting guidelines so that States that choose to offer personal care services benefits furnish quality services in an effective manner." CCH Medicare & Medicaid Guide, ¶45,624 at 55,279. States therefore have broad discretion to choose the proper mix of amount, scope and duration limits on coverage as long as care and services are provided in the "best interests of the recipients". *Alexander v. Choate*, 469 U.S. 287, 83 L.Ed.2d 661, 105 S.Ct. 712 (1985). In addition,

> Medicaid programs do not guarantee that each recipient will receive that level of health care *precisely tailored to his or her particular needs.* Instead, the benefit provided through Medicaid is a particular *package* of health care services... (Emphasis added).

Alexander v. Choate, 469 U.S. at 303, 83 L.Ed.2d 661, 105 S.Ct. at 721.

Federal law contains no provisions with respect to safety monitoring, and State law only requires that personal care services be provided when specific tasks can be performed safely in the home. The only applicable Federal and State requirement regarding Medicaid services is that such services be "sufficient in amount, duration and scope" in order to adequately meet the needs of most recipients. *King by King v. Sullivan*, 776 F. Supp. 645, 652-653 (D.R.I. 1991); *Curtis v. Taylor*, 625 F.2d 645 (5th Cir. 1980), *mod.*, 648 F.2d 946 (5th Cir. 1980); *Virginia Hospital Association v. Kenley*, 427 F. Supp. 781, 785-786 (E.D. Va. 1977). Only those individuals who are found to be medically stable and generally self-directing are eligible for personal care services in the first instance. 18 N.Y.C.R.R. §505.14.

In the instant case, the District Court abused its discretion by misinterpreting the provisions of the Medicaid Act, substituting its own judgment for that of the particular administrative social services agencies, and effectively changing the nature of personal care services. The District

Court completely eliminated the requirement that an individual be self-directing and is mandating instead that local social services districts provide the supervision and direction to maintain these non-self-redirecting individuals in the home. Specifically, the District Court ordered the defendants to consider "safety monitoring" as a separate task to benefit non-self-directing individuals, who might otherwise not be qualified to receive personal care services, and justified its action based on the comparability provision of the Medicaid Act. However, the comparability provision of the Medicaid Act warrants no such conclusion.

The comparability provision of the Medicaid Act requires that state Medicaid plans must provide:

> (B) that the medical services made available to any [categorically needy[7]] individual
> (i) shall not be less in amount, duration, or scope than the medical assistance made available to any other such individual, and
> (ii) shall not be less in amount, duration or scope than the medical assistance made available to [medically needy[8]] individuals...

42 U.S.C. §1396a(a)(10)(B). Comparibility requires that standards "be comparable, not identical, for all groups." *DeJesus v. Perales*, 770 F.2d 316, 324 (2d Cir. 1985).

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[7] categorically needy -- financial assistance to those persons who lacked sufficient income to meet their basic needs.
[8] medically needy -- those whose resources were insufficient to meet their medical expenses.

The comparability provision of the Medicaid Act can not be read as creating a specific and definite federal right to safety monitoring services. There is no "comparable" service that is provided to physically impaired recipients but not to cognitively impaired recipients. "Safety monitoring" is not, in and of itself, an enumerated task. *Absent an enumerated task, safety monitoring is not a personal care service for Medicaid purposes.* The United States Department of Health and Human Services opined that:

> Supervising/monitoring of an individual, by itself, without the provision of recognized personal care services, would not be considered personal care services for Medicaid purposes.

(RA305). Consequently, neither the physically impaired nor the cognitively impaired receive personal care services from a social services district based on a separate task of safety monitoring.

By mandating the defendants to tailor the personal care services program to meet the needs of the cognitively impaired by providing supervision and monitoring has entirely altered the nature of the program by imposing the additional duty of providing non-self directing individuals with supervision and direction in the home. The District Court's mandate could be interpreted to require massive changes to all of the Medicaid programs provided by the defendants in order to accommodate all

individuals, regardless of their medical condition, to participate in any and all of the Medicaid programs available, regardless of cost. For example, a day care program geared for the mentally handicapped must now also be opened to the physically handicapped, and vice versa. Consequently, in order to preserve the administrative prerogatives of New York State and the local social services districts originally granted by the Medicaid Act, this Court should reverse the Decision and Order of the District Court in its entirety.

The District Court Misinterpreted the Americans With Disabilities Act As Mandating All Individuals to Receive the Same Services.

In its Decision and Order, the District Court also misinterpreted the provisions of the Rehabilitation Act and the Americans with Disabilities Act in a manner that completely disregarded the objectives of said laws and the legal precedent which interpreted said laws.

The Americans with Disabilities Act and the Rehabilitation Act of 1973 address primarily "evenhanded treatment" between the handicapped and non-handicapped. In these pieces of legislation, Congress focused on several substantive areas - employment, education, and the elimination of physical barriers to access - where it considered the societal and personal costs of refusals to provide meaningful access to the handicapped to be particularly high. But there is nothing in either the Americans with Disabilities Act or the Rehabilitation Act which suggests that Congress desired to make major inroads on the States' longstanding discretion to choose the proper mix of amount, scope and duration limitations on services covered by state Medicaid. *Alexander v. Choate*, 469 U.S. at 306-07.

The Americans with Disabilities Act and the Rehabilitation Act were never intended to provide identical treatment between different categories of handicapped individuals. *Traynor v. Turnage*, 485 U.S. 535, 548, 99 L.Ed.2d 618, 108 S.Ct. 1372

(1988); *see Alexander v. Choate*, 469 U.S. 287, 304 (1985). The Rehabilitation Act does not provide that "any benefit extended to one category of handicapped persons also be extended to all other categories of handicapped persons". *Traynor*, 485 U.S. at 549.

Similarly, Title IIA of the ADA does not require that all handicapped persons be treated identically but 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.

42 U.S.C. §12132.

This provision of the American with Disabilities Act clearly establishes that the State may not (1) deny "qualified individuals"[9] with a disability a benefit, program or activity by reason of the disability, or (2) discriminate against such "qualified individuals" on the basis of their disability. The concept of "discrimination" necessarily requires uneven treatment of "similarly situated" individuals which is not present here. *General Motors Corp. v. Tracy*, 519 U.S. 278, 136

[9] The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies or practices, the removal of architectural, communication, transportation barriers, or the provision of auxiliary aids and services meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

L.Ed.2d 761, 117 S.Ct. 811 (1997); *Lorance v. AT&T Technologies, Inc.*, 490 U.S. 900, 905, 104 L.Ed.2d 961, 109 S.Ct. 2261 (1989); *Bazemore v. Friday*, 478 U.S. 385, 395, 92 L.Ed.2d 315, 106 S.Ct. 3000 (1986).

The lower Court's decision in this case ignores the concept that an individual must be "qualified" or "similarly situated" in order to receive a particular benefit and penalizes all of the defendants for providing personal care services to some disabled individuals who were determined to be qualified for the program.

The exclusion of non-handicapped persons from the benefits of a program or the exclusions of a specific class of handicapped persons from a program limited to a different class of handicapped persons is not prohibited by either the Americans with Disabilities Act or the Rehabilitation Act. For example, a healthy young man who does not have à handicap may wish to receive "personal care services" but since he is not "qualified" to receive such a service, he will be denied the benefits of the program. Another example might be a physically handicapped woman who, though completely bedridden and in critical need of one-on-one medical attention, wished to participate in a day care program in order to be in contact with other individuals. The social services district would have the discretion to deny this request because the program is not appropriate for the

woman. The program is not equipped with the necessary and critical medical services required to safely address the woman's condition. Consequently, there is justification to exclude some individuals if they are deemed not to "qualify" for a particular program.

The instant case does not even involve such an extreme result. Personal care services are provided to individuals with mental disabilities so long as those individuals are self-directing, and Plaintiffs-Appellees conceded this point. Yet, because the Plaintiffs-Appellees are not completely satisfied with the personal care services program, they complain that it is necessary to effectively change the basic nature of the entire program to specifically address the needs of some mentally impaired individuals. By granting a permanent injunction and requiring the defendants to include safety monitoring as a separate task, the District Court requires personal care services to be tailored to meet the needs of all individuals suffering from mental afflictions regardless of whether or not they are self-directing.

The personal care services program was never meant to be a governmentally funded guardianship program. If an individual cannot be safely maintained in the home by a personal care services aide because the individual is not self-directing, then the program simply is not appropriate. The local social

service district must be afforded the ability to administer a service in a manner that bears a rational relationship to the underlying federal purpose of providing the service to those in greatest need of it. *White v. Beal*, 555 F.2d 1146, 1151 (3d Cir. 1977).

Accordingly, this Court should reverse the District Court's Order in its entirety.

CONCLUSION

For the foregoing reasons, the Westchester County Department of Social Services respectfully requests that an order be entered reversing the Order of the United Sates District Court for the Southern District of New York (Scheindlin, U.S.D.J.) dated April 19, 1999, and entered on May 13, 1999, insofar as it issued a permanent injunction and directed the all of the defendants, (including the Westchester County Department of Social Services) to include safety monitoring as a separate task on the TBA forms, assess the need for safety monitoring as a separate task and calculate any minutes allotted for safety monitoring as part of the total personal care services authorized for applicants and recipients.

Dated: White Plains, New York
June 22, 1999

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