IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FRANKLIN BENJAMIN, et. al	:	09-cv-1182
	:	
Plaintiffs,	:	Hon. John E. Jones III
	:	
v.	:	
	:	
DEPARTMENT OF PUBLIC WELFARE, COMMONWEALTH OF PENNSYLVANIA and ESTELLE B. RICHMAN,	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER

January 25, 2010

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Before the Court in this action brought under the Americans with Disabilities act and the Rehabilitation Act is Defendants Department of Public Welfare ("DPW") and Estelle Richman's ("Richman") ("collectively, "Defendants") Motion to Dismiss the Amended Complaint ("the Motion"). (Doc. 20). For the reasons articulated below, the Court will deny the Motion.

I. PROCEDURAL HISTORY

Plaintiffs Franklin Benjamin[1] ("Benjamin"), Richard Grogg ("Grogg"), Frank Edgett ("Edgett")[2], Wilson Sheppard[3], Sylvia Baldwin ("Baldwin")[4], and Anthony Beard ("Beard")[5] initiated this action with the filing of a Complaint on June 22, 2009. (Doc. 1). With leave, all of above-named Plaintiffs but Wilson Sheppard (collectively, "Plaintiffs") filed an Amended Complaint on July 14, 2009. **(**Doc. 9). Plaintiffs are institutionalized in Pennsylvania's state-operated intermediate care facilities for persons with metal retardation ("ICFs/MR"). Plaintiffs assert that Defendants' failure to offer and provide to Plaintiffs community alternatives in lieu of institutionalization where appropriate violates Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 ("ADA") and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 ("Section 504" or "RA").

On September 2, 2009, the Court granted Plaintiffs' unopposed Motion to Certify a Class (Docs. 15), and certified a class of all persons who: (1) currently or in the future will reside in one of Pennsylvania's ICFs/MR, (2) could reside in the

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[1]Benjamin's interests are represented by and through his next friend, Andree Yock.

[2]Grogg's and Edgett's interests are represented by and through their next friend, Joyce McCarthy.

[3] Sheppard's interests were represented by and through his next friend, Pamela Zotynia.

[4]Baldwin's interests are represented by and through her next friend, Shirl Meyers.

[5]Beard's interests are represetned by and through his next friend Nicole Turman.

community with appropriate services and supports, and (3) do not or would not oppose community placement. (Doc. 17). The named Plaintiffs, Benjamin, Grogg, Edgett, Baldwin, and Beard, were named as class representatives. **(**Doc. 17).

Defendants filed the instant Motion on September 24, 2009. (Doc. 20). The Motion has been fully briefed and, therefore, is ripe for disposition. (Docs. 21, 22, 26). Defendants assert that Plaintiffs have failed to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

II. STANDARD OF REVIEW

In considering a motion to dismiss pursuant to Rule 12(b)(6), courts "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips v. County of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008) (quoting *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002)).

A Rule 12(b)(6) motion tests the sufficiency of the complaint against the pleading requirements of Rule 8(a). Rule 8(a)(2) requires that a complaint contain a short and plain statement of the claim showing that the pleader is entitled to relief, "in order to give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555

(2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* A plaintiff must make "a 'showing' rather than a blanket assertion of an entitlement to relief", and "without some factual allegation in the complaint, a claimant cannot satisfy the requirement that he or she provide not only 'fair notice,' but also the 'grounds' on which the claim rests." *Phillips*, 515 F.3d at 232 (citing *Twombly*, 550 U.S. at 555 n.3). "[A] complaint must allege facts suggestive of [the proscribed] conduct," and the "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555, 563 n.8. Therefore, "stating a claim requires a complaint with enough factual matter (taken as true) to suggest the required element." *Phillips*, 515 F.3d at 234 (quoting *Twombly*, 550 U.S. at 555 n. 3).

On the other hand, "a complaint may not be dismissed merely because it appears unlikely that the plaintiff can prove those facts or will ultimately prevail on the merits." *Id.* at 231 (citing *Twombly*, 550 U.S. 554-56, 563 n.8). Rule 8 "does not impose a probability requirement at the pleading stage, but instead simply calls for enough facts to raise a reasonable expectation that discovery will reveal

evidence of the necessary element." *Id.* at 234.

III. FACTUAL BACKGROUND

In accordance with the standard of review, the following facts, derived from the Amended Complaint and other submissions, are viewed in the light most favorable to the Plaintiffs.

Plaintiff Benjamin has been institutionalized at the Ebensburg ICF/MR since 1966. Plaintiffs Grogg and Edgett have been institionalized at the Selinsgrove ICF/MR for twenty (20) years each. Plaintiff Baldwin has been institutionalized at the Polk ICF/MR since 1990. Plaintiff Beard has been institutionalized at the Ebensburg ICF/MR for forty-two (42) years. (Docs. 9 ¶¶ 8-12, 22 p. 1-2). All named Plaintiffs are more or less generally independent and, with proper support, could live in more integrated community settings. (Doc. 22 p. 2). The class members and their families are generally unopposed to community integration, and community support and services would be far less costly than continued institutionalization of the residents. (Doc. 22 pp. 2-3). The Plaintiffs are either not on a waiting list for these community-based services or are likely to be removed from such a list regardless of their level of need. (Doc. 9 ¶¶ 62-63, 73). Further, Plaintiffs assert that DPW has also failed to develop an integration plan to support future community integration. (Doc. 22 p. 11).

IV. DISCUSSION

Defendants note that Plaintiffs' ADA claim is governed by *Olmstead v. L.C.*, 527 U.S. 581 (1999). In a plurality opinion, the Supreme Court asserted that a state is required to provide community-based services for persons with mental disabilities when "(1) the State's treatment professionals determine that such placement is appropriate, (2) the affected persons do not oppose such treatment, and (3) the placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others." *Id.* at 606.

The Court noted that the integration mandate "is not boundless" and is limited by "reasonable modifications" and "fundamental-alteration" clauses.[6] *Id.* at 603. Therefore, if a state can prove that integration or modification of its policies and practices would require a fundamental alteration of its services, programs, or activities, it can avoid liability under the mandate for the state's alleged insufficient integration. *See Olmstead*, 527 U.S. at 603-607. In evaluating the reasonableness of modification, *Olmstead* requires consideration of the state's available resources and responsibility to other patients. *See id.* at 604.

Defendants assert that Plaintiffs' claim for community care in lieu of

[6] "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7).

institutional care under the ADA should be dismissed because the claim fails satisfy the third element as required by *Olmstead*, that the placement can be reasonably accommodated. Specifically, Defendants assert that Plaintiffs give "no plausible account of how the relief it seeks can be granted without simply allowing plaintiffs to jump the queue." (Doc. 21 p. 5). Defendants essentially maintain that Plaintiffs are requesting that DPW disregard the rights or needs of other individuals with mental disabilities to provide Plaintiffs with community-based services.

As Plaintiffs note, Defendants are, basically, asserting that the Plaintiffs have not properly pleaded facts sufficient to suggest that integration would not result in a "fundamental alteration." Although Plaintiff will bear the initial burden of demonstrating the availability of a reasonable accommodation, if Plaintiff is successful in that task then the burden of proof would shift to the Defendant to establish that the relief demanded would be unduly burdensome or require a fundamental alteration of policy. *See Frederick L. v. Dep't of Public Welfare*, 364 F.3d 487, 492 n. 4 (3d Cir. 2004). Therefore, Defendants cannot properly assert that Plaintiffs have failed to meet such a burden when in fact it belongs to Defendants. Accordingly, the Court will not dismiss the Amended Complaint with respect to Plaintiffs claim under the ADA.

Defendants also tersely assert that Plaintiffs have no entitlement to relief under the RA because "Section 504 is simply not a deinstitutionalization statute." (Doc. 21 p. 8). The RA, however, like the ADA favors "[t]he most integrated setting appropriate to the needs of qualified individuals with disabilities." *See Frederick L.*, 364 F.3d at 491 (quoting 28 C.F.R. § 35.130(d)). As such, under Section 504, when appropriate, community-based treatment is preferable over institutionalization. We therefore find that Plaintiffs have also stated a viable claim under Section 504 of the RA.

The Court is satisfied that Plaintiffs have sufficiently alleged a cause of action under both the ADA and the RA. We note that at this stage we are neither evaluating the merits of Plaintiffs claims nor determining Plaintiffs' probability of success. We are simply evaluating whether Plaintiffs have alleged facts sufficient to state a cognizable claim under the ADA and the RA, and we find that they have. Accordingly, we will deny Defendants' Motion to Dismiss the Amended Complaint. (Doc. 20).

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Defendants' Motion to Dismiss the Amended Complaint (Doc. 20) is **DENIED**.

/s/ John E. Jones III
John E. Jones III

United States District Judge