

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DISABILITY ADVOCATES, INC.,

Plaintiff,

v.

DAVID A. PATERSON, in his official
capacity as Governor of the State of New
York, RICHARD DAINES, in his capacity as
Commissioner of the New York State
Department of Health, THE NEW YORK
STATE DEPARTMENT OF HEALTH,
MICHAEL HOGAN, in his capacity as
Commissioner of the New York State Office
of Mental Health, and THE NEW YORK
STATE OFFICE OF MENTAL HEALTH

Defendants.

03 Civ. 3209 (NGG) (MDG)

**[PROPOSED] ORDER
AND JUDGMENT**

WHEREAS, plaintiff Disability Advocates, Inc. (“DAI”) filed a complaint on behalf of its constituents, who are individuals with mental illness residing in, or at risk of entry into, adult homes in New York City with more than 120 beds and in which twenty-five residents or 25% of the resident population (whichever is fewer) have a mental illness (the “Adult Homes”), seeking declaratory and injunctive relief under Title II of the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act (“RA”);

WHEREAS, defendants the Governor of the State of New York, the Commissioner of Health of the State of New York, and the Commissioner of Mental Health of the State of New York, all in their official capacities, and the New York State Department of Health (“DOH”) and the New York State Office of Mental Health (“OMH”), (collectively, “defendants” or “the State”), answered the complaint;

WHEREAS, the parties filed motions for summary judgment, which were denied by the Court upon consideration of a factual record of more than 13,000 pages and approximately 675 exhibits;

WHEREAS, the Court presided over an eighteen-day bench trial during which twenty-nine witnesses testified, more than 300 exhibits were admitted into evidence, and the excerpts from the deposition transcripts of twenty-three additional witnesses were entered into the record, along with a 3,500-page trial transcript;

WHEREAS, the parties submitted proposed findings of fact and conclusions of law after trial, and the Court issued a 210-page Memorandum and Order Setting Forth Findings of Fact and Conclusions of Law, dated September 8, 2009, finding that the defendants have discriminated against DAI's constituents in violation of the integration mandate of the ADA and the RA, that virtually all of DAI's constituents are qualified to receive services in supported housing, and that defendants failed to establish that the relief sought by DAI would constitute a fundamental alteration of the State's mental health service system;

WHEREAS, the Court found that DAI is entitled to declaratory and injunctive relief and ordered (1) the State to submit to the Court a proposed remedial plan in advance of the issuance of an injunction and (2) DAI to respond to the State's proposed remedial plan;

WHEREAS, the Court has considered the State's proposed remedial plan and DAI's response thereto;

IT IS HEREBY ORDERED and ADJUDGED that:

1. Within four years of entry of this Order, defendants shall ensure that: (a) all current Adult Home residents who desire placement in supported housing have been afforded such a placement if qualified, (b) all future Adult Home residents who desire placement in supported housing are promptly afforded such a placement if qualified, and (c) no individual who is qualified for supported housing is offered placement in an Adult Home unless, after being fully informed, he or she declines the opportunity to receive services in supported housing.¹

2. At the conclusion of the four-year period, defendants must ensure, on a permanent and ongoing basis, that: (a) no individual who is qualified for supported housing is offered placement in an Adult Home unless, after being fully informed, he or she declines the opportunity to receive services in supported housing, and (b) Adult Home residents who desire placement in supported housing are promptly afforded such placement if qualified.

3. Defendants will develop a sufficient number of supported housing beds to ensure compliance with paragraphs 1 and 2 above. During each of the first three

¹ “Current Adult Home resident,” for purposes of this Order, means a resident of an Adult Home on the date of this Order. “Future Adult Home residents” includes both individuals admitted to the Adult Homes during the four-year transition period and individuals admitted to the Adult Homes after the four-year transition period who desire placement in supported housing. “Supported housing” means scattered site supported housing funded by OMH. The phrase “declines the opportunity to receive services in supported housing” does not include situations where a person declines supported housing because it is not promptly available, and therefore chooses an adult home as an alternative to continued unnecessary hospitalization, homelessness or discharge to a shelter.

years following entry of this Order, defendants will develop a minimum of 1,500 supported housing beds for DAI constituents. Defendants will continue to develop supported housing beds for DAI constituents at a rate of 1,500 per year until such time as there are sufficient supported housing beds for all DAI constituents who desire such housing.

4. Through a Request for Proposals (“RFP”) process, defendants will contract with a sufficient number of supported housing providers to develop and provide the supported housing required by paragraph 3 above. Defendants’ contracts with these providers will require providers to (a) develop and provide supported housing to DAI constituents, (b) secure necessary support services for residents of such housing, and (c) conduct in-reach to DAI constituents, as described in paragraph 5 below. Defendants will ensure that their current in-reach efforts at state-operated Psychiatric Centers include in-reach to DAI constituents at risk of admission to Adult Homes from those settings. Defendants shall provide, or arrange for, training to the supported housing providers awarded contracts pursuant to this paragraph.

5. The contracts awarded pursuant to paragraph 4 will require providers to conduct frequent and effective in-reach to build trust and actively support DAI constituents in moving to supported housing. In conducting in-reach, providers will, among other things:

- (a) Explain fully the benefits and financial aspects of supported housing;
- (b) Facilitate, and accompany DAI constituents on, visits to supported housing apartments;
- (c) Assess DAI constituents’ interest in supported housing;

- (d) Determine eligibility for supported housing pursuant to paragraph 9 below;
- (e) Explore and address the concerns of any DAI constituent who declines the opportunity to move to supported housing or is ambivalent about moving to supported housing, despite being qualified for such housing;
- (f) Review DAI constituents' housing preferences on a regular and recurring basis;
- (g) Identify the services each DAI constituent needs to successfully transition to and live in supported housing and arrange for the constituent to timely receive those services; and
- (h) Employ Peer Bridgers as appropriate to assist in the above activities.

6. In advance of issuing the RFPs described in paragraph 4 above, and no later than 60 days from the date of this Order, defendants shall provide to DAI and its counsel a copy of the RFPs it proposes to issue. Within 20 days of receipt of such documents, DAI will provide a written response to defendants commenting on the sufficiency of the RFPs to achieve adequate relief, and the parties will negotiate in good faith with respect to the terms of the RFPs. If the parties are unable to resolve any dispute with respect to the content and terms of the RFPs within 90 days of this Order, such dispute shall be submitted to the Court.

7. Defendants will ensure that DAI constituents who move to supported housing have access to the array and intensity of services and supports they need to successfully transition to and live in supported housing. Defendants will contract for supportive services, including case management services and Assertive Community Treatment (ACT), sufficient to meet the needs of DAI constituents who

move to supported housing. At least quarterly, defendants will evaluate the need, if any, for expansion of such services. Defendants shall timely contract for additional services as needed to enable DAI constituents to successfully transition to and live in supported housing.

8. DAI constituents' eligibility for ACT will be determined by OMH's current statewide ACT guidelines.

9. Defendants shall deem DAI constituents qualified for supported housing unless they have one of the following specific characteristics: (a) severe dementia, (b) a high level of skilled nursing needs that cannot be met in supported housing with services provided by Medicaid home care or waiver services, or (c) are likely to cause imminent danger to self or others. The determination of whether such a condition exists shall be made by the providers awarded contracts to develop supported housing and conduct in-reach pursuant to paragraph 4 above. If such a condition is found to exist, the individual will be deemed qualified for supported housing if the provider determines, after further assessment, that the individual could be served successfully in supported housing.

10. Defendants shall require that, when case managers, clinicians, Adult Home staff and others discuss housing options with DAI's constituents, they accurately and fully inform them about supported housing, its benefits, the array of services and supports available to those in supported housing, and the SSI, rental subsidy, and other income they will receive while in supported housing.

11. Defendants will carefully monitor whether DAI constituents are being discouraged by Adult Home operators or others from exploring alternatives to Adult Homes, and, if so, take corrective action. Defendants shall report such incidents to DAI.

12. The Court will appoint a Monitor who is experienced in the development, management, and oversight of community programs serving people with mental illness, including supported housing. The duties and powers of the Monitor will be detailed in an order accompanying the Monitor's appointment. The duties shall include monitoring defendants' compliance with this Order, identifying potential areas of non-compliance, facilitating the resolution of disputes concerning compliance without the Court's intervention, and recommending appropriate action by the Court in the event an issue cannot be resolved by discussion and negotiation among the Monitor and the parties.

13. The Court has afforded defendants the opportunity to respond to DAI's proposal that a Monitor be appointed. Based on defendants' response and DAI's submissions, the Court finds the appointment of a Monitor appropriate under both its inherent equitable powers and Rule 53 of the Federal Rules of Civil Procedure. A Monitor is needed to undertake post-trial tasks that cannot be effectively and timely conducted by an available District Judge or Magistrate Judge of the district.

14. Within one week of the entry of this Order, the parties shall meet and confer in an effort to agree on the selection of a Monitor and the specific duties and powers of the Monitor for joint proposal to the Court. If the parties are unable to agree

on a Monitor, or his or her specific duties and powers, each of the parties shall, within two weeks of entry of this Order, propose to the Court one or two persons qualified to serve as a Monitor. Additionally, the parties shall each submit to the Court a proposed order and memorandum in support of that proposed order detailing the Monitor's duties and powers.

15. Within 45 days of his or her appointment, and after consultation with the parties, the Monitor will submit to the Court a proposed budget setting forth his or her proposed compensation, the proposed compensation of any necessary staff, and an estimate of other necessary expenses. Defendants will be responsible for payment of the proposed budget items approved by the Court.

16. No less than every 60 days, defendants shall provide DAI, its counsel, and the Monitor with a detailed report containing data and information sufficient to evaluate defendants' compliance with the Order. The report shall contain, among other components, information describing, (a) the number of DAI constituents offered supported housing, (b) the number of DAI constituents who have accepted supported housing, (c) the identity of the supported housing providers serving such individuals and providing in-reach to Adult Home residents, (d) the number of DAI constituents determined by providers not to be qualified for supported housing pursuant to paragraph 9 and the reasons for such determinations, (e) reasons why DAI constituents, if any, declined supported housing, (f) in-reach efforts, (g) the number of new admissions to each Adult Home and source of payment, and (h) the current census of each Adult Home.

17. As the prevailing party, DAI is entitled to reasonable attorneys' fees and costs. 42 U.S.C. § 12205 (2006); 29 U.S.C. § 794a(b) (2006). Pursuant to Fed. R. Civ. P. 54(d)(2)(B), the Court extends the deadline for submission of DAI's fee application. The parties are directed to confer and submit to the Court within 14 days of this Order a briefing schedule for DAI's fee application.

18. DAI is entitled to reasonable fees and expenses for post-judgment monitoring and enforcement of this Order.

SO ORDERED.

Dated: Brooklyn, New York

NICHOLAS G. GARAUFIS
United States District Judge