
VOR Weekly E-Mail
Update
February 29,
2008

=====

FOCUS: STATE NEWS

Table of Contents

1. Washington State: VOR approved as Amicus; Summary Judgment denied
 2. Massachusetts: Ricci court mulls arguments on transfers
 3. California: State Legislator, a champion for people with disabilities, reintroduces abusive caregiver registry bill
 4. Maryland: Short but sweet - Letter to the Editor supports choice
 5. New Jersey: Waiting List Exceeds 8.000
- =====

1. Washington State: VOR approved as Amicus; Summary Judgment denied

With good results, VOR's participation as Amicus Curiae began as quickly as it ended in Lamb v. Washington. In this case, state defendants sought to have the case dismissed arguing that state officials were immune from suit under the state's Abuse of Vulnerable Adults Act (AVAA). Plaintiffs are 4 former residents of Fircrest Habilitation Center, a state operated ICF/MR, who allege that their move has caused them to suffer "abuse" or "neglect" as those terms are defined in the AVAA.

VOR request to participate as Amicus Curiae was approved, the same day the court ruled against the state. In support of the plaintiffs, VOR, through its pro bono attorney Mike Rato, argued, in part, "VOR respectfully requests the opportunity to rebut the Defendants' narrow interpretation of the AVAA . . . VOR believes this that this issue - apparently one of first impression - is a cornerstone of the Act, and that acceptance of the Defendant's position would seriously undermine the goal of protecting the developmentally disabled from abuse." On February 25, 2008, the Court agreed, granting VOR's request to participate as Amicus and rejecting the State's AVAA immunity arguments.

2.
Massachusetts: Ricci Court mulls arguments on transfers

Summary (Source: Boston Globe, Feb. 26, 2008): A court hearing earlier this week is part of years of litigation over whether the residents would be best served by staying at Fernald, a state operated ICF/MR, or moving to a group home. Beryl Cohen, the lawyer representing families and guardians of residents, asked the judge to order prosecutors to look into the circumstances of the recent transfer of several residents from Fernald, including a 91-year old woman (the subject of the hearing earlier this week). In August, Federal Judge Tauro barred officials at Fernald from moving any residents unless they and their guardians agreed. Governor Deval L. Patrick, like Governor Mitt Romney before him, wants to close Fernald and move residents to group homes. The Patrick administration is appealing Tauro's order to the US Court of Appeals for the First Circuit, where arguments are expected in a few months. VOR, and its statewide affiliate, COFAR, are seeking to participate as Amicus Curiae in the appeal.

The Daily News Tribune
By Richard Conn
Tuesday, February 26,
2008

A federal judge said yesterday he may ask the U.S. Attorney's office to investigate whether a 91-year-old mentally retarded woman was moved against her will from the Walter E. Fernald Developmental Center to a group home in Bedford.

U.S. District Judge Joseph Tauro said at the end of several hours of testimony that he would issue a ruling soon.

Beryl Cohen, an attorney for the Fernald League - a group of guardians looking to keep Fernald open - asked the judge to broaden the federal prosecutor's investigation. He asked that the scope include other transfers out of Fernald completed by the Arc of Greater Boston - a corporate guardian - which were approved by the state.

The 91-year-old woman, who was referred to in court yesterday as "A.T." lived at Fernald for some 50 years before she was moved on Feb. 13.

She is legally blind, hearing impaired and has a heart condition.

Tauro ruled in August that Fernald must remain an option for its current residents as long as it's open. The state announced the next month it would appeal that decision.

Yesterday's hearing was called primarily to consider a motion filed last week from the Fernald League, which asked Tauro to bar the transfer of any more residents from the facility until an appeals decision was rendered in the case.

Tauro quickly turned down that request, and said stopping the transfer of residents was not the intention of his order last year, nor was trying to block the state from closing the facility.

"My concern is that people who are there and want to stay there, get an opportunity to stay there," Tauro said.

But after that ruling, an unexpected full day of testimony followed, most of which revolved around A.T.

Cohen first called to the stand Linda Curran, a former caseworker with the Arc of Greater Boston, who said she would not approve the woman's transfer out of Fernald, because A.T. said on many occasions that she wanted to stay there.

However, Curran said that after choosing to keep the elderly woman at Fernald she was told by her bosses at Arc of Greater Boston of the longtime Fernald residents, "We gotta move them out."

However, Terri Angelone, chief executive officer for the Arc of Greater Boston, testified that employees were never pressured to transfer residents from Fernald to other facilities. Angelone also said Curran did not look at the Bedford home as an option for Fernald residents.

After refusing to move A.T. and other Fernald residents, Curran said her caseload was then given to another employee in October. She gave her notice in January and her last day with the Arc of Greater Boston was on Friday.

Attorneys for the Arc of Greater Boston and the Department of Mental Retardation called to the stand Carrie Johnson, who now serves as the corporate guardian's case manager for some Fernald residents. She said that A.T. was happy with the move to Bedford when she was moved on Feb. 13.

"She said she wanted to stay," Johnson said. "She expressed that she was content, 'this is it.'"

Johnson said that A.T. has not expressed a desire to go back to Fernald since the move.

But Cohen questioned the method of how the woman was moved. He said A.T. was told she was going on an "outing" instead of being moved permanently from Fernald.

"It's critical to determine in my point of view whether A.T. was deceived, if not worse," Cohen said.

The state has been given until tomorrow to file its appeal brief to Tauro's August decision.

An attorney for the state asked yesterday that Tauro stay his order, a request which he denied.

"The Aug. 14 order stands, even though the case is on appeal," Tauro said.

"The order stands."

3. California: State Legislator, a champion for people with disabilities,
reintroduces abusive caregiver registry
bill

California Political Desk
February 15, 2008

SACRAMENTO, CA -- Assemblymember Noreen Evans (D-Santa Rosa), Chair of the Assembly Democratic Caucus, reintroduced legislation yesterday to protect the developmentally disabled from abusive caregivers by creating a registry to track them and prevent them from further employment as a caregiver.

"The Governor vetoed a similar bill last year," said Evans. "I hope that he sees things differently. Developmentally disabled people cannot fight back against their abusers. We need to pass this bill and protect them."

Assembly Bill (AB) 1983 directs the Department of Developmental Services to establish a registry of care providers with abusive histories and make the information available to the groups hiring caregivers. The bill also: requires employers to consult the registry prior to hiring a caregiver; prohibits the hiring of any caregiver listed on the registry; requires employers of caregivers report instances of abuse to the department for inclusion on the registry.

The first two points listed above were added AB 1983 in order to respond to the Governor's veto message of AB 1192, a substantively similar bill authored by Evans last year which passed the Legislature unanimously.

"We received word from the Administration too late last year to respond to the Governor's concerns the first go around," added Evans. "This bill is an effort to craft a bill the Governor will sign."

Forty-four percent of abusers make contact with their victims as unlicensed, direct care workers. If caught, investigated, and/or fired, many abusers move on to another agency because they can. Without knowledge of a caregiver's past, employers continue to hire abusive caregivers.

Abuse of the developmentally disabled population encompasses physical, sexual, verbal, and financial abuse, as well as neglect, abandonment, abduction, isolation, and deprivation of needed goods and services. Developmentally disabled persons face a higher risk of abuse because they are often segregated from the mainstream population and are heavily dependent on others for their basic needs.

"This bill will help prevent abusive caregivers from moving around the state to continue their violence and abuse," added Evans. "We need to stop the cycle of violence. A registry will help protect the public from these criminals."

Individuals with developmental disabilities are 11 times more likely of being sexually assaulted and 13 times more likely of being robbed than people without disabilities. One study by the University of California, Irvine found that there are five million crimes against the developmentally disabled each year.

AB 1983 is sponsored by the REACH - Registry to End Abusive Caregiver Hiring -Project. Further information about this bill is available online at <http://www.leginfo.ca.gov>.

4. Maryland: Short but sweet - Letter to the Editor supports choice

Related news: See author Andrew Booth's call for community resource centers in Maryland in the February 15, 2008, VOR Weekly E-Mail Update (<http://vor.net/Feb152008.htm>), and information about the "recent admissions decision," (Reese v. DHMH) he references in the November 9, 2007, VOR Weekly E-Mail Update (<http://vor.net/Nov92007.htm>).

Md. policy violates federal mandate for choice in care
Andrew W
Booth
Salisbury
(Booth is chairman of the Holly Center Task Force of the Greater Salisbury Committee)

As a condition of Maryland's participation in Medicaid, the state must certify to the federal government that it provides the choice to individuals to receive care in the community or an institution, including an intermediate care facility for the mentally retarded like our Holly Center.

In a recent admissions decision, the secretary of the Department of Health and Mental Hygiene sought to sidestep this choice requirement by simply rejecting an individual's admission to Holly Center, then "stonewalling" further hearings or review expecting them to go away. The Court of Special Appeals of Maryland found this practice violated the Fourteenth Amendment right of due process, which guarantees the opportunity to be heard and to present evidence.

It is unconscionable that the DHMH also tried to conceal its policy of satisfying the "choice" requirement with the sham of offering out-of-state institutional placements to beneficiaries at state expense. This is an outrageous ruse to disregard the federal and state choice requirements at the expense of our most fragile citizens.

The state of Maryland needs to wake up and follow the lead of neighboring Virginia with its community resource centers that efficiently serve both state residential center clients and community-based clients.

This practice would both benefit the disabled and save us tax dollars.

5. New Jersey: Housing Waiting List Exceeds 8.000

N.J. fails to fulfill promise to house disabled - Waiting list for aid grows to more than 8,000 instead of being eliminated

By Susan
Livio
The Star-Ledger
Sunday, February 10, 2008

This was supposed to be the year of hope for thousands of families raising children with developmental and intellectual disabilities.

A state law enacted more than a decade ago promised a group home or apartment for disabled adults who longed for independence or whose parents needed respite after decades of physically and emotionally draining care.

With careful planning and steady investments, the law said, the waiting list of 4,700 people could be eliminated by 2008. Without it, the list would escalate to a staggering 7,500 people.

As of January -- the month the list was to have been eliminated -- there were more than 8,000 people waiting for housing assistance, according to budget records and state Department of Human Services statistics. The list surpassed even the early dire predictions in part because no money was spent on housing for disabled people for five of the past 10 years.

Among those on the list are Michael and Debbie Legutko's sons Derek, 23, and Frankie, 20. Debbie Legutko, who has been their full-time caregiver, survived breast cancer and heart valve surgery.

"We feel like we are going to be with these kids for the rest of our lives, and the older we get the harder it gets to do what it takes," said Debbie Legutko, 53, of Ringwood. "Up until now, we didn't need that much for them. Now we are looking for services the state is supposed to provide. They've given us nothing."

The Arc of New Jersey, a family advocacy group, is trying to attract political and financial support to reduce the waiting list but has been unable to gain any traction as most state lawmakers are focused on a looming budget deficit and Gov. Jon Corzine's plan to pay down the state's debt by raising highway tolls.

"We know the score. New Jersey is going through tough times," said Tom Baffuto, The Arc's executive director. "We are in a year where we'll be facing draconian budget cuts. But this is the number one priority with our families. We think this is a crisis situation that is only going to get worse."

After visiting families at home and witnessing "firsthand the profound commitment so many families make to caring for a relative," state Public Advocate Ronald Chen sent a letter to Corzine in December backing The Arc's proposal.

"This is a very real crisis and it must be addressed this fiscal year and every year thereafter until it is resolved," Chen's letter states.

Lilo Stainton, Corzine's spokeswoman, stressed the budgets are tight. "It's too early to comment on specifics for the upcoming budget, but Governor Corzine has made clear that it will include deep and painful -- but necessary -- spending cuts," she said.

Paring the waiting list became a popular cause in 1994, when voters passed a \$160 million housing bond act for people with developmental disabilities and mental illness.

The Legislature followed up by spending roughly \$24 million a year to pay private companies to staff the group homes and supervised apartments. With state and matching federal cash flowing from Medicaid, about 400 to 500 people with disabilities were scheduled to leave the waiting list each year.

When Gov. Christie Whitman enacted a law in 1997 requiring the Department of Human Services to develop a blueprint to end the waiting list by 2008, the goal seemed within reach, Baffuto said.

But by 2002, the economy stalled and state budget coffers emptied. The waiting list "fell off the radar screen," Baffuto said.

It surfaced in the current state budget in the form of a modest proposal from Corzine that commits \$2.8 million to move about 28 people off the list this year.

There are 7,400 people with developmental disabilities living in subsidized community housing in New Jersey, according to the state budget. Every year, 900 more people are added to the waiting list by their parents, and 300 people move to the top of the list because their parents or caregivers die.

On the eve of budget negotiations for the coming budget year, which begins July 1, The Arc is asking lawmakers to support the "10 Percent Solution."

Of the 8,000 people on the list, half are considered "urgent" placements because their parents are 55 or older or they suffer from a chronic physical or psychiatric disease. Moving 10 percent of them off the urgent portion of the list each year would cost the state about \$15 million, which would be matched by the federal government.

Baffuto called the plan "a reasonable, attainable goal" that won't break the bank.

The advocates have a powerful emissary: Senate Majority Leader Steve Sweeney, whose teenage daughter is disabled.

"I absolutely support it. This is a very reasonable approach to deal with the waiting list, which has to be dealt with," Sweeney said.

Sweeney (D-Gloucester) said he believes Corzine "gets it. ... We have to find the money."

The Department of Human Services would like to tackle the waiting list, but instead it is grappling with "a worsening fiscal picture that has us all reconsidering our priorities," Assistant Commissioner Kenneth Ritchey said.

The Division of Developmental Disabilities' \$1.4 billion budget is also under pressure from the hundreds of people living in state institutions who have sued the state to live in less-restrictive community housing. Most group homes and apartments for disabled people are 98 percent full, Ritchey said.

"The numbers are overwhelming us," Ritchey said. "But I recognize families should not have to wait for an emergency" for help.

Debbie and Michael Legutko wonder whether their sons will have to wait long.

Derek needs a place to live because he works, can take care of himself with supervision, and wants his own life, his mother said. "He'd like to live in Manhattan or Orlando," she said.

She worries most about her younger son, Frankie, who needs a ventilator to breathe because of a birth defect. He graduates from school in June and has few opportunities for work or housing. Only nursing homes are equipped to handle him.

Legutko said she met with Ritchey and his boss, Commissioner Jennifer Velez, but they offered no solutions.

"I would like for him to be placed where he is going to be happy while I am still alive," she said.

Tamie
Hopp

REFERRAL/MEMBERSHIP/CONTRIBUTION FORM
THREE EASY WAYS TO SUPPORT VOR > REFER, CONTRIBUTE OR JOIN
THANK YOU FOR YOUR SUPPORT!

TO JOIN OR CONTRIBUTE: \$25 per individual, \$150 per family organization, or \$200 per provider/professional organization. Extra donations are welcome!

You may pay by credit card or check.

TO REFER SOMEONE TO VOR: Use the form below, including the additional sections for referrals.

Mail the completed form (if joining or contributing) with payment to:

Voice of the Retarded
836 S. Arlington Heights Rd., #351
Elk Grove
Village, IL 60007
847-258-5273 fax (for referrals or credit card payments)
kluck146@comcast.net (for referrals or credit card payments)

FOR REFERRALS: ___ The contact information provided is for someone I think would consider membership with VOR.

FOR REFERRALS: ___ You may use my name in any correspondence with this individual.

My name is _____.

Name

Address (if paying by credit card, use billing address). All forms must include complete address including zip code)

City St Zip

Phone Fax

E-Mail

Family/Professional
Organization Affiliation (if applicable)

VOR now accepts Master Card and Visa. If paying by credit card, please provide the following information:

Amount to charge to card:

___\$1,000 ___\$500 ___\$250 ___\$150 ___\$50 ___\$25 \$_____ Other amount

___ Mastercard

___ Visa

Card Number: _____

Expiration Date: _____

Cardholder's Signature: _____

=====