

Chicago Daily Law Bulletin®

Volume 154, No. 224

Thursday, November 13, 2008

Accord ends lawsuit over housing for disabled

By Pat Milhizer

Law Bulletin staff writer

Mentally disabled residents currently living in institutions in Illinois will have greater access to community-style living under a class-action lawsuit settlement announced Thursday morning.

"The point of the case is that the State of Illinois was not giving people meaningful choices," said **Sonnenschein Nath & Rosenthal LLP** partner **John I. Grossbart**, who represented the plaintiffs on a pro bono basis.

A federal civil rights suit filed in July 2005 alleged that the state's long-term care system for people with developmental disabilities violates the Americans with Disabilities Act. It also said that the system is "antiquated" and puts people at risk of being "unnecessarily institutionalized."

The suit said that the state requires the plaintiffs "to submit to institutionalization as a condition of receiving services," which causes the residents to experience "unnecessary regression, deterioration, isolation and segregation."

The state ranks last in the nation in terms of community-based living options offered to the developmentally disabled, Grossbart said.

"The bottom-line answer is they have not had the political leadership or will, until now, to address these issues," Grossbart said. "And this lawsuit called them to task for that."

About 6,000 mentally disabled people currently live in about 250 privately-run

institutions throughout the state. The class also extends to all adults who are mentally disabled, eligible for Medicaid and live at home and are at risk of being institutionalized due to the death of a caregiver or other factors.

The class members won't receive financial compensation, and attorney fees of nearly \$2 million will be donated to civil rights agencies such as Equip for Equality, Grossbart said.

In summary, the agreement gives developmentally disabled residents who wish to do so a good chance to live in a community rather than an institution.

First, the state has to develop an administrative system that receives applications from and assesses the eligibility of various support systems for people with developmental disabilities.

The state then has to develop individual plans for all institutional residents that are consistent with the individual's choice for "appropriate supports and services," according to a proposed consent decree.

In addition, institutional residents will receive evaluations to determine the support they would need to live in a community-based setting.

The professionals who conduct the evaluations will have to consult with family members, friends or others who know the resident. Those relatives and friends also must receive an example of a community-based setting in or near the resident's desired place to live.

If the evaluation indicates that the resident will stay in an institution, it must state why the resident can't benefit from community living, or it must indicate that the resident opposes such a placement. Residents also may appeal what they deem to be an unfavorable evaluation.

After evaluations are completed, institutional residents must indicate that they either support or oppose a move to a community-based setting. Whatever the resident chooses, the state must create a service plan that is tailored for each person.

The proposed consent decree will require approval by Chief U.S. District Judge James F. Holderman. After that happens, the state has six months to present its plan to implement the procedures set out in the consent decree.

In addition to attorneys at **Sonnenschein** and Equip for Equality, the plaintiffs are represented by Access Living, the American Civil Liberties Union of Illinois and the Public Interest Law Center of Philadelphia.

Brent D. Stratton, an Illinois assistant attorney general, represented officials at the Illinois Department of Healthcare and Family Services and the Department of Human Services. The IDHFS official also was represented by assistant attorney general Karen Konieczny.

A spokeswoman for the attorney general's office didn't comment on the agreement by early Thursday afternoon.

Stanley Ligas, etc., et al. v. Barry S. Maram, etc., et al., No. 05-4331.

Reprinted with permission from Law Bulletin Publishing Company.