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Olmstead v. L.C.: Implications and Subsequent Judicial, Administrative, and Legislative Actions

Melinda De Atley
Law Clerk
American Law Division

(name redacted)
Legislative Attorney
American Law Division

Summary

The Supreme Court ruled in *Olmstead v. L.C.* that Title II of the Americans with Disabilities Act (ADA) requires states to transfer individuals with mental disabilities into community settings rather than institutions when a state treatment professional has determined the appropriateness of such an environment, the community placement is not opposed by the individual with a disability, and the placement can be reasonably accommodated. The Health Care Financing Administration (HCFA), as a response to the Supreme Court's decision, sent a letter to states on January 14, 2000 outlining interim guidance for compliance with the requirements of Title II of the ADA regarding community based services. This report will discuss the Supreme Court's decision, subsequent lower court decisions, the HCFA letter, and selected legislation. It will be updated as necessary.

Background

Olmstead v. L.C., a landmark case on the rights of persons with mental disabilities,[1] found that "unjustified isolation...is properly regarded as discrimination based on disability."[2] Writing for the majority, Justice Ginsburg interpreted Title II of the Americans with Disabilities Act (ADA) to prohibit such "unjustified isolation" but noted several limitations: a state treatment professional must determine the appropriateness of the environment, community placement is not opposed by the individual with a disability, and the placement can be easily accommodated. The case was remanded for a determination of the type of relief the state should provide.

[1] *Olmstead v. L. C.*, 119 S.Ct.2176, 527 U.S. 581, 144 L.Ed.2d 540 (1999).

[2] *Supra* note 1 at 2185.

The ADA provides broad nondiscrimination protection for individuals with disabilities in employment, public services, public accommodations and services offered by public entities, transportation and telecommunications.[3] Title II of the ADA states in part 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."[4] Public entity is defined as a state or local government.[5]

The plaintiffs in *Olmstead* were mentally disabled individuals voluntarily confined in a state hospital's psychiatric unit. Their physicians had determined them to be capable of living in a community based environment. Georgia refused to transfer these individuals to a less restrictive setting, although the programs were available in the state. The plaintiffs then brought suit under the ADA arguing that their segregation in the state institution violated Title II of the act.

Supreme Court Decision

The Supreme Court in a six to three decision held it was discriminatory to force the plaintiffs to remain in an institutionalized setting when a qualified state professional had approved the placement of the plaintiffs in a community setting, the community placement was not opposed by the plaintiffs, and the placement could be reasonably accommodated. In so ruling the Court clarified that it was not suggesting that a state must close all of its institutions in favor of only community-based programs. More specifically the Court indicated that a state must simply make "reasonable accommodations" to a person known to have physical or mental limitations and who is able to live in a less restrictive setting.[6] However, the state still maintains the right to argue that even a reasonable accommodation would present an undue hardship.[7]

Writing for the majority, Justice Ginsburg discussed the appropriateness of institutional care in various circumstances, and further explained that institutional care is appropriate in cases of "acute psychiatric symptoms" and for those whom a protective environment allows the freedom to function without undue intervention.[8] Justice Ginsburg

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[3] 42 U.S.C. §12101 *et seq.* For a more detailed discussion of the ADA see (name redacted), "The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues," CRS Rep. No. 98-921A.

[4] 42 U.S.C. §§12131-12133. There is a question whether Title II of the ADA is constitutional. The Court did not have this issue before it in *Olmstead* but has granted certiorari in a case to be decided next term, *Garrett v. University of Alabama.* For a more detailed discussion see (name red acted), "The Americans with Disabilities Act: Eleventh Amendment Issues," CRS Rep. No. RS20472.

[5] 42 U.S.C. §12131.

[6] *See supra* note 1 at 2189-2190.

[7] *Id.*

[8] *See supra* note 1, at 2189.

stressed that this holding in no way relieves the state from providing institutional care to those who have need of an intense supportive environment.

Most importantly, the Court confirmed that the "[u]njustified isolation" of persons with disabilities is discrimination.[9] The Court explained that institutionalizing individuals who are able to function in a community based program serves to perpetuate the stereotyping of all persons with disabilities. Moreover, the Court recognized that the consequences of institutionalizing a person results in his or her diminished capacity for social, cultural, and work opportunities. However, states may rely upon reasonable assessments by professionals of an individual's ability to meet the requirements for living in a community based program. Also, even if the state provides community based services, the Court found that the state's responsibilities are "not boundless." The ADA does not require fundamental alterations of a state's services or programs. The Court found that "[s]ensibly construed, the fundamental-alteration component of the reasonable-modifications regulations would allow the State to show that, in the allocation of available resources, immediate relief for the plaintiffs would be inequitable, given the responsibility the State has undertaken for the care and treatment of a large and diverse population of persons with mental disabilities." Similarly, the Court found that if a state has a comprehensive, effectively working plan for placing individuals with disabilities in a less restrictive setting and a waiting list that moved at a reasonable pace, the requirements of the ADA would be met. The Supreme Court then remanded the case for further consideration of the appropriate relief.

The dissent argued that distinctions were being made among members of the same class, which does not rise to the level of discrimination on the basis of a characteristic described in the statute.[10] The dissent did not believe that the state of Georgia had discriminated against the petitioners for reasons related to their disability. Arguing against the majority's view that it was discriminatory to keep the plaintiffs in an institutional setting after becoming eligible for another placement, the dissent found that temporary exclusion would not amount to discrimination.

Subsequent Court of Appeals Decisions

Two court of appeals cases thus far have reviewed the implications of the *Olmstead* holding: *Rodriguez v. City of New York*[11], and *Weyer v. Twentieth Century Fox Film Corporation*.[12] In *Rodriguez*, the second circuit court of appeals found that New York State's Medicaid program did not violate the ADA when the state refused to provide safety monitoring as an independent service for Medicaid recipients suffering from mental disabilities. Writing for the second circuit, Chief Judge Winter clarified the holding in *Olmstead* as being "inapposite" to the decision before them in *Rodriguez*. According to Judge Winter, the issue in *Olmstead* concerned the provision of a service which the state of Georgia already provided and maintained as a program for persons with mental disabilities. In the *Rodriguez* case, the State of New York did not have an established

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[9] *Supra* note 1 at 2187.

[10] *See id* at 2194.

[11] 197 F.3d 611 (2nd Cir. 1999).

[12] 198 F.3d 1104 (9th Cir. 2000).

program to provide independent safety monitoring to those with mental disabilities. Finally, the *Rodriguez* court understood the Supreme Court's holding in *Olmstead* to explicitly hold that a state was required to provide its services with equity and nondiscrimination among those who are eligible: *it did not* hold that a state must create a service program where it does not already maintain one.

In the case of *Weyer v. Twentieth Century Fox Film Corp*., the ninth circuit also distinguished *Olmstead* from the facts of the case before it. The *Weyer* case dealt with an insurance disability policy which provided longer term benefits for those with *physical disabilities* versus shorter term benefits for those with mental disabilities. The Court found that this type of discrimination between different types of disabilities was consistent with Supreme Court precedent, including *Olmstead*. The *Weyer* court distinguished *Olmstead* by interpreting the holding as speaking only to "unwarranted institutional confinement."[13] Furthermore, the court found that distinguishing between disabilities was allowable and that the Supreme Court endorsed distinctions for insurance purposes by its rulings in *Alexander v. Choate*[14] and *Traynor v. Turnage.*[15] The ninth circuit further distinguished the facts by noting that Congress' intent in creating the safe harbors in the ADA was to allow for discrimination in underwriting of risk by insurance companies.

HCFA Letter

On January 14, 2000, the Health Care Financing Administration (HCFA) sent a notice to all State Medicaid Directors enunciating key principles for compliance with Title II of the ADA following the ruling in *Olmstead.*[16] This letter highlighted several points. First, *Olmstead* was seen as applicable to all individuals with disabilities, not just those with mental disabilities. Second, the requirement to provide services in the most integrated setting was seen as applicable to those already institutionalized along with those being assessed for institutionalization. Since Medicaid plays a key role in delivery of community based services, HCFA developed key principles as guidelines for compliance with the ADA in service delivery.

HCFA indicated that a state may demonstrate compliance with the ADA, as interpreted by the Supreme Court in *Olmstead,* in two ways. First, a state may show that it has a comprehensive plan for the placement of qualified individuals with disabilities in a less restrictive setting. Second, compliance may be demonstrated by showing a waiting list that moves "at a reasonable pace", devoid of state controls to keep its institutions at full capacity.

More specifically, in developing this plan the states may provide opportunities for individuals with disabilities and their representatives to play active roles in plan development and evaluation. Another key principle outlined in the HCFA letter encourages the states to ensure that there is not unjustified or unwarranted institutionalization of those who may function in a less restrictive environment. When carrying out this principle, the

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[13] Weyer v. Twentieth Century Fox Film Corp., 198 F.3d 1104 (9th Cir. 2000).

[14] 469 U.S. 287 (1985).

[15] 485 U.S. 1372 (1988).

[16] [hhtp://www.hcfa.gov/medicaid/smd1140a/htm].

states should ensure that community-integrated services are available. In addition, another principle is that states should offer a disabled individual and their family the opportunity to make an informed choice in deciding between the community-based and the institutional settings. Finally, the principle of quality assurance and quality improvement encourages the maintenance of a program with sound management principles to ensure effective delivery of services.

Selected Federal Legislation

There has been long standing congressional interest in the provision of community services to individuals with disabilities.[17] In 1987, Congress created authority for states to expand home and community based long term care services under Medicaid in response to what was perceived to be a bias in Medicaid's service and eligibility provisions toward institutional care. The program, found at section 1915c of the Medicaid statute, authorizes HCFA to waive certain Medicaid requirements to allow states to provide home and community based long term care services to persons of all ages who otherwise meet eligibility requirements and who, without the home and community based services, would be institutionalized.

In 1997, H.R. 2020, 105th Cong., the Medicaid Community Attendant Services Act of 1997, was introduced. H.R. 2020 would have expanded availability of personal attendant care by requiring state Medicaid plans to make the service available to each eligible individual who would otherwise require institutional care. The major criticism of the legislation was its cost. The Congressional Budget Office estimated that the bill could cost $10 to $20 billion a year.[18]

Since the decision in *Olmstead,* legislation has been introduced in both the House and Senate to further enable Medicaid to assist the states in complying with the requirements of Title II of the ADA. On November 16, 1999, Senator Harkin introduced S.1935, 106th Cong., the Medicaid Community Attendant Services and Supports Act of 1999. This bill, often referred to as the MiCASSA legislation, would amend Title XIX of the Social Security Act (Medicaid) to require the states to provide for community attendant services and supports through Medicaid to individuals who are entitled to nursing facility services or intermediate care facility for the mentally retarded (ICFsMR). The goal is to provide eligible individuals with disabilities with community attendant and support services which would better enable them to live in a community setting rather than a state institution. The bill prohibits federal expenditures for community attendant services to be more than the amount that would have been spent if the individual had been institutionalized. A similar bill, H.R. 4416, 106th Cong., was introduced in the House by Representative Danny Davis on May 10, 2000.

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[17] See e.g. H.R. 2020, 105th Cong.

[18] For a more detailed discussion of H.R. 2020 see Carol V. O'Shaughnessy, "Summary and Analysis of H.R. 2020, the Medicaid Community Services Attendant Services Act of 1997," CRS General Distribution Memorandum (November 25, 1997).