Olmstead v. L.C.: Judicial Developments

Carol J. Toland
Legislative Attorney

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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 such an environment is appropriate, the community placement is not opposed by the individual with a disability, and the placement can be reasonably accommodated. Most subsequent litigation has focused on whether state programs for individuals with developmental disabilities, including Medicaid waiver programs, have adequately complied with the *Olmstead* decision. This report will discuss the Supreme Court's decision, selected subsequent appellate court decisions, and related legislation in the 110th Congress.

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Background

The Americans with Disabilities Act (ADA) provides broad nondiscrimination protection for individuals with disabilities in employment, public services, public accommodations and services offered by public entities, transportation, and telecommunications.[1] Its stated purpose is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[2] 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."[3] A public entity is defined as a state or local government.[4] The Department of Justice has promulgated detailed regulations for Title II. One of these regulations interprets Title II to mean that "a public entity shall administer services,

programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."[5] However, the integrated setting is not required if "the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity."[6]

Olmstead v. L.C.

In *Olmstead v. L.C.*,[7] the Supreme Court held that "unjustified isolation ... is properly regarded as discrimination based on disability" under Title II of the ADA.[8] The plaintiffs in Olmstead were mentally disabled individuals who were voluntarily confined to a state hospital's psychiatric unit. Their physicians had determined that they were capable of living in a community-based environment. Georgia refused to transfer the 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.[9] The Court ruled that states are "required to provide community-based treatment for persons with mental disabilities when the [s]tate's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the [s]tate and the needs of others with mental disabilities."[10] However, the Court found that the state maintains the right to argue that a "reasonable modification" for a person with physical or mental limitations who is able to live in a

[1] 42 U.S.C. § 12101 *et seq*. For a more detailed discussion of the ADA, see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by Nancy Lee Jones.

[2] 42 U.S.C. § 12101(b)(1).

[3] 42 U.S.C. §§ 12131-12133.

[4] *Id.*

[5] 28 C.F.R. § 35.130(d).

[6] 28 C.F.R. § 35.130(b)(7).

[7] 527 U.S. 581 (1999).

[8] *Id.* at 597.

[9] *Id.* at 593-94.

[10] *Id.* at 607.

less restrictive setting would be a "fundamental alteration" of the program and therefore not required under the ADA.[11] "Sensibly construed, the fundamental-alteration component of the reasonable-modifications regulation would allow the [s]tate to show that, in the allocation of available resources, immediate relief for the plaintiffs would be inequitable, given the responsibility the [s]tate has undertaken for the care and treatment of a large and diverse population of persons with mental disabilities."[12] For example, if "the [s]tate were to demonstrate that it had a comprehensive, effectively working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that moved at a reasonable pace not controlled by the [s]tate's endeavors to keep its institutions fully populated, the reasonable-modifications standard would be met."[13]

Selected Appellate Decisions: Fundamental Alteration Defense

The major appellate cases subsequent to the *Olmstead* decision tend to discuss the fundamental alteration defense and its application to various programs for individuals with developmental disabilities. In some instances, courts have found a state's program to be committed to deinstitutionalization and therefore allowed the state to claim a fundamental alteration defense. However, courts also have determined that a state's program falls short of the *Olmstead* mandate and therefore prohibited the state from asserting the fundamental alteration defense.

Successful Fundamental Alteration Defenses

Two significant appellate court cases held that the state was entitled to claim the fundamental alteration defense for its program for individuals with developmental disabilities. In both of these cases, the state had a comprehensive working plan that resulted in fewer individuals residing in institutions. In *The Arc of Washington State, Inc. v. Braddock*,[14] the Court of Appeals for the Ninth Circuit held that "forcing the state to apply for an increase in its Medicaid waiver program cap constitutes a fundamental alteration, and is not required by the ADA."[15] The court found that Washington had shown a "'comprehensive, effectively working plan,' ... and that its commitment to deinstitutionalization ... [was] 'genuine, comprehensive and reasonable.'"[16] In another case, *Sanchez v. Johnson*,[17] the Ninth Circuit found that California's commitment to deinstitutionalizing persons with developmental disabilities was "genuine, comprehensive and reasonable"[18] and held that granting the plaintiffs' requested relief would "require the 'fundamental alteration' of a comprehensive, working plan for deinstitutionalization in contravention of *Olmstead*."[19]

[11] *Id.* at 603; 28 C.F.R. § 35.130(b)(7).

[12] *Id.* at 604.

[13] *Id.* at 605-06.

[14] 427 F.3d 615 (9th Cir. 2005).

[15] *Id.* at 621-22.

[16] *Id.* at 621.

[17] 416 F.3d 1051 (9th Cir. 2005).

[18] *Id.* at 1067.

[19] *Id.* at 1068.

Throughout both cases, the court specifically analyzed the structure and features of each program before reaching its conclusion. The *Braddock* court observed that the state's home and community-based services waiver program was "sizeable," "full," and "available to all Medicaid-eligible disabled persons as spots become available."[20] Additionally, the program had "already significantly reduced the size of the state's institutionalized population" and had "experienced budget growth in line with, or exceeding, other state agencies."[21] Similarly, the *Sanchez* court observed that California's expenditures for individuals in community settings increased 196% between 1991 and 2001 and that California decreased its institutional population by 20% between 1996 and 2000.[22]

Unsuccessful Fundamental Alteration Defenses

Appellate courts have held in several other cases that the state could not claim the fundamental alteration defense because its programs for individuals with developmental disabilities did not comply with *Olmstead*. Two of these cases emphasize that the state's budget constraints alone are not sufficient to establish a fundamental alteration defense.

In some cases, the state did not have an *Olmstead* program but attempted to claim that changing its noncomplying program would amount to a fundamental alteration. For example, in *Pennsylvania Protection and Advocacy, Inc. v. Pennsylvania Department of Public Welfare*,[23] the Court of Appeals for the Third Circuit held that a state could not successfully assert the fundamental alteration defense for a program when compliance with *Olmstead* "would be too costly or would otherwise fundamentally alter" a noncomplying integration program.[24] The court stated that "budgetary constraints alone are insufficient to establish a fundamental alteration defense."[25] The Department of Public Welfare attempted to claim that it had a "sufficient plan in the form of 'policies and procedures that demonstrate DPW's commitment to deinstitutionalization ... and a history ... that show[ed] that the policy ... [was] in effect,'"[26] but the court concluded that "the only sensible reading of the integration mandate consistent with the Court's *Olmstead* opinion allows for a fundamental alteration defense only if the accused agency has developed and implemented a plan to come into compliance with the ADA."[27] In another case, the Third Circuit in *Frederick L. v. Department of Public Welfare of Pennsylvania*[28] held that a state could not assert the fundamental alteration defense for a program that was not an "adequately specific comprehensive plan" for transferring eligible individuals into community-based programs.[29] The Department of Public Welfare claimed that it had a sufficient plan that showed the "required commitment to deinstitutionalization."[30] Its plan included the "non-specific" goal of closing "up to" 250 state hospital beds per year but lacked "measurable goals"

[20] 427 F.3d at 622.

[21] *Id.*

[22] 416 F.3d at 1067.

[23] 402 F.3d 374 (3d Cir. 2005).

[24] *Id.* at 381.

[25] *Id.* at 380.

[26] *Id.* at 383 (citing Appellees' Brief at 20).

[27] *Id.* at 380.

[28] 422 F.3d 151 (3d Cir. 2005).

[29] *Id.* at 158-59.

[30] *Id.* at 154-55.

and "any commitment to implement" specific plans that had been developed by each of the state's regions that were served by a state psychiatric hospital.[31] The appellate court held that "general assurances and good-faith intentions to effectuate deinstitutionalization" were insufficient[32] and concluded that "an adequately specific comprehensive plan for placing eligible patients in community-based programs by a target date" must be part of the program in order for the state to assert the fundamental alteration defense.[33]

In other cases, the state refused to expand its community based programs to include certain individuals who were otherwise qualified for the programs and argued that this expansion would be a fundamental alteration. The Court of Appeals for the Ninth Circuit held in *Townsend v. Quasim*[34] that the state could not claim a fundamental alteration defense solely because it would have to offer its existing program in a community-based setting rather than a nursing home.[35] Mr. Townsend, a bilateral amputee who originally qualified for a Medicaid waiver program based on his income, was informed that he would have to move to a nursing home or lose his benefits following an increase in his income which disqualified him from the Medicaid waiver program.[36] The court observed that "[c]haracterizing community-based provision of services as a new program of services not currently provided by the state fails to account for the fact that the state is already providing those very same services"[37] and concluded these facts alone would not allow the state to claim that the provision of services to Townsend would fundamentally alter the state's program.[38] In another case, *Fisher v. Oklahoma Health Care Authority*,[39] the Court of Appeals for the Tenth Circuit held that "the fact that Oklahoma has a fiscal problem, by itself, does not lead to an automatic conclusion that preservation of unlimited ... prescription benefits for participants in the ... program will result in a fundamental alteration."[40] Oklahoma imposed a cap of five prescriptions per month on individuals in its home and community-based services waiver program while imposing no cap on individuals in nursing homes, and the plaintiffs claimed that Oklahoma's decision violated the ADA because it would force them into nursing homes in order to obtain needed medical care.[41] The Oklahoma Health Care Authority (OHCA) claimed that the cap was a "reasonable" decision in light of the state's financial crisis,[42] but the court observed that "[i]f every alteration in a program or service that required the outlay of funds were tantamount to a fundamental alteration, the ADA's integration mandate would be hollow indeed."[43]

[31] *Id.* at 157-58.

[32] *Id.* at 158-59.

[33] *Id.*

[34] 328 F.3d 511 (9th Cir. 2003).

[35] *Id.* at 517-18.

[36] *Id.* at 514-15.

[37] *Id.* at 517.

[38] *Id.* at 518.

[39] 335 F.3d 1175 (10th Cir. 2003).

[40] *Id.* at 1182.

[41] *Id.* at 1181.

[42] *Id.* at 1182.

[43] *Id.* at 1183.

Legislation in the 110th Congress

Two identical bills that address issues related to the *Olmstead* decision were introduced in March 2007. H.R. 1621 and S. 799 (known as the Community Choice Act of 2007) proposed to amend Title XIX (Medicaid) of the Social Security Act to require state Medicaid plan coverage of community-based attendant services and support for certain Medicaid-eligible individuals. The bills also proposed to establish financial assistance programs for states with community-based attendant services. The bills stated that one of their purposes was to "assist States in addressing the decision of the Supreme Court in Olmstead v. L.C. ... and implementing the integration mandate of the Americans with Disabilities Act."[44] Although a hearing was held by the Senate Committee on Health, Education, Labor, and Pensions on July 10, 2007, [45]the 110th Congress did not enact this legislation.

Author Contact Information

Carol J. Toland
Legislative Attorney
ctoland@crs.loc.gov, 7-4659

[44] H.R. 1621 at § 2(b)(4), 110th Cong. (1st Sess. 2007); S. 799 at § 2(b)(4), 110th Cong. (1st Sess. 2007).

[45] http://help.senate.gov/Hearings/2007_07_10/2007_07_10.html