



February 15, 2012

## **Day v. DC Lawsuit Moves Forward**

In Day v. District of Columbia, a class action lawsuit on behalf of 2,900 DC residents in nursing facilities brought by University Legal Services, AARP Foundation Litigation and Arent Fox LLP, Federal District Judge Ellen Huvelle rejected the District's summary judgment motion. In this ruling, the judge rejected the District's argument that it complies with Title II of the Americans with Disabilities Act (ADA) which requires states and local governments to provide services to people with disabilities in the most integrated setting appropriate to their needs.

Judge Huvelle ruled that governing legal standards and undisputed facts undermine the District's claims that it complies with the ADA & Supreme Court's *Olmstead* decision. The District has no *Olmstead* Integration Plan or measurable commitment to deinstitutionalization of people with disabilities from nursing facilities. The court rejected the District's claims based on the following, among other undisputed facts:

- The mere existence of some community-based programs, without outreach, information, and transitional assistance, does not constitute an *Olmstead* Integration Plan;
- The District's transition of only 3 people from nursing facilities under the federally-funded Money Follows the Person (MFP) Program (now in its 5<sup>th</sup> year), as compared with the initial goal of transitioning nearly 900 such individuals, does not reflect commitment to integration;
- The District's failure to seek an increase in the number of slots in the Home & Community-based Medicaid Waiver Program for People who are Elderly &/or have Physical Disabilities (EPD Waiver) or reserve slots for people in nursing facilities to meet the demand for services or track the waiver participants from nursing facilities undermines the District's efforts to integrate people seeking to move out of nursing facilities;
- The Department of Mental Health lacks policies, protocols or practice in transitioning mental health consumers from nursing facilities;
- The steady occupancy rate of nursing facilities at 90% since 2000 shows the District's lack of effort to comply with the ADA's integration mandate;
- The failure to take steps to identify all DC residents in nursing facilities who want to move back to the community or to assist the undisputed 526 to 580 individuals who already expressed their preference to move back to the community reflects the District's *Olmstead* violations.

The US Department of Justice filed briefs in support of the plaintiffs in nursing facilities seeking to uphold their civil rights to live in integrated community settings.