

## **Court Certifies Class of Nursing Facility Residents in Thorpe v. DC**

In a major victory for DC residents in nursing facilities, in *Thorpe et al. v. District of Columbia*, U.S. District Judge Ellen Huvelle certified a class<sup>1</sup> of individuals with physical disabilities in nursing facilities who are eligible for long term home health services in the community and would prefer to live in the community, but need the District of Columbia to provide transition assistance to facilitate their access to Medicaid long-term care home health services in the community. The Court's March 29<sup>th</sup> ruling found the class of approximately 500-2,000 nursing facility residents sufficiently numerous to warrant certification.

In allowing the case to proceed, Judge Huvelle ruled that the class claims share common issues based on the District's failure to implement a system of transition assistance, perpetuating their segregation in nursing facilities. The judge noted that the nine individual named plaintiffs have collectively spent 41 years in nursing facilities without information about community options or help to transition back to the community. The judge also denied the DC government's fourth motion to dismiss the case.

University Legal Services, the DC protection and advocacy agency, AARP Foundation Litigation, and Arent Fox LLP filed the case under the integration mandate of the Americans with Disabilities Act (ADA) on behalf of DC residents in nursing facilities who want to move back to the community with the services they need. "We applaud the Court's ruling and look forward to pursuing the civil rights of all DC residents seeking liberation from nursing facilities," said Marjorie Rifkin, class counsel at University Legal Services. Nearly 15 years ago in *Olmstead v. L.C.*, the Supreme Court ruled that state and local governments must provide services to people with disabilities in the most integrated setting appropriate to their needs, rather than segregated in institutions such as nursing facilities. The US Department of Justice filed a brief in support of class certification.

Based on the level of care they need, people with disabilities qualify for long-term care home health services either in nursing facilities or in the community. Despite the lower cost to taxpayers of home health services, DC Medicaid consistently maintains a 90% occupancy rate in nursing facilities and limits access to home health services.

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<sup>1</sup> All persons with physical disabilities who, now or during the pendency of this lawsuit:

- (1) receive DC Medicaid-funded long-term care services in a nursing facility for 90 or more consecutive days;
- (2) are eligible for Medicaid-covered home and community-based long-term care services that would enable them to live in the community; and
- (3) would prefer to live in the community instead of a nursing facility but need the District of Columbia to provide transition assistance to facilitate their access to long-term care services in the community.

The court found:

- The District consistently lowered its nursing facility transition targets and failed to meet its lower targets, transitioning a total of 49 nursing facility residents over a three-year period;
- After identifying 256 nursing facility residents who wanted to return to the community, the District transitioned only 16 of the 40 people selected by lottery;
- The Aging & Disability Resource Center (ADRC) primarily assisted people discharging from hospitals, rather than those stuck in nursing facilities.

Nursing facility residents are seeking a court order requiring the District to develop and implement a comprehensive and effectively working integration plan with measurable targets for transitioning sufficient numbers of plaintiff class members (who meet the class definition) from nursing facilities to the community within specific timeframes.<sup>2</sup> The key components of an effective system of transition assistance include asking nursing facility residents if they are interested in community-based services, providing information about community options, beginning discharge planning upon admission, assisting with all benefits including housing applications.

The case will now proceed toward a trial, where plaintiffs intend to seek system-wide transition help for people languishing in nursing facilities who want community alternatives.

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