

SUMMARY OF COURT DECISION IN ROSIE D. v. ROMNEY

I. Overview

In a landmark decision with national implications, U.S. District Court Judge Michael A. Ponsor ruled that the Commonwealth of Massachusetts is violating the federal Medicaid Act by failing to provide home-based mental health services to an estimated 15,000 children with serious emotional disturbance.

“The result of this failure is that thousands of Massachusetts children with serious emotional disabilities are forced to endure unnecessary confinement in residential facilities or to remain in costly institutions far longer than their medical conditions require,” the judge said in the 98-page decision, handed down January 26, 2006.

The judge called the state’s efforts to comply with the requirements of the federal law “woefully inadequate, with detrimental consequences to thousands of vulnerable children.” He added, “(The) defendants’ failure to provide adequate assessments, service coordination and home-based supportive services for Medicaid-eligible children with serious emotional disturbances was glaring from the evidence and at times, shocking in its consequence.”

II. The Lawsuit

The ruling stemmed from the class action lawsuit, *Rosie D. v. Romney*, which was brought on behalf of eight named plaintiffs, aged five to 16, who were either hospitalized or at risk of hospitalization due to the state's failure to provide appropriate services to enable them to live at home and attend local schools. The lawsuit claimed that the Commonwealth violated the Medicaid Act, and specifically its provisions governing treatment for children called EPSDT. During a six-week trial last spring, more than 30 witnesses testified about the effectiveness of home-based services, the state's failure to provide these services, the thousands of children who need these services, and the harm they suffer when denied this treatment.

III. Children with Serious Emotional Disturbance

The Court’s opinion described in detail the turbulent history of each of the named plaintiffs, and found that many had recommendations for home-based services that were ignored. Several were repeatedly admitted to hospitals or crisis programs because of the lack of adequate services in the community. Others were offered acute interventions, like Family Stabilization Teams for a month or two, only to have these short-term interventions terminated even though they were still desperately needed.

Like the named plaintiffs, the Court found that children with serious emotional disturbances (SED) suffer from long-term conditions that require ongoing supports. Judge Ponsor found that the state has failed to recognize that these disabilities represent “chronic conditions that require continuous monitoring, coordination, and modification of

services.” In contrast to the children’s chronic, long-term needs for services, he found that the Commonwealth’s programs are short-term and time-limited. He relied heavily upon a clinical review of a sample of children to support his conclusion that the vast majority of children with serious emotional disturbance need, but are not provided, home-based services.

“The undisputed evidence offered at trial made it clear that children with serious emotional disturbance are among the most fragile members of our society,” Judge Ponsor said, and continued, “Prompt, coordinated services that support a child continuation in the home can allow even the most disabled child a reasonable chance at a happy, fulfilling life.”

IV. The Deficiencies of the Massachusetts Mental Health System for Children

The Court noted that the state’s Medicaid system relies on pediatricians to bear the initial responsibility for mental health assessments – a “deficient” approach that lacks consistency, time frames, oversight and most often, comprehensiveness. As he stated, “Without a clinically appropriate, detailed assessment of an SED child, proper treatment is obviously impossible.”

The judge found that clinical assessments and support services are provided haphazardly, without oversight or coordination. He decried the lack or inadequacy of in-home supports, which include trained para-professionals or licensed clinicians who can assist the child in his or her home, provide mobile crisis stabilization as necessary, and prevent or minimize the need for an out-of-home placement.

The judge also found the state fails to provide necessary crisis intervention and treatment to SED children and their families. Such short-term services are designed only to stabilize the child, and as the judge found, “are almost never coordinated with any overall treatment plan.” Similarly, the state has failed to provide adequate in-home supports to prevent crises and minimize the need for out-of-home placements.

Judge Ponsor also found the state failed to provide SED children with another “critical service,” case management, also known as service coordination. He noted that many case managers, who are responsible for coordination, oversight and implementation of services, have never met the children on their caseloads. “It is impossible to overstate the importance of active, informed case management,” he said.

The judge described the services offered by the state’s largest mental health provider for Medicaid recipients, the Massachusetts Behavioral Health Partnership, as a “patchwork of services” with “arbitrary time limits.” He also pointed out that MBHP’s literature fails to mention EPSDT services; the state’s Office of Medicaid’s literature excludes mental health services from its listing of EPSDT services (check-ups, dental examinations and immunizations).

Judge Ponsor held that the state's two "in-home programs," the Family Stabilization Team (FST) and the Community Support Program (CSP), are short-term programs that do not offer the services needed to treat SED children with chronic long-term needs. "Moreover, the availability of these programs is so restricted that they reach only a minute fraction of the children who might benefit from them," the judge added.

Citing the evidence presented at trial, he said that the imminent termination of FST services for several named plaintiffs and class members in the plaintiffs' sample "dramatically highlights the shortcomings of the existing system." The children "were trapped in the same pattern: short-term support services were terminated as soon as the most acute stage of a crisis passed, virtually ensuring that another such episode would follow."

And CSP services, the judge found, mirror FST services in that they too have time limitations and are not coordinated with other services. Similarly, other programs, such as the Crisis Stabilization Units, Partial Hospitalization Services, Community-Based Acute Treatment Units, Enhanced Residential Care and Transitional Care Units, "are each inadequate in providing ongoing, coordinated treatment for children with SED," the judge said, and added, "None is designed to support a child in his or her home for as long as medically necessary."

The judge concluded that the state's "provision of services amounts to an attempt to patch together long-term care out of short-term programs. For most SED children, this will not work." He found that such programs cannot "treat children with chronic conditions, who usually require carefully planned and flexible services for months or years. The absence of these long-term services too often leaves SED children with only one option: expensive, clinically unnecessary and damaging confinement in a long-term residential program or hospital, far from home and family."

But as the judge pointed out as "one of the painful ironies" of the case, the Commonwealth is wasting money on residential programs even while it supports less expensive pilot programs with clinical interventions that enable SED children to receive treatment at home and in their own communities.

V. The Effectiveness of Home-Based Services

The Court noted that Massachusetts knows how to provide effective treatment in the community for children with serious emotional disturbance; it has just chosen not to do so except for a few isolated pilot programs serving a small fraction of the children who need this type of care. He pointed to three successful programs: the Mental Health Services Program for Youth (MHSPY), the Worcester Communities of Care (WCC) and the Coordinated Family-Focused Care program (CFFC), and noted that each offers effective treatment to SED children, using comprehensive assessments, service coordination, crisis intervention and in-home supports. Yet, as he stated, these programs reach only "a miniscule portion" of children who need these services. The judge cited the impressive outcome data for the programs. He noted that the newest program, CFFC, "is

no more costly than the Commonwealth's system of multiple service providers." Furthermore, he found there was no financial, clinical or administrative bar to prohibit the expansion of a MHSPY-type or CFFC-type program throughout the state.

VI. The Remedy

As ordered by the Court, plaintiffs' attorneys will meet with the defendants to discuss proposed remedies and a timetable for their implementation. Judge Ponsor will hold a status conference February 23 in US District Court, Springfield.

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