

 KeyCite Red Flag - Severe Negative Treatment
Vacated by Gary W. v. State of La., 5th Cir.(La.), February 6, 1992
1991 WL 49674

Only the Westlaw citation is currently available.
United States District Court, E.D. Louisiana.

GARY W., et al.
v.
STATE of LOUISIANA, et al.
Civ.A.No. 74-2412. | April 1, 1991.

Opinion

MINUTE ENTRY

ROBERT F. COLLINS, District Judge.

*1 Defendant, State of Louisiana, Department of Health and Human Resources (“the State”), moves this Court for an order altering the definition and interpretive guidelines of Day Developmental Training (“DDT”) for compliance purposes in all audits conducted during or after January, 1987. For the reasons stated below the motion is DENIED.

BACKGROUND:

The State, arguing that current DDT guidelines are now and have always been confusing, filed the instant motion seeking the following definitions and interpretive guidelines for DDT.

Definition:

Community based—featuring prescriptive programming in an extended sheltered employment environment, using work as a vehicle to meet variety of rehabilitative needs.¹

Interpretive Guidelines:

Program content characterized by:

1. Intensive training—skill development in communication; behavioral management; self-help skills; socialization skills; motor skills; adaptive behavior skills; work relatives activities.
2. Training skills associated with performing work task.
3. Intensive supervision, structured program format.

4. Center based program, located in the community, usually operated by not-for-profit agency serving severely handicapped individuals, including, but not limited to, a sheltered facility serving only handicapped individuals.

Plaintiffs oppose the State’s motion on the following grounds: (1) there is no “confusion” between the parties concerning either the definition of the service or the awarding of compliance time; (2) the defendants should be estopped from arguing for a change at this late date; and, alternatively (3) the defendants are seeking an advisory opinion on an issue which is best determined on a class member by class member basis.

In filing their motion, defendants stated that an evidentiary hearing on the instant motion was necessary. After conferring with both counsel, the Court scheduled an evidentiary hearing for 10:00 a.m. on April 29, 1991. In addition, the Court agreed to hear the plaintiffs’ estoppel argument and the defendants’ opposition thereto prior to the evidentiary hearing. The hearing on the plaintiffs’ estoppel argument was scheduled for and held on March 6, 1991. Based upon this March 6th hearing, the Court finds that the defendants’ motion must be denied.²

DISCUSSION

The crux of the State’s motion is obtaining maximum compliance time for the Gary W. class members who should have been placed in DDT. Unfortunately, the State wishes to obtain this compliance time by placing these class members in sheltered workshops. In support of this proposition, the State argues that DDT interpretive guidelines are confusing and that sheltered workshops should fall within the ambit of DDT. However, the Court finds that, at this time, the State cannot argue that DDT includes sheltered workshops or that the State has been confused about the meaning of DDT.

A cursory review of the relevant facts of this case shows that the State cannot at this time argue that there is confusion about the meaning of DDT as related to sheltered workshops.

The original placement guidelines defined a sheltered workshop as:

*2 A work setting certified as such by the U.S. Labor Department, Wage and Hour Division or by a public agency. A rehabilitation facility or that part of a rehabilitation facility, engaged in production or services operation for the purpose of providing gainful employment as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as

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employment opportunities for them in the competitive labor market do not exist.

(Defendants' Exhibit I attached to Memorandum for Order Declaring Definition and Interpretive Guidelines of Day Developmental Training) ("Motion for Order").

On the other hand, DDT is defined as "community-based day care services featuring prescriptive programming in an extended sheltered employment environment, using work as a vehicle to meet a variety of rehabilitative needs." (Defendants' Exhibit I attached to Motion for Order.) The State now comes forward to suggest that sheltered workshops are the same as DDT. This assertion is contradicted by the original Special Review Committee's definition of DDT and sheltered workshops.

The Court concedes that use of the word "shelter" in the definition of DDT may have caused some confusion about DDT. However, on February 5, 1986, after the first round of joint audits, Cecil N. Colwell, Assistant Secretary of the Department of Health and Human Resources for the Office of Mental Retardation, issued a memorandum entitled "Clarification of specific issues related to Gary W. Standards applicable to Adult Day Programs" ("the Colwell Memo") (Defendants' Exhibit J attached to Motion for Order). The Colwell Memo cites the genesis of the clarification as "continued misunderstanding and misinterpretation" by staff and providers in the field. Mr. Colwell appointed Rosemary Estes (now director of the Gary W. Project Office) to work with the Office of the Special Master "to examine problem areas and to provide information to clarify the issues in question." As the memo clearly indicates, the information which Mr. Colwell attached to his memorandum to all administrators in the Office of Mental Retardation and Developmental Disabilities was also distributed to "all regional staff and providers of Adult Day Services associated with Gary W. class members."

Page six of the Colwell Memo makes clear that the terms "Day Developmental Training" and "Sheltered Workshop" are not interchangeable; nor is the latter included within the definition of the former. They are separate and distinct categories. "Day developmental training" is described as "work training within a sheltered employment setting" whereas "sheltered workshop" is described as "a center-based employment setting, certified by the U.S. Department of Labor". According to the

Colwell Memo, the two services are not interchangeable on that document, either; nor is "sheltered workshop" listed as included in "day developmental training". The service setting for "day developmental training" is described as "job sites in the community", and is distinguished from the service setting for "sheltered workshop", which is described as "center-based".

*3 The Colwell Memo purported to address the "misunderstanding and misinterpretation" of the original Special Review Committee ("SRC") definitions and, without changing any of the original definitions used during the SRC process, clarified the distinctions between the two service categories. The Colwell Memo eliminated any confusion as to the meaning of DDT as related to sheltered workshops.

The State now argues that the Colwell Memo is of no moment. Arguing that the distribution of the memorandum means nothing, the State contends that Cecil Colwell was not authorized to issue said memorandum. Such an argument is of no merit. The memorandum in question was distributed to all administrators in the State Office of Mental Retardation. The State cannot now argue that Cecil Colwell, whose department had primary responsibility for many class members, could not speak for the State.

It is now too late for the Division of Mental Retardation and the State to argue that they do not know the standards against which they are measured. There have been several audit initiatives and second-level reviews measuring the amount of compliance credit that the defendants are entitled to receive. After these audits and second-level reviews, the State did not receive compliance time for those DDT class members who were placed in sheltered workshops. Yet, the State now appears before this Court, nearly a decade after the original placement plans were developed and five years after Cecil Colwell issued his memo, and argues that it does not know the meaning of DDT. The Court cannot accept the State's arguments and further finds that the State is estopped from crying "confusion" at this late date. Therefore, the State's motion for an order altering the definition and interpretive guidelines for DDT is DENIED.

Footnotes

¹ The Court notes that the State is requesting a change in the interpretive guidelines for DDT. The requested "definition" is the same as the original definition.

² Because this Court has found that an evidentiary hearing is unnecessary for the resolution of the instant motion, the following motions are dismissed as moot: Joint Motion to Continue the Evidentiary Bearing and Plaintiffs' Motion in Limine.

