

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Patricia Welsch, et al,
Plaintiffs, No. 4-72 Civil 451

v.

Arthur E. Noot, et al,
Defendants.

Following a careful review of the entire record in this matter, I herewith adopt in total the Supplemental Findings, Conclusions and Recommendations submitted on May 11, 1982 by Frank J. Madden, Hearing Officer, regarding the above matter.

Dated: May 11, 1982

Respectfully submitted,

Lyle D. Wray
Lyle D. Wray, Ph.D
Court Monitor

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Patricia Welsch, et al.

Plaintiffs,

v.

Arthur E. Noot, et al.,

Defendants.

Paragraph 26 Hearing
SUPPLEMENTAL
FINDINGS OF FACT AND
RECOMMENDATIONS

No. 4-72 Civil 451

On February 5, 1982, an evidentiary hearing was held before Frank J. Madden, Hearing Officer appointed by Lyle D. Wray, Court Monitor, pursuant to paragraph 95(g) of the Consent Decree. On April 7, 1982, the hearing officer submitted Findings of Fact and Recommendations which were adopted in total by the Court Monitor. The Court Monitor retained jurisdiction over the matter pending submission by the defendant of further evidence relating to the issues presented.

FINDINGS OF FACT

Procedural Background

1. In the April 7, 1982 Findings of Fact and Recommendations, the hearing officer established the following criteria for resolving the issue of whether a reduction in developmental achievement center (DAC) services for Bruce L. from five to three days constitutes a violation of paragraph 26 of the Consent Decree. First, the plaintiff must show that a change has been made in the discharge plan of Bruce L. and that such change was made for reasons other than an assessment of Bruce L.'s individual needs. Second, once plaintiff has demonstrated the above, the burden shifts to the defendant to demonstrate that the County of Stearns is using all available funding appropriated for purposes of providing DAC services and to demonstrate that the resulting DAC services are "appropriate" as mandated by paragraph 26 of the Consent Decree.

2. The hearing officer found that plaintiff had met its burden and that the burden therefore shifted to the defendant. The hearing officer further found that there was insufficient evidence in the record from which to determine whether defendant had satisfied the criteria established. Therefore, the Court Monitor retained jurisdiction over the matter pending submission of further evidence by the defendant and a resolution of the issue.

3. On April 19, 1982, P. Kenneth Kohnstamm, Special Assistant Attorney General, submitted a response on behalf of the defendant. Luther A. Granquist and Anne L. Henry, Attorneys for Plaintiffs, submitted a Supplementary Memorandum on April 27, 1982, and on May 5, 1982 counsel for the defendant submitted a response.

Utilization of All Available Funding Appropriated for Providing DAC Services

4. As of March 31, 1982, Stearns County had expended 29% of its DAC budget in 25% of the year. If DAC expenditures continue at this rate, Stearns County would spend approximately \$20,000 more for DAC services that was budgeted for 1982. (Exhibit 32).

Appropriate Level of DAC Services for Bruce L. Pursuant to Paragraph 26 of the Consent Decree

5. The defendant provided no evidence to demonstrate that a reduction in DAC services for Bruce L. from five to three days per week would provide "appropriate" services pursuant to paragraph 26 of the Consent Decree.

6. Plaintiffs submitted exhibits indicating that it is the unanimous judgment of the Nobles County social worker, the DAC director and the Director of Ridgewood that a continuation of his present five day a week program at the DAC is necessary for Bruce L. taking into consideration his individual needs and capabilities. (Exhibits 29, 30 and 31).

7. The position of the Nobles County DAC as of April 22, 1982 is that Bruce L. will not be demitted from the DAC

despite the failure by Stearns County to provide payment for full-time service in light of the position of the Department of Public Welfare that Rule 31 does not allow demission for that reason. (Exhibit 30, paragraph 10). That position is subject to change if Stearns County does not provide full payment for services already provided in January and February, 1982. (Exhibit 30, paragraph 14).

8. If Stearns County will pay only the annual amount of \$2,983.47 for DAC services for Bruce L. for calendar year 1982 and if the Nobles County DAC will limit services for Bruce L. after May 15, 1982 to remain within that limitation, a program at the DAC for Bruce L. will be provided for only 58 of the 126 scheduled DAC days for the remainder of 1982. (Exhibit 30, paragraph 11 and Appendix B).

9. The defendant stated that a three day per week program is less desirable than a five day per week program, but declined to submit evidence as to the appropriateness of a three day per week program for Bruce L.

DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

The defendant maintains its reliance on the district court decision in Lindstrom v. State of Minnesota and Kittson County Welfare Board wherein the court held that counties have authority to reduce DAC services to their mentally retarded residents in order to keep the costs within the limits of the appropriations available for such purposes. In declining to submit evidence regarding whether or not a three day per week program would be "appropriate" for Bruce L., the defendant contends that if such proof were provided it could lead to a permanent reduction in services rather than to a temporary reduction due to budget deficits as exists in the present matter. Likewise, the defendant contends that to define "appropriate" DAC services as requiring a five day per week program would be inappropriate and damaging to the individual program planning concept. Finally, the defendant submits that due to the

interplay between Minnesota statutes, the Lindstrom decision and the Consent Decree, the Court Monitor should defer recommending a remedy until the federal court system has decided the legal issues presented.

The plaintiff contends that although the defendant has submitted evidence regarding the utilization of all available funding appropriated for the purposes of providing DAC services, the defendant has failed to demonstrate that the reduction in DAC services for Bruce L. which will result from the budget deficit are appropriate within the meaning of paragraph 26 of the Consent Decree. The plaintiff further contends that to require the continuation of a five day per week program for Bruce L. would not establish an inflexible five day a week standard for every discharged resident. Rather, all determinations as to appropriate DAC services for discharged residents would be made on an individual basis. Finally, in an effort to prevent the necessity of protecting the interests of other similarly situated residents on a case by case basis, the plaintiff requests that the Court Monitor recommend to the Court that an Order issue preventing discharge of residents for whom appropriate day programs are not provided.


Based on a review of the evidence and arguments submitted by the parties subsequent to the April 7, 1982 Findings of Fact and Recommendations, the hearing officer concludes that the defendant has not met its burden of proving that the reduction in DAC services for Bruce L. from five to three days a week results in "appropriate" services as mandated by paragraph 26 of the Consent Decree. In reaching this conclusion the hearing officer is mindful of the budget constraints of Stearns County as well as the authority of Stearns County pursuant to the Lindstrom decision to reduce its DAC services in order to keep the costs within the limits of the appropriations available for such purposes. Notwithstanding these considerations, however, the Court Monitor cannot ignore his duty to insure compliance with the Consent Decree.

Paragraph 26 of the Consent Decree clearly and unequivocally mandates that "appropriate" programs be provided to all persons discharged from state institutions. It is likewise clear that what constitutes "appropriate" DAC services is an individualized determination to be made on a case by case basis. The only evidence in the record regarding the issue of appropriate services was submitted by the plaintiff and is comprised of declarations of the Nobles County social worker, the DAC director and the Director of Ridgewood. (Exhibits 29, 30 and 31). The statements contained in these exhibits are persuasive with respect to the necessity for continuing a five day per week program for Bruce L. and, absent evidence to the contrary, require a conclusion that a three day per week DAC program for Bruce L. would not provide appropriate services.

On the basis of the above noted Supplemental Findings of Fact and Conclusions and the Findings of Fact, Discussion and Conclusions of April 7, 1982 the Hearing Officer makes the following recommendation:

The DAC programing for Bruce L. should not be decreased from five to three days per week but rather should be maintained at a five day level until such time as Bruce's interdisciplinary team determines that a modification of his DAC programing is necessitated and justified on the basis of individual need.

Dated this 11th day of
May, 1982.



Frank J. Madden
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