



MH-MA-001-008

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKETED

DAVID BREWSTER, ET AL.,)	
Plaintiffs)	
)	
v.)	CIVIL ACTION NO. 76-4423-F
)	
MICHAEL S. DUKAKIS, ET AL.,)	
Defendants)	

ORDER OF DISENGAGEMENT

March 12, 1987

FREEDMAN, C.J.

I. PRELIMINARY STATEMENT

A. INTRODUCTION

1. On December 6, 1978, the parties entered into an agreement with each other for the purpose of establishing a comprehensive system of appropriate, less restrictive treatment, training, and support services for each member of the plaintiff class, which agreement, upon the approval of the Court, was entered as the Final Consent Decree ("Decree") in this action on December 7, 1978 and which Decree has been amended from time to time.

2. The parties have diligently pursued the goals of the Decree and, with the assistance of the Court and its Monitor, much has been accomplished and the purposes of the Decree are nearing completion.

B. ACCOMPLISHMENTS

3. The Decree provided for the establishment of a comprehensive community-based mental health system. Community-

based services were to be designed and developed to enable Brewster class members "to live in the least restrictive, most normal residential alternative and to receive appropriate treatment, training, and support suited to their individual needs." Decree, Paragraph 8.b. The parties are in agreement that there have been substantial accomplishments regarding this objective. Specifically the parties note the following achievements:

(1) Residential Services

4. Approximately 500 beds have been developed during the term of the Decree for mentally ill and mentally retarded Brewster class clients.

5. These community residential beds are provided to Brewster clients through a wide range of program types, maximizing the likelihood of finding a placement for each individual that is least restrictive and most appropriate in light of that individual's needs.

6. The range of community residential programs now available includes programs offering services within each of the program types defined in Attachment B of the Decree, specifically including: specialized home care programs, supervised apartment programs or group homes, transitional apartment programs or group homes with physical care components, apartment programs or group homes with behavioral emphasis, and apartment programs or group homes with physical care components and behavioral emphasis.

7. Innovations in community residential programming have

occurred throughout the course of defendants' implementation of the Decree, allowing many individual class members to be appropriately served in programs specially designed to meet their unique needs.

8. Mentally retarded class members, more than eighty of whom were at Northampton State Hospital in 1978, have benefitted from successful placements in community residential programs. These residential placements and related day or nonresidential programs have effectively minimized acute hospitalization and have almost completely substituted for long-term hospitalization at Northampton State Hospital of mentally retarded class members.

9. Elderly class members, about one hundred of whom were at Northampton State Hospital in 1978, have similarly benefitted from successful placements in community residential programs. As with the mentally retarded class members, these residential programs have effectively minimized acute hospitalization and have almost completely substituted for long-term hospitalization at Northampton State Hospital.

10. The establishment of short-term respite beds in association with crisis intervention programs in each community mental health service area has enabled thousands of Brewster class members to receive effective care and treatment services in the community without the need for institutionalization in the more restrictive environment of Northampton State Hospital.

(2) Nonresidential Services

11. Nonresidential community-based treatment and support programs are now available to serve the mentally ill and mentally retarded Brewster class clients who have been placed in community residential programs as well as to serve many other Brewster class members, who with this support, are capable of living independently. Prior to the Decree most of these services either were not available or were provided in association with long-term hospitalization at Northampton State Hospital.

12. The nonresidential programs are provided through a wide range of program types, maximizing the likelihood of effectively assisting each individual client to acquire and maintain those physical, mental and social skills that will enable the client to cope most effectively with the demands of his or her environment.

13. The range of nonresidential programs now available includes programs offering services within each of the program types defined in Attachment C of the Decree, specifically including: assessment teams, community service coordination, psychotherapy/counseling, respite care, family support, medication unit/nursing support, crisis intervention units, day treatment, day activity, vocational rehabilitation (including prevocational training/sheltered workshops and transitional employment/job placement), and recreational, socialization and support services.

14. New innovative community nonresidential programs

have been developed during the course of defendants' implementation of the Decree, with particular emphasis on vocational and work support programming, intensive case management services, specialized support programs for adolescents, citizen advocacy and family support programs and mobile crisis intervention services.

(2) Client Rights, Service Planning, Human Resources and Licensing

15. Comprehensive regulations for the community-based mental health service system regarding client rights, individual service plans, program standards and licensing requirements have been promulgated by the Department of Mental Health ("the Department"). No comparable regulations existed prior to the signing of the Decree.

16. Activities beneficial to Brewster class clients that have occurred pursuant to the community mental health regulations have included: development and implementation of comprehensive individual service plans for hundreds of clients; independent reviews of some disputed service plans pursuant to a formal appeals system wherein fundamental differences of opinion regarding appropriate services may be fairly and definitively resolved; independent surveys and licensing of community residential and nonresidential programs to ensure that established program standards are met; and enforcement of clear regulatory standards governing such basic client rights issues as the use of restraint, consent to treatment, and the management of client records,

client possessions and client funds.

17. Training to maximize staff understanding of and capacity to respond to client needs is now occurring on a continuous cycle for all staff of community residential and nonresidential programs.

II. DEFENDANTS' UNDERTAKINGS

18. NOW THEREFORE, the Court hereby ORDERS defendants as part of this Order of Disengagement to undertake to accomplish the following:

A. MANAGEMENT AND QUALITY ASSURANCE

19. A Field Operations Manager will be established for mental health services in District I, with direct supervisory authority over the Area Directors. The Field Operations Manager will be fully responsible for the overall operation, development and quality of all community-based mental health services in the District. A position has been authorized and funded for this purpose in the Fiscal Year ("FY") 1987 budget. Sufficient staff will be assigned to support the Field Operations Manager in carrying out these responsibilities.

20. At the direction of an appropriate central office manager, the Field Operations Manager will have authority over the expenditure of community mental health resources allocated to the District. The Field Operations Manager will periodically review expenditures within the community program accounts throughout the fiscal year. The Field Operations Manager will review and approve all purchase of service

changes and any other significant reallocation of resources within an area's community mental health system.

21. The Field Operations Manager will monitor utilization of community mental health resources. As is the current practice the Field Operations Manager will approve long-term vacancies from residential programs. The Field Operations Manager will also review and approve all justifications relating to delays in program development or underutilization.

22. The Field Operations Manager will have authority over issues that arise between areas. Specifically, the Field Operations Manager will have responsibility for settling all disputes between areas within the District regarding area of meaningful tie designations. The Field Operations Manager will have the authority to order the treatment of a client from one area in another area's program when necessary.

23. The Field Operations Manager will serve as the Commissioner's designee for many regulatory and contractual functions. The Field Operations Manager will ordinarily be the hearing officer for all contract award appeals. The District Manager's role in departmental investigations, 104 C.M.R. 24.06, will be taken over by the Field Operations Manager when the complaint involves community mental health services. The Field Operations Manager will assume the responsibilities given the Regional Services Administrator in mental health Individual Service Plan appeals, see 104 C.M.R.

16.11(4).

24. The Field Operations Manager will continue the District Manager's role in the licensing process. Specifically, the Field Operations Manager will review and sign all deficiency statements/plans of compliance, review and sign all licensing waiver petitions and review and monitor all deficiency correction orders.

25. The Field Operations Manager will regularly review utilization by the areas of institutional mental health resources. In conjunction with the Chief Operating Officer of Northampton State Hospital, staff from the area office and said state hospital, the Field Operations Manager will regularly review the current patients at this state hospital. This review will center on the circumstances of the client's admission, the client's clinical condition, the plan for discharge, barriers to discharge and any other relevant issues regarding the client or utilization of the state hospital and community systems.

26. The Field Operations Manager will continue to have oversight of the training of staff in community mental health programs. The Field Operations Manager in conjunction with the area personnel will develop a system to insure that staff in community programs are adequately trained.

27. The Field Operations Manager will develop and implement systems for utilization review within the community mental health system. Part of this community utilization review will result from the amendment and strengthening of

the Individual Service Plan process which is discussed infra. The Field Operations Manager will preside over the standardization of the Individual Service Plan process in District I. The Field Operations Manager will also develop other utilization review procedures in the community mental health system. While implementation of this system will primarily rest with the areas, the Field Operations Manager will have an independent capacity in this process to conduct quality assurance client audits or as an ex officio member of treatment or assessment teams. Each area will be required to submit regular reports to the Field Operations Manager on its utilization review process.

28. The Field Operations Manager will periodically review the performance of the Area Directors in regards to their management of the community mental health system.

29. The Field Operations Manager shall be responsible for working with the Chief Operating Officer of Northampton State Hospital to insure the integration of the hospital's operations with the community mental health system and shall have access to the central office manager responsible for hospitals to resolve any differences.

30. For a period of three years from the effective date of this Order of Disengagement, the defendants shall comply with present Court orders regarding human resource training.

B. INDIVIDUAL SERVICE PLANS

31. Mental Health Individual Service Plan regulations were issued by the Department in 1980 pursuant to Decree

requirements. The regulations are limited in scope to District I in Western Massachusetts. They are presently codified at 104 C.M.R. 16.00.

32. The Department will develop a plan thoroughly to assess, revitalize and standardize the District I mental health Individual Service Plan system. This plan shall be completed within three months from the Court's approval of this recommendation. The goals of this plan will be (1) to conduct training and to establish enforcement mechanisms sufficient to ensure full and timely implementation as mandated by the Individual Service Plan regulations, and (2) to identify and then make whatever revisions of the regulations may be necessary to ensure that they will promote their purposes to the maximum extent possible. The Department plans to initiate the Individual Service Plan regulatory revision and implementation activities concurrently during FY '87.

33. The defendants shall complete all required Individual Service Plans for those persons who are hospitalized at Northampton State Hospital within six months of the date of this Order of Disengagement. Individual Service Plans shall be implemented thereafter within a reasonable time subject to available resources.

C. RESIDENTIAL PLACEMENTS

34. With respect to the Governor's 1986 mental health initiative which presently provides that there be 230 new residential placements for District I, the defendants shall,

for FY '88, seek funding for twenty-five high-intensity residential placements for class members. Preferences for these twenty-five placements will be given to those class members who are hospitalized at Northampton State Hospital on the date of this Order and shall apply on a seniority basis to those residents with the longest length of hospitalization.

35. With respect to other placements that may be developed pursuant to the Governor's initiative, it is understood that preference shall be given for one-half of these additional placements to persons now or hereafter hospitalized at Northampton State Hospital. Defendants shall plan for these additional placements but do not commit themselves for their funding. These placements shall be allocated on the basis of seniority favoring those residents with the longest length of hospitalization. With respect to the presently planned eighty additional placements of the moderate or high-intensity type that may be developed, preference will be given for one-half of these placements to persons presently or hereafter hospitalized at Northampton State Hospital. These placements are also to be allocated on the basis of seniority favoring those residents with the longest length of hospitalization.

D. INPATIENT FACILITIES

36. The defendants will develop a plan for the providing of inpatient services for class members. The plan will identify the location(s) and projected capacity of inpatient

services to be provided by the Department in District I. The plan will utilize regional, emergency and/or backup facilities and area inpatient facilities. This plan shall be completed within eight months of the date of this Order of Disengagement and submitted to the Monitor and plaintiffs' counsel.

37. It is recognized that the capacity of such regional and area inpatient facilities may be increased or decreased in the future, depending upon the needs of persons in District I. The Department shall nonetheless prepare and implement a plan providing for a capacity of no more than 120 persons in three to five area facilities. Defendants have exercised reasonable good faith efforts during the last two years to prevent inappropriate hospitalization and shall continue to make such efforts in order to attempt to achieve the goal of a census of 120. The defendants agree the Memorial Complex Building will be closed at the earliest possible date permitted by the development of the three-to-five area inpatient facilities. Thereafter, the Haskell Building shall be utilized and maintained as an emergency or backup inpatient facility.

38. The defendants may eventually close the Haskell Building if the defendants determine that it is no longer necessary to serve class members or if the defendants decide another facility is more suitable as an emergency or backup inpatient facility.

39. These inpatient facilities should be operated

consistent with existing policies and state law to screen out inappropriate admissions of the mentally retarded, those with organic brain syndrome, alcoholics and adolescents.

III. MAINTENANCE OF EFFORT

40. Notwithstanding the Court's Disengagement Order and subject to ~~available~~ appropriations, and community mental health system of services established under the Decree shall be maintained at present appropriation levels and annualized appropriations for the twenty-five new residential placements referred to in Section II, supra, pursuant to the following principles:

(a) Residents and clients are entitled to live in the least restrictive, most normal residential alternative and to receive appropriate treatment, training, and support suited to their individual needs.

(b) The determination of client service needs will occur through an individualized screening, evaluation, and service planning process, including annual reviews of Individual Service Plans.

(c) The determination of appropriate residential and nonresidential placements for each resident and client will be made so as to guarantee that all persons are placed in the least restrictive alternative which will provide them with appropriate treatment, training and support.

(d) Since the residential models are designed to be the most normal and least restrictive environments appropriate for the residents and clients, smaller apartment units are

preferred to larger group homes, although either may be appropriate depending on the particular circumstances.

(e) Community residential and nonresidential services will be offered, to the maximum extent feasible, on a voluntary basis and with due regard for the client's dignity and personal autonomy.

(f) Community residential alternatives and nonresidential programs will be integrated in the community and operated in the most normal manner appropriate to the needs of their clients.

(g) If new information and a clear change in circumstances indicate a more appropriate way to maintain existing services than required by these principles, the defendants may modify a program or programs. For purposes of this subparagraph (g) only, notice of any such change which is proposed within a period of three years from the effective date of this Order of Disengagement, and an opportunity to object, shall be given to plaintiffs' counsel.

IV. COURT DISENGAGEMENT

41. In consideration of the foregoing, the Court hereby relinquishes active supervision over the Consent Decree but retains supervision over this case subject to the following qualifications:

(a) For a period of one year, the defendants will file bimonthly written reports with the Monitor and also oral reports at least monthly describing their efforts and progress in planning and implementation of Section II. The

Monitor shall retain the authority specified in the Decree to investigate and propose action by the defendants sua sponte or on request by a party. Defendants will provide copies of their written reports to plaintiff's counsel.

(b) At the end of one year, the defendants shall file a one-year progress report with the Monitor describing the status of the several initiatives and plans identified herein. The Monitor shall afford the plaintiffs and representatives of interested community organizations an opportunity to comment upon the defendants' report, and shall thereafter file the report with his own comments thereon with the Court. The plaintiffs and interested community representatives may file comments with the Court, to which the defendants may respond.

(c) If it shall appear to the Court, based upon the defendants' report, the Monitor's comments, and the comments of plaintiffs and representatives of interested community organizations, if any, that the defendants have exercised good faith efforts and have made reasonable progress in developing and implementing the initiatives and plans identified above, the Court shall find reasonable progress is being achieved and therefore the terms of the Order of Disengagement will continue to be recognized by the Court and the parties will continue to be bound thereby for an additional two-year period.

42. (a) The defendants shall for an additional two-year period file quarterly written reports with the Monitor and

such other oral reports as the Monitor may require outlining their continued efforts and progress with the planning and implementation of Section II herein.

(b) The Monitor shall retain authority to investigate and propose action sua sponte or on request of a party. Defendants will provide copies of their written reports to plaintiffs' counsel.

43. At the end of the two years of said quarterly reports, the Monitor shall report to the Court as to whether the defendants during said additional two-year period have made reasonable good faith efforts to bring about significant progress toward implementation of the initiatives in Section II. Plaintiffs, defendants and representatives of interested community organizations may submit their own comments to the Court with regard to the degree of effort and progress achieved in this two-year period. The Court shall hold a hearing and if it determines that the defendants have made significant good faith efforts and progress, the Court will make a finding that the defendants are in compliance with the Consent Decree and will end its jurisdiction over the case and the mental health system in Western Massachusetts. The Decree will then be terminated and notwithstanding said termination of the Decree, the maintenance of effort provisions in Section III herein shall remain in effect. The Court notes that said maintenance of effort provisions, in addition to the stated principles therein, are designed to prevent a virtual undermining of the Decree's accomplishments

or a dismantling of the mental health system created in
Western Massachusetts by the Decree.

It is So Ordered.



Chief United States District Judge