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DD Waiver Waitlist Litigation Settled

Thursday, July 26, 2012

Dykes v. Dudek Settlement Agreement Summary

Disability Rights Florida filed the Dykes v. Dudek lawsuit in March of 2011 on behalf of individuals with intellectual and developmental disabilities who needed care, treatment, and habilitation and who were on the Waitlist for DD Medicaid Waiver services. Some of the plaintiffs resided in private ICF/DDs or nursing homes and some of the plaintiffs resided in their families' homes. Many had been on the DD Waitlist for over five years.

The lawsuit sought to compel Florida to develop a reliable and accurate means of tracking and projecting service demand and associated trends in order to design and implement a comprehensive plan for the continued enrollment of over 21,000 persons waiting for DD Waiver services. In October of 2011, the court denied our motion to proceed as a class action and the case proceeded instead on the basis of our agency's standing to sue and on behalf of the named plaintiffs.

On July 3, 2012, the lawsuit was settled. Under the settlement agreement the Agency for Persons with Disabilities (APD) and the Agency for Health Care Administration (AHCA) will

engage in the activities described below. The agreement addresses five key areas:

- **Individuals Residing in ICF/DDs and Nursing Homes**

During 2011-2012 and 2012-2013, after the lawsuit was filed, the Legislature enacted budget proviso language allowing APD and AHCA to utilize current appropriations in the ICF/DD budget to fund transitions of persons in ICF/DDs to the DD Waiver. Two named plaintiffs successfully transitioned to community services and APD began transitioning other individuals. The agreement requires that APD request another year of this key proviso language. Moreover, APD will complete the process of contacting everyone on the DD Waitlist who resides in an ICF/DD and providing transition support to those desiring to move. APD will also provide choice counseling at annual reviews and every 6 months after during the Continued Stay Reviews. Previously, the Continued Stay Review form only required a review of the level of care for the continuation of ICF/DD services. Thus, residents will be made aware of the available options more frequently and have a more meaningful option to view alternative placements and have their choice documented. APD and AHCA will provide Disability Rights Florida with monthly progress reports regarding ICF/DD transitions.

Additionally, the agreement requires that AHCA request a similar mechanism from the Legislature to transition people with DD who reside in nursing homes to the DD Waiver. The named plaintiff from the lawsuit who resided in a nursing home has successfully transitioned and is now thriving in a small group home setting in the community.

- **Crisis**

Individuals approved for Crisis enrollment will receive DD Waiver-funded services within no more than ninety days from the determination of crisis. General revenue funds may continue to be used during the crisis application process. The ninety-day period is important because it ensures prompt enrollment on the DD Waiver as required by Medicaid law and greater certainty in the provision of needed DD Waiver services.

- **Individual Family Support (IFS) Funds**

APD will notice the development of a rule to govern utilization

of IFS funds and the rule will include a uniform application to be used statewide. APD will also track the IFS services requested, the IFS amounts requested, and whether each request was approved or denied. This data will be provided to Disability Rights Florida. These changes should make the statewide process more fair and equitable. Moreover, by tracking the services and amounts requested, APD will have a more reliable and accurate means of tracking and projecting service demand.

- **Waitlist Strategic Planning Workgroup**

Each of the past few years, only 500-600 people were enrolled onto the DD Waiver and only if they qualified for crisis. To address this problem, the agreement requires APD to invite certain stakeholders (Self-Advocates, Family Care Council, DD Council, Centers for Independent Living, ARC, Disability Rights Florida, and others) to their Waitlist workgroup. The agreement outlines that the Waitlist Workgroup will consider developing ways to meet the needs of those waiting when it comes to housing, transportation, choice and community activities, investing in training for self-advocates, establishing peer connections, new training for Waitlist support coordinators, and a means of tracking and projecting service demand and associated trends.

- **Employment**

Many people waiting for DD Waiver services need waiver services to access long-term employment supports to obtain and maintain a job. Disability Rights Florida will be added to APD's Employment workgroup. This workgroup is charged with designing a system to support the employment objectives of people with DD who are waiting for DD Waiver services.

During the coming months, if you or someone you know is waiting for services, it is possible to request that APD provide notification about the Waitlist category assigned. This notice must be requested. It is also possible to request reconsideration. Additionally, if you or someone you know needs assistance transitioning out of an ICF/DD, the APD Area/Regional office can be reached to provide a contact person and more information about the transition process.

Disability Rights Florida will continue to provide free and confidential services to individuals and be actively involved in

monitoring the performance of the settlement agreement. Special attention will be placed on the stakeholder-developed comprehensive plan. Florida needs such a plan to meet the needs of those waiting for services as well as to continue the process of diverting and deinstitutionalizing those waiting in ICF/DDs or nursing homes. Over 3000 of the 21,000 people on the DD Waiver Waitlist live in an institution or are expected to need care in the next 12 months because of caregiver or behavioral issues. Another 209 report their caregiver as being over the age of 70. Moreover, approximately 115 people with DD on the Waitlist currently reside in nursing homes. We consider these to be urgent problems requiring a comprehensive plan developed by Florida's stakeholders and we know you do too.

For more information about this settlement agreement, please contact Sylvia W. Smith, Director of Legislative and Public Affairs at Sylvias@disabilityrightsflorida.org.

If you would like to request information, referral, legal, or advocacy assistance regarding a DD Waiver issue or any other disability related issue, call 800-342-0823, ext. 4022 or submit your request confidentially online using this link to our [online intake request form](#).

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