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January 28, 2010

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Nicholas G. Garaufis
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

in the Chambers of
Judge
NICHOLAS G. GARAUFIS

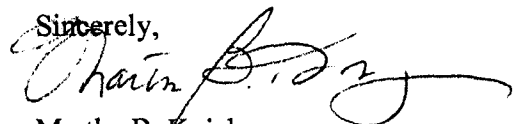
Re: DAI, Inc. v. Paterson 03-CV-3209 (NGG)

Judge Garaufis:

Attached is the *DAI, Inc. v. Paterson* Court Monitor's Six Month Report covering the reporting period of July 1, 2010 through December 31, 2010 pursuant to the Order appointing the Court Monitor on April 5, 2010 and consistent with the Court Monitor's assuming her duties following the 2nd Circuit's denial of a stay in this case during the Defendant's appeal to the 2nd Circuit Court of Appeals. The Order stipulates the Court Monitor report to the Court and to the parties regularly, and in no event less than every six months, concerning the status of Defendants' compliance with the Remedial Order, including progress, any barriers to compliance and potential areas of non compliance.

The Order further stipulates the Monitor shall circulate a draft report to the parties at least two weeks before filing a report to the court. The Monitor circulated a draft, received comments and amended the report to reflect comments by the parties. The Monitor circulated a second draft. Attached is the amended draft as final report.

Sincerely,



Martha B. Knisley
Court Monitor
DAI, Inc. v. Paterson

Encl: *DAI* Court Monitor July-December 2010 Report to the Court

Copies to:

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**Six Month Report to the Court
In the Matter of
DAI, Inc. v. Paterson
03-CV-3209 (NGG) (MDG)**

January 21, 2011

Report Summary

The DAI Court Monitor was appointed by Judge Nicholas G. Garaufis, United States District Judge in the United States District Court, Eastern District of New York on April 5, 2010. However implementation was suspended after the state's appeal of the District Court's Remedial Order and Judgment to the 2nd Circuit Court of Appeals. The Second Circuit Court of Appeals denied the Defendants' motion for a stay of the District Court Order pending a decision on the appeal on June 23, 2010. Therefore this report covers the six month period beginning July 1, 2010.

This summary covers the status of Defendants' compliance with the Remedial Order, including progress, any barriers to compliance and potential areas of noncompliance as required in Order Appointing the Monitor.

The Court Monitor established regularly scheduled Parties-Court Monitor meetings beginning in July 2010. The purpose of these day long meetings has been to discuss Defendant's proposed actions to meet requirements and settle potential differences among the Court Monitor and Parties regarding those proposed actions. Six day-long meetings have been held to date. These day-long meetings have been augmented by conference calls and other meetings and calls to answer questions, clarify actions and Remedial Order implementation steps. These calls have also been used to clarify the Court Monitor's budget, arrange Adult Home visits and for the Court Monitor to get oriented to New York's services and supported housing systems. The Court Monitor met with a number of relevant constituents including CIAD, The New York Long Term Care Ombudsman, and several providers before the RFP was issued, and visited four homes. The Court Monitor has also assembled a team to assist her in her duties.

During this first reporting period, the state issued the required Supported Housing RFP that meets the requirements set forth in the Remedial Order. In addition to progress being made by the state in awarding this RFP, Defendants began establishing a framework for assuring DAI Constituents will have "access" to critical services. However Defendants are still in the process of articulating these arrangements and the Court Monitor is assessing these arrangements for their consistency with the Remedial Orders. The preliminary discussion regarding those arrangements is described below.

The Court Monitor and Parties have also discussed at length several other issues that have direct bearing on the Defendants ability to meet the Remedial Order. These include but are not limited to: the availability of affordable housing in NYC, the potential of DAI Constituents being "discouraged" by Adult

Home operators and others from exploring alternatives to Adult Homes, and protocols for establishing eligibility.

Because the Defendants have just announced the awardees of the Supported Housing contracts but have not yet signed contracts with these awardees, this report only describes the Defendants compliance with planning and making arrangements for activities to commence shortly. The Court Monitor is also developing and will distribute shortly for comments a Five Month (February-June) Monitoring Plan to take effect when the Defendants select support housing providers. A more detailed discussion of the aforementioned items is listed below:

1. Availability of Supported Housing Units:

The Remedial Order requires the Defendants to “develop a sufficient number of supported housing beds to ensure compliance” with the Remedial Order.

The Defendants raised the question of the availability of “scattered site” rental units and the potential challenge this presents to implementation in New York City. This occurred during the RFP discussions among the parties and the Court Monitor when the Court Monitor asked what potential challenges the Defendants would face implementing the Court’s orders. These discussions also included a specific discussion on what constitutes ‘scattered site’.

Given the Defendants concerns, the Court Monitor requested the Defendants present their views. Attached is a report provided the Court Monitor (Attachment A) that summarizes the Defendants concerns regarding availability of supported housing units. The Court Monitor has completed a report that was presented to the Parties and will be forwarded to the Court following Parties review in the next 10 days that examines the New York City housing market and information presented by the Defendants.

The parties discussed the definition of scattered site housing including using the concept of specific percentages. The parties agreed not to set a specific percentage related to variation in building sizes, consumer choice and desirability of buildings and neighborhoods. For example, 25% of units in a four unit building is one unit while 25% in a 100 unit building is 25 units. It is also important units not be designated for ‘disabled’ persons, which ensures people with disabilities get a choice of units without being relegated to the ‘disabled’ units.

This concept is becoming more clearly defined as it becomes policy in other states where it is deemed an effective option for people with limited financial means and disabilities to gain access to affordable, attractive and safe buildings. Some states such as North Carolina, Pennsylvania, New Mexico and Louisiana have already established policy for a small percentage of units (5-10%) to be set aside in mixed use low-income tax credit financed multifamily complexes. Congress recently enacted a reform of the HUD 811 program that promotes the development of supported housing in “mixed use” housing developments which is referred to by the 811 bill authors as achieving the same outcome as ‘scattered site’. The bill references that no more than 25% of units in a mixed use complex be set aside for people

with disabilities. The authors of this legislation used this percentage because “mixed used” housing is often developed in buildings and developments that have fewer than 100 units.

2. The Issuance of an RFP to Procure 4,500 units of Supported Housing

The Remedial Order requires the Defendants contract with a sufficient number of supported housing providers “to develop and provide supported housing at a rate of 1,500 units per year until such time as there are sufficient supported housing beds for all of DAI’s Constituents who desire such housing”.

During this first reporting period, the state issued the required Supported Housing RFP that meets the requirements set forth in the Remedial Order. There were no insurmountable disputes and the RFP was issued in a timely manner. The Defendants took special measures to complete this process in a compressed timeframe. Since the court has had the opportunity to review this RFP, this report will not repeat the Defendants intentions to implement their program in accordance with these requirements and statements except to draw attention to Sections 4.3 Initial Awards and Allocations, 5.2 Objectives and Responsibilities, 5.3 Reporting Requirements, Section 5.4 Operating Funding, and Section 5.5 Proposal Narrative. The Court Monitor views these sections as representing the state’s commitment to this supported housing program thus any proposed material change to the requirements and statements in these sections would come to the Parties and possibly the court’s attention before any changes to these requirements are made.

The Court Monitor has also reviewed potential applicants’ questions of clarification regarding the RFP and the OMH responses to those questions. The Court Monitor also views these answers consistent with the RFP reviewed by the Court Monitor and the Plaintiffs.

Given that 2010-11 is a startup year for supported housing contracts to be awarded, the Defendants agreed to tentatively award all 4,500 supported housing units to the eight supported housing providers in this RFP. By awarding all 4,500 units pending acceptable provider performance in year one and two of their contract, the state and supported housing providers are in a better position to develop 4,500 units within three years. The Monitor will monitor the Defendants progress in meeting these targets as well as the Defendants oversight of these contracts.

The Defendants plan to contract with seven (7) providers in eight different groupings across four boroughs. Between two and six Adult Homes are included in each of these groupings. This enables OMH and supported housing providers to concentrate their In Reach efforts in one geographic area. DAI Constituents will be given the opportunity to indicate their preference to live in a neighborhood outside the supported housing provider’s grouping area. The RFPs were scored based on proposal rankings by grouping.

The Defendants have submitted a preliminary training plan for providers which the Court Monitor’s office is reviewing. The Court Monitor (and/or Court Monitor’s staff) will attend all the trainings and will monitor guidance given to the providers. Of specific interest early in this process is the development

and implementation of the processes to be used to assure supported housing providers are implementing a fair and sufficient process to determine whether DAI's Constituents qualify for supported housing, and adequate plans for In Reach and for engagement of DAI's Constituents who may be interested in supported housing already or may become interested once they learn more about it. To date there is not sufficient information available for the Court Monitor to assess adequacy of these processes.

The Defendants are also required to assure "when case managers, clinicians, Adult Home staff and others discuss housing options with DAI's Constituents they accurately inform them about supported housing, its benefits, the array of services and supports available to those in supported housing, and the Supplemental Security Income ("SSI"), rental subsidy, and other income they will receive while they are in supported housing". The Court Monitor will monitor how Defendants assure the entities and persons listed above will be provided the information described therein.

3. Notification to Home Operators of Their Obligations to Comply with Remedial Order

The Remedial Order requires Defendants to carefully monitor whether DAI's Constituents are being discouraged by Adult Home operators or others from exploring alternatives to Adult Homes and to take corrective action if it is determined Adult Home operators are discouraging DAI's Constituents. Defendants are to report such incidents to the Court, the Monitor and the parties.

On September 9, 2010, the State of New York Department of Health (DOH) issued a letter to Adult Home Administrators outlining the Remedial Orders in this case and the relevant state regulation that references residents cannot be impeded from seeing supported housing providers. The letter indicated the DOH is committed to complying with the Court's orders. Copies of the Remedial Order and Judgment (April 5, 2010) appointing the Court Monitor were referenced as being available on the Department's website (see Attachment B).

The DOH has repeatedly indicated the DOH's intention to comply with this requirement. The Court Monitor will begin monitoring the Defendants plans for determining if DAI's Constituents are being discouraged by Adult Home operators and others and specifically how this will be reported and corrected if residents are discouraged. This will be a monitoring priority for the Court Monitor in the coming six months. The Court Monitor will specifically request how DOH intends to interpret 'discouraged', how the Defendants will monitor this, what corrective actions they will take if necessary, how they will report the violation of the Remedial Order and their corrective action.

4. Defendants Plans for Services and Service Arrangements

The Remedial Order requires the Defendants to "ensure DAI's Constituents who move to supported housing have access to the array and intensity of services and supports they need to successfully transition to and live in supported housing" and specifically mentions Assertive Community Treatment (ACT) and case management services. The Remedial Order references the Defendants contracting

timely for additional services as needed to enable DAI's Constituents to successfully transition to and live in supported housing. The Remedial Order requires the Defendants to evaluate the need, if any, for expansion of such services on a quarterly basis. The Remedial Order also requires supported housing providers to identify the services each eligible individual needs to successfully transition to and live in supported housing and arrange for the individual to timely receive those services.

The Defendants have identified potential challenges to providing services as required in the Order given that the behavioral health and health care systems are extraordinarily complex. DAI's constituents' eligibility for the various benefits is based on their age, work history as it related to what benefits they are eligible to receive, income and level and type of disability. Several health plans have authorization requirements and some services are covered under one plan but not another plan. Defendants have expressed their commitment to addressing these challenges. Ultimately Defendants are required to assure access to services regardless of these constraints. However since health benefits are typically appropriated as benefits managed in these various plans, it is important to work within benefit guidelines as much as possible.

The supported housing RFP references the supported housing contractors identifying "the services each eligible individual needs to successfully transition and live in Supported Housing and, when necessary, arrange for the individual to timely receive these services by making referrals to a care coordination organization". Likewise the Defendants referenced the potential need for a care coordination organization in the first and subsequent meetings among the Parties and Court Monitor beginning in July 2010. At the request of the Court Monitor, the Defendants began discussing their plan for assuring services are available and plans for a Care Coordination Organization (CCO) at the October 22, 2010 Parties meeting. Discussions regarding services availability and the role of a potential CCO organization are ongoing. Including a CCO into the services "pathway" is a decision that potentially significantly impacts the Defendants ability to meet Remedial Orders. The significance of these discussions and decisions is similar to the Supported Housing provider RFP development discussions where the Court Monitor sought concurrence among the Parties and Court Monitor before the supported housing RFP was issued.

There are many issues to consider such as the potential overlap of responsibilities between the CCO and supported housing providers, the potential for multiple 'prior approvals' and disagreements among multiple entities, confusion regarding who manages plans of care, and authority over decisions among other questions. All of these issues could lead DAI's Constituents to be 'discouraged' about leaving their Adult Home even if they wanted to move and it could lead to systemic breakdowns that slow down implementation of the Remedial Order. On the other hand given health care reform and shifting health care policies, it is important for the Defendants to assure systemic interventions cut through various services requirements so supported housing providers, DAI's Constituents and Defendants are not left to fight each problem in an isolated and potentially ineffectual fashion.

It is the Court Monitor's goal to work with the Parties over the next month to reach agreement on the roles and responsibilities of a CCO, the DAI's Constituents rights and choices, the supported housing

providers roles and responsibilities and DOH and OMH responsibilities. There have been discussions regarding other services during this reporting period. It will also be important to assure any service capacity issues are identified and dealt with prior to implementation to assure needed services are available to DAI's Constituents.

5. Court Monitor's Proposed Plans for February-June 2011

As highlighted throughout this report the Court Monitor will begin a formal monitoring plan in February. The timing of this plan coincides with the Defendants awarding the supported housing RFP on January 10, 2011, signing contracts with providers as close to February 1, 2011 as possible and supported housing providers beginning their In Reach and other activities as soon as possible thereafter. The Court Monitor will provide the Parties a Monitoring Plan in early February for discussion. Based on feedback, this Plan will be provided to the Court. The Plan will cover monitoring activities to occur between February 1 and June 30, 2011 to coincide with implementation of supported housing contracts.

The Monitoring Plan will include activities to determine Defendants compliance with their obligation to:

- a. monitor Adult Home Operators or others to assure DAI's Constituents are not being 'discouraged' by Adult Home operators and others. This will include monitoring of the Defendants plans and implementation for taking corrective action where they find discouragement and reporting incidents to the Court, Monitor and the Parties. The Court Monitor will work with the parties to clearly define 'discouragement' prior to the Court Monitor requesting the Defendants monitoring plan regarding this issue;
- b. develop a sufficient number of supported housing beds to ensure compliance with Remedial Order;
- c. contract with supported housing providers to develop and provide supported housing, to determine if DAI's Constituents qualify for supported housing, secure necessary support services for residents and conduct in-reach, assessments of needs and service planning with DAI's Constituents;
- d. provide training to providers and ensure in-reach efforts are extended to persons at State Psychiatric Centers at risk of admission to Adult Homes;
- e. assure "case managers, clinicians, Adult Home staff, and others accurately and fully inform DAI's Constituents about supported housing, its benefits, the array of services and supports available to those in supported housing and the Supplemental Security Income ("SSI"), rental subsidy and other income they will receive while in supported housing" when discussing supported housing with them; and
- f. ensure "DAI's Constituents who move to supported housing have access to the array and intensity of services" (including ACT and case management) "and supports they need to successfully transition to and live in supported housing".

The Defendants are responsible to evaluate the need, if any, for expansion of services on a quarterly basis. This review will come near the end of this monitoring period. However the Court Monitor will request the Defendants to forward their plan to conduct such an evaluation.

The Court Monitor's staff have begun discussions with Defendants regarding their supported housing tracking system and will continue these discussions and add the Defendants obligations to track and evaluate other requirements outlined above to these discussions.

Respectfully Submitted by



Martha B. Knisley

DAI Court Monitor/January 21, 2011