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# Illinois Judge Approves Agreement Giving Choice in Treatment for Mental Illness

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# ILLINOIS JUDGE APPROVES AGREEMENT GIVING CHOICE IN TREATMENT FOR MENTAL ILLNESS

*by* TESSA JANIA

There are 25 Institutions for Mental Diseases (IMDs) in Illinois, serving approximately 4300 residents.<sup>1</sup> An IMD is an institution with more than 16 beds that primarily provides diagnosis, treatment and care for individuals with mental diseases.<sup>2</sup>

On September 29, 2010, the Northern District of Illinois approved a settlement agreement consisting of a consent decree in the class action case *Williams v. Quinn*.<sup>3</sup> The consent decree, which builds on recent recommendations from the Governor's Nursing Home Safety Task Force, lays out a framework that

gives a choice to individuals in Illinois with mental illness to transition from IMDs into a more integrated community setting.<sup>4</sup>

Recommendations from the Governor's Nursing Home Safety Task Force concluded that there is "remarkable consensus that many people currently admitted to nursing homes with serious mental illness would be better cared for in specially designed and monitored community residential settings."<sup>5</sup> *Williams v. Quinn* builds on these conclusions.<sup>6</sup>

In the case, four named plaintiffs alleged that the State of Illinois has a duty under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act to provide persons with mental illness who reside in privately owned IMDs the opportunity to be placed in an integrated community setting.<sup>7</sup>

The duty referred to is part of the underlying purpose of the ADA. Congress found that segregation and discrimination against individuals with disabilities is a serious social problem and sought to ensure that no person with a disability was denied the services or programs of a public entity.<sup>8</sup>

The Supreme Court has said that when community residential settings are appropriate, states are required to place persons with mental disabilities in these less restrictive settings rather than in an institution because undue institutionalization qualifies as discrimination.<sup>9</sup> These community settings include subsidized apartments and group homes that provide therapy, skills training, and case management.<sup>10</sup>

The consent decree approved in *Williams* lays out a foundation for what is required for Illinois residents with mental illness residing in IMDs.<sup>11</sup> Benjamin Wolf of the Illinois ACLU and lead counsel for the plaintiffs said that, as a result of the agreement, three of the four named plaintiffs have moved to a community setting and the final plaintiff is in the process of transitioning.<sup>12</sup>

The members of the class not named in the case will be afforded the opportunity to move away from IMDs over the next five years when the implementation plan is finalized.<sup>13</sup> A draft of the implementation plan, which puts the mandated terms of the consent decree into a more detailed procedural plan, is expected to be finalized by June 2011.<sup>14</sup>

The consent decree mandates procedures for evaluating IMD residents for possible placement in community settings and for providing those placements and services to residents who want them.<sup>15</sup> There is a timeline built into the decree in which all IMD residents are to “receive an independent, professionally appropriate and person-centered evaluation of his or her preferences, strengths and needs in order to determine the Community-Based Services required for him or her to live in PSH (Permanent Supportive Housing) or another appropriate Community-Based Setting” within two years of the finalization of the Implementation Plan.<sup>16</sup>

The evaluations are to be performed by “Qualified Professionals”, as is defined by state law, who will develop an individualized Service Plan for each resident.<sup>17</sup> Within five years after the finalization of the Implementation Plan, all those residents who qualify can opt for a community-based setting.

The main criticism of the Consent Decree is that it will force many, if not all, IMDs to close, leaving residents who opposed transferring to community-based settings without resources.<sup>18</sup> These fears, however, are unfounded according to the court because it is expressly written in the Decree that residents will not be left without appropriate housing in the event that an IMD closes.<sup>19</sup> Wolf addresses this issue by saying that it is important to remember that this Decree does not force anyone to move away from an IMD if they wish to stay.<sup>20</sup>

The agreement is also intended to relieve much of the State’s financial burden in providing housing for residents in IMDs.<sup>21</sup> Ed Mullen, managing attorney for community integration at Access Living, estimated that the state could save more than \$50 million over the next few years by transitioning residents with mental illness from IMDs into community-based settings.<sup>22</sup> The State could realize these savings because IMDs are more expensive to maintain than community-based services.<sup>23</sup> In addition, the IMDs are funded by the State only, but under Medicaid laws, part of their cost could be federally funded if the services are offered through community-based settings.<sup>24</sup>

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#### NOTES

1 *Williams v. Quinn*, No. 05 C 4673, 2010 WL 3894350, at 1 (N.D. Ill. Sept. 29, 2010).

2 42 C.F.R. 435.1010.

- 3 *Williams*, 2010 WL 3894350, at 1.
- 4 Press Release, Illinois ADA Project, Judge Approves Historic Agreement to Better Serve Individuals with Mental Illness in Illinois (Sept. 30, 2010), *available at* <http://www.ada-il.org/news/judge-approves-historic-agreement.php>.
- 5 *Id.*
- 6 *Id.*
- 7 *Williams*, 2010 WL 3894350, at 1.
- 8 Americans with Disabilities Act, 42 U.S.C. §§ 12101(a)(2), 12132 (2009).
- 9 *Olmstead v. L.C.*, 527 U.S. 581, 582 (1999).
- 10 Gary Marx and David Jackson, *Pact to Decrease Number of Mentally Ill in Nursing Homes*, CHI. TRIB., Sept. 30, 2010, *available at* <http://www.latimes.com/health/ct-met-nursing-home-settlement-20100930,0,3454106,print.story>.
- 11 Interview with Benjamin Wolf, Associate Legal Director, American Civil Liberties Union of Illinois, in Chi., Ill. (Mar. 21, 2011).
- 12 *Id.*
- 13 *Id.*
- 14 *Id.*
- 15 *Williams*, 2010 WL 3894350, at 3.
- 16 Proposed Consent Decree at ¶6(a), *Williams v. Quinn*, 2010 WL 3894350 (N.D. Ill. Sept. 29, 2010) (No. 05 C 4673).
- 17 *Williams*, 2010 WL 3894350, at 4.
- 18 *Id.* at 5.
- 19 *Id.*
- 20 Interview with Benjamin Wolf, *supra* note 11.
- 21 *Williams v. Quinn*, AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS, [http://il.aclu.org/site/PageServer?pagename=IL\\_Content\\_WilliamsFactSheet](http://il.aclu.org/site/PageServer?pagename=IL_Content_WilliamsFactSheet).
- 22 Rich Daly, *Mentally Ill in Illinois Win Right to Community Care*, PSYCHIATRIC NEWS, April 16, 2010, at 14, *available at* <http://pn.psychiatryonline.org/content/45/8/14.1.full>.
- 23 Interview with Benjamin Wolf, *supra* note 8.
- 24 *Id.*