

Judge David L.

BAZELON CENTER
for Mental Health Law

NEWS

California Settlement Takes First Step Toward Olmstead Compliance

New Assessment System to Foster Community Alternatives to San Francisco Nursing Home

San Francisco, CA (Jan. 5, 2004)—The recent [settlement of a major class action lawsuit](#) against the state of California and the city of San Francisco is seen by disability advocates to be an important step toward the community integration of people with disabilities, as required by the Supreme Court’s 1999 Olmstead decision that their unnecessary institutionalization constitutes illegal discrimination based on disability.

The two-year-old lawsuit, *Davis v. California Health and Human Services Agency*, challenged the state’s and city’s practice of serving people with disabilities, including many seniors, in the city’s Laguna Honda Hospital and Rehabilitation Center (LHH), a 1,200-bed nursing home, without considering community alternatives as mandated by the Americans with Disabilities Act.

The settlement was approved on December 18 by Judge Sandra B. Armstrong of the U.S. District Court, Northern District of California. It requires San Francisco to develop a system of assessment and hospital-discharge planning that allows people who are in Laguna Honda or eligible for admission there in the future the option of receiving supports and services in the community.

Plaintiff Jesse Fitchett spent more than six years in the nursing home but now lives in an apartment with part-time attendant care and other supports. “I was so happy to get out and have my freedom back and get better care,” Mr. Fitchett said. Now “I want to see other people get out and be able to live independently like I do.”

By March 29, 2004, San Francisco has agreed to start a state-of-the-art program to screen, assess and develop individual service and discharge plans to members of the Davis class and provide ongoing case management after their discharge. Program staff will receive training on community-living alternatives and Laguna Honda residents will have training and support resources.

“The settlement is a key step in helping to guarantee the rights of people at such facilities, but it’s not the last,” said Jennifer Mathis, co-counsel in the lawsuit and a staff attorney with the Bazelon Center, a national legal advocacy group for people with mental disabilities. “We’re committed to seeing the city create adequate community alternatives to Laguna Honda.”

The plaintiffs have reserved the right to go back to court if the new assessment process demonstrates that the need for community-based services is greater than San Francisco has the capacity to provide.

"By informing class members about community options and reassessing all LHH residents, San Francisco is taking a first step in recognizing the right to live free of institutionalization," said Arlene B. Mayerson, directing attorney of the Disability Rights Education and Defense Fund , a nonprofit law and policy center for disability civil rights that has co-counseled in the case.

The *Davis* case also settles longstanding deficiencies in the state mental health department's Pre-Admission Screening and Resident Review (PASRR) program for individuals with psychiatric disabilities. The new assessment process will identify personal goals for housing, work, relationships and health. State evaluators will consider whether the person's goals and needs can be met with community-based alternatives to nursing home care. According to co-counsel Michael Stortz of California's Protection and Advocacy, Inc., "The settlement helps put an end to an evaluation process that steers too many people into nursing homes."

"Polls show that people would never go into nursing homes if they had the services necessary to help them stay in their community," commented Herb Levine, executive director of the Independent Living Resource Center of San Francisco. "For the first time, San Francisco will gather the information to determine what people need to live successfully in the community."

In April 2003, the US Department of Justice (DOJ) concluded a five-year investigation of Laguna Honda for practices that discriminate on the basis of disability. In a letter finding the city in violation of the ADA for failing "to ensure that LHH residents are being served in the most integrated setting appropriate to their needs," Assistant Attorney General Ralph Boyd, Jr. concluded that residents are not adequately assessed for community-based services, either on admission or at discharge.

DOJ also questioned the cost-effectiveness of San Francisco's plan to spend \$401 million for a 1,200-bed replacement facility that will cost \$127,000 per bed each year to operate, noting that "community integrated options could be provided at a fraction of the cost of staying in LHH." The Department filed a friend of the court brief in support of the *Davis* plaintiffs.

The plaintiffs are represented by a coalition: Protection & Advocacy, Inc. (PAI) in Oakland, California; Disability Rights Education and Defense Fund, Inc.(DREDF) in Berkeley, California; the National Senior Citizens Law Center in Los Angeles, California; the Bazelon Center for Mental Health Law in Washington, D.C.; the Law Offices of Andrew Thomas Sinclair in Oakland, California; Howrey Simon Arnold & White, LLP, in Menlo Park, California; and the AARP Foundation Litigation, in Washington, DC.