

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

James and Lorie Jensen, as parents,
Guardians and next friends of Bradley J.
Jensen, *et al.*,

Civil No. 09-1775 (DWF/FLN)

Plaintiffs,

v.

Minnesota Department of Human Services,
an agency of the State of Minnesota, *et al.*,

Defendants.

**OLMSTEAD PLAN: RESOLUTION OF STATE'S
REQUESTS FOR MODIFICATIONS
Nos. 2014-26 (revised) and
2014-47 through 2014-50**

June 18, 2014

David Ferleger
Court Monitor
Archways Professional Building
413 Johnson Street
Jenkintown, PA 19046
Phone: (215) 887-0123
david@ferleger.com

Before the Court Monitor are several requests by the State of Minnesota for modification of the *Olmstead Plan*. The Plan was provisionally adopted by the Court by Order of January 14, 2014. The background of the Plan is well known to the Court and parties and is detailed in prior reports by the Court Monitor.

The Monitor has reviewed the State's modification requests and has resolved them as stated in Appendix A, attached hereto and incorporated by reference.¹

Two further comments are fitting in the current context:

- ❖ Straightforwardly said, compliance with the Olmstead Plan will be measured against measureable goals; absent such measureable goals, compliance cannot reasonably be achieved. The Monitor reiterates that the Olmstead Plan must include "measureable goals." As he emphasized in his report on the first set of modification requests, "When possible, such goals must be related to demonstrating benefits to the individuals intended to be served. Thus, for example, unqualified general goals such as "increase housing," or "establish a process to. . ." are insufficient."²
- ❖ With the Olmstead Plan now an enforceable order, modification requests would most appropriately be those which establish measureable goals, address unexpected and unavoidable obstacles, adjust action steps to more speedily or completely achieve desired outcomes, or more fully benefit the individuals intended to be served. Other grounds permitted by the Federal Rules of Civil Procedure will

¹ In establishing the process for modification of implementation plans, including the Olmstead Plan, the Court directed that the Court Monitor resolve all modification requests. A party dissatisfied with the Monitor's resolution may apply to the Court for review of the Monitor's action on a particular modification request. The standard of review is "good cause shown." Order of August 28, 2014 at 6, ¶6 ("Any requests for modification of due dates under the above provisions of this Order and Memorandum, or for modification of the Plans' deadlines or other elements, shall be in writing, for good cause shown, and shall, in the first instance, be addressed and resolved by the Court Monitor, subject to review by the Court on written application by any party.").

² *Olmstead Plan: Resolution of State's Requests for Modifications Nos. 2014-1 through 46* (May 14, 2014, Dkt. 303) at 2 (footnote omitted).

also be examined. Free-ranging editorial changes will not be considered “good cause.”

Respectfully submitted,

/s/David Ferleger
Court Monitor

Modification Request No. 2014-26 (revised)

Olmstead Plan Action Item Code:	SS4A and new action items related to SS4A Development of CFSS
Action Item Page Number:	57

Reason for requested modification:

The Olmstead Plan requires that the state replace the Personal Care Attendant (PCA) services with a more flexible personal support service, with an emphasis on self-direction, called Community First Services and Supports (CFSS). On January 1, 2014 the state submitted a state plan to CMS to replace the personal care assistance (PCA) programs CMS has not authorized this change. The proposed language modifies the due date to require state action on developing an implementation plan within 30 days of CMS approval of the request.

This clarification to Modification Request 2014-26 attempts to address confusion raised by multiple CMS approvals. Originally the State sought CMS permission to implement CFSS was under one authority, the 1115 authority. In order to implement CFSS as we envisioned it, we learned from CMS it would be necessary to apply under four separate authorities. While we have received approval for part of the CFSS program under the 1115 authority, DHS has submitted applications for the 1915(k) and the 1915(i) authorities, as well. We recently learned that we also have to use a 1915(b) authority, and that has not yet been submitted. None of those have been approved yet by CMS.

Current language for Action item including current date set for completion:

By April 1, 2014 replace the personal care assistance (PCA) programs with a more flexible personal support service, with an emphasis on self-direction, called Community First Services and Supports (CFSS).

Proposed language of Action Item including any timelines for completion:

Implement Community First Services and Supports:

- **Within thirty days of federal approval, the state will establish an implementation plan including specific actions and timelines.**

COURT MONITOR DECISION:	GRANTED
------------------------------------	----------------

The modification had been taken under advisement because the change proposed in the second paragraph of the earlier-proposed language was unclear and unrelated to the topic of the request; that second paragraph is eliminated in the revised request.

The change in the first paragraph would tie implementation of the Waiver to the date of federal approval is reasonable and approved. NOTE THAT, DEPENDING ON THE FEDERAL APPROVAL DATE, THIS MAY REQUIRE EXTENSION OF THE COURT'S JURISDICTION TO ENSURE MONITORING AND VERIFICATION OF THIS ELEMENT OF THE OLMSTEAD PLAN.

Modification Request No. 2014-47

Olmstead Plan Action Item Code:	HS 5A
Action Item Page Number:	45

Reason for requested modification:

The Olmstead Plan requires the state to establish a baseline and set annual goals to increase the number of counties and tribal nations providing Individualized Housing options (thereby increasing the number of persons in individualized housing options.) The proposed language sets the goals based on information gathered in the baseline.

Current language for Action item including current date set for completion:

Two major examples include Individualized Housing Options and Supportive Housing as an Evidenced-Based practice for persons with a serious mental illness. These and other best practices that will increase choice and integration will be reviewed on an ongoing basis.

Timeline:

- By March 31, 2014 establish a baseline and set annual goals to increase the number of counties and tribal nations providing Individualized Housing Options (thereby increasing the number of persons in Individualized Housing Options.

Proposed language of Action Item including any timelines for completion:

Two major examples include Individualized Housing Options and Supportive Housing as an Evidenced-Based practice for persons with a serious mental illness. These and other best practices that will increase choice and integration will be reviewed on an ongoing basis.

Timeline:

- By March 31, 2014 establish a baseline and set annual goals to increase the number of counties and tribal nations providing Individualized Housing Options (thereby increasing the number of persons in Individualized Housing Options.
- **By June 30, 2014, begin measuring the number of individuals receiving Individualized Housing Options and report bimonthly to the Subcabinet. Options.**

**COURT MONITOR
DECISION:**

DENIED AS PRESENTED

**** This denial assumes that there is no computer glitch in the bolded second bullet under Timeline, which concludes with the word “Options” on its own line, and (on the Monitor’s screen) an unusual 3 inch sequence of computer symbols. If some language was dropped by a computer glitch, then this request may be resubmitted.****

Critical to the Olmstead Plan is that there be measurable goals, as set forth in the Plan and in the Settlement Agreement language. There were to have been a baseline and annual goals set by March 31, 2014. The Plan’s announced process is that those baseline and goals then become incorporated into the Plan. That does not appear to have occurred. Thus, adding an action to “begin measuring” by June 30, 2014 appears to have little utility in the Plan unless the measurement is against established approved baseline and annual goals.

Modification Request No. 2014-48

Olmstead Plan Action Item Code:	
Action Item Page Number:	

Reason for requested modification:
<p>The current language utilized in the Plan is understood and accepted by people with developmental disabilities and their supporters. People with other disabilities, primarily people with a mental illness, do not see the value of this approach due to how person centered is currently described in the Plan.</p> <p>The proposed language is intended to broaden the person centered concept to include all people with disabilities. The drafting team will determine where to incorporate into the Plan.</p>

Current language of Action item including current date set for completion:
<p>This new language is meant to add context to the current references to the person centered plan references in the Plan. It is not intended to replace current language.</p>

Proposed language of Action Item including any timelines for completion:
<p>Person-Centered Planning in the MN Olmstead Plan</p> <p>Throughout the MN Olmstead Plan there are references to the requirement of person-centered planning. This section of the document is meant to help clarify the importance of person-centered plans and how they are defined the Minnesota Olmstead Plan.</p> <p>Context of Person-Centered Planning</p> <p>Historically, this term was used in the field of developmental disabilities to describe specific planning approaches designed to combat the tendency of professionals and systems to view people primarily through labels and disability rather than as unique and whole individuals with potential and gifts to share. “Person-centered” services have continued to evolve as counterpoints to “system-centered” or “professionally-driven” approaches. Over the years, the ADA and Supreme Court rulings have affirmed and emphasized “most integrated” and individualized approaches that are consistent with “person-centeredness” for all individuals with disabilities. As the social aspects of recovery and community success continue to emerge as critical to overall health and wellness, terms and approaches such as</p>

“patient-centered” or “person-centered recovery practices” are also emerging. As a result, today the term “person-centered plan” is used in many fields (e.g. health care, nursing care, aging, mental health, employment, education). Although the details of person-centered planning are expressed differently in these contexts, all of these approaches aid practitioners and communities in developing whole life, person-driven approaches to supporting people who experience barriers to full engagement in community living. Broadly, the term is used to describe a value-based orientation and methods of organizing discovery and planning for services, treatment, and support that are likely to yield more person-driven and balanced results rather than a limited list of specific strategies developed for people with developmental disabilities. Terms like “person-centered planning” and “person-driven planning” are distinct, but they share the fundamental principle that government and service providers begin by listening to individuals about what is important to them in creating or maintaining a personally-valued, community life. Planning of supports and services are not driven or limited by professional opinion or available service options but focused on the person’s preferences and whole life context. Effective support and services are identified to help people live, work, and participate in their preferred communities and on their own terms. Many state and federal policies now mandate person-centered delivery of long-term services and supports. In January 2014, the Centers for Medicare and Medicaid Services issued a rule that applies to all Home and Community Based Services; this rule provides a description of a person centered service plan. The full rule, 42.C.F.R.Pt.430, 431 et al, is available at <http://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf> (§441.725 contains the description of a person-centered service plan).

The MN Olmstead Plan sees person-centered planning as foundational to overcoming system biases and supporting people’s ability to engage fully in their communities. The following definition is meant to help providers, families, communities and individuals in understanding what qualifies as a person-centered plan in the MN Olmstead Plan. It is recognized that people may choose different levels of responsibility in the planning process, from taking complete charge of their own planning, service arrangements and budgets to relying on a designated representative or family member to assist them. The planning process may incorporate a variety of approaches, tools, and techniques based on the person's request or understanding to ensure that the options reviewed and offered are the most appropriate based on the person’s goals and preferences. A process used to complete person-centered planning is acceptable under the Olmstead Plan only if that process clearly demonstrates alignment with the definition, values and principles as described in the MN Olmstead Plan. Additional efforts will be taken to clarify and support MN communities and individuals in achieving this vision of planning and organizing services in MN.

Definition of Person-Centered Planning

Person-centered planning *is an organized process of discovery and action meant to improve a person's quality of life.* Person-centered plans must identify what is *important to* a person (e.g. rituals, routines, relationships, life choices, status and control in areas that are meaningful to the person and lead to satisfaction, opportunity, comfort, and fulfillment) and what is *important for* the person (e.g. healthy, safety, compliance with laws and general social norms). What is important for the person must be addressed in the context of his or her life, goals and recovery. This means that people have the right and opportunity to be respected; share ordinary places in their communities; experience valued roles; be free from prejudice and stigmatization; experience social, physical, emotional and spiritual well-being; develop or maintain skills and abilities; be employed and have occupational and financial stability; gain self-acceptance; develop effective coping strategies; develop and maintain relationships; make choices about their daily lives; and achieve their personal goals. It also means that these critical aspects cannot be ignored or put aside or ignored in a quest to support health and safety or responsible use of public resources.

Statement of Core Values and Principles of Person-Centered Planning

Person-centered planning embraces the following values and principles:

- People (with an authorized representative, if applicable) direct their own services and supports when desired.
- The quality of a person's life including preferences, strengths, skills, relationships, opportunity, and contribution is the focal point of the plan.
- The individual who is the focus of the plan (or that person's authorized representative) chooses the people who are involved in creating the context of the plan.
- Discovery of what is important to and for the person is not limited to what is currently available within the system or from professionals.
- People are provided sufficient information, support and experiences to make informed choices that are meaningful to them and to balance and take responsibility for risks associated with choices.
- Services, treatments, interventions and supports honor what important to people (e.g. their goals and aspirations for a life, overall quality of life) and promote dignity, respect, interdependence, mastery and competence.
- Plans include sufficient proactive support and organization to prevent unnecessary life disruption and/or loss especially during transition periods or crisis recovery.

- Community presence, participation, and connection are expected and supported through the use of natural relationships and community connections in all aspects of the plan to assist in ending isolation, disconnection and disenfranchisement of the individuals.
- The process is based on mutually respectful partnerships that empower the person who is the focus of the plan and are respectful of his/or her important relationships and goals.
- The context of a person's unique life circumstances including culture, ethnicity, language, religion, gender and sexual orientation and all aspects of the person's individuality are acknowledged when expressed and embraced and valued in the planning process.

**COURT MONITOR
DECISION:**

**GRANTED WITH DIRECTION TO
INCLUDE CLARIFICATION**

This addition to the Olmstead Plan is supported by good cause. A detailed exposition of "person centered planning" is not present in the existing plan. The modification is approved with the understanding that references to "person-driven" in the section titled "Context of Person Centered Planning" are not to be understood as limiting or altering the later sections on "definition" and the statement of "core values and principles."

A footnote will be dropped at the end of the title, "Person-Centered Planning in the MN Olmstead Plan," to state:

The references to "person-driven" in the section titled "Context of Person Centered Planning" are not to be understood as limiting or altering the later sections on "definition" and the statement of "core values and principles of person centered planning."

Modification Request No. 2014-49

Olmstead Plan Action Item Code:	EM3A
Action Item Page Number:	36

Reason for requested modification:

The Olmstead Plan requires person-centered planning training to include training related to employment strategies.

- The State is requesting to change the date for this goal to August 31, 2014.
- The original plan was to incorporate the employment curriculum into the Person-Centered Planning and Person-Centered Thinking training that we already provide and it was assumed that this would be quickly implemented. However, upon further evaluation, staff decided to take more time to develop and test the training, before launching on a large scale.
- We are currently piloting “Make Work Part of the Plan” training with staff from the Department’s Response Team (staff who do direct support via the phone with people who use disability services) and with the Disability Linkage Line staff.
- Over the next 90 days the experience from the pilots will be examined, the training will be re-worked, as necessary and the resulting employment module will be incorporated into the person-centered thinking and person-centered planning training that is currently being offered. (See Supports and Services Action 1, first bullet.)

Current language for Action item including current date set for completion:

- By March 1, 2014 enhanced Person Centered Planning training components will be offered to assure employment planning strategies and Employment First principles are understood and incorporated into the tools and planning process.

Proposed language of Action Item including any timelines for completion:

- By **August 31, 2014** enhanced Person Centered Planning training components will be offered to assure employment planning strategies and Employment First principles are understood and incorporated into the tools and planning process.

**COURT MONITOR
DECISION:**

GRANTED WITH CONDITION

The request is for a five month delay in incorporating employment strategies/principles into person centered planning training. This is a welcome and important intention, and the relatively modest delay is justified. Good cause is shown for the additional time.

The condition of this granted change is that the Person Centered Planning training, which will now incorporate employment elements, be a requirement for audiences including case managers and provider agency staff and officials.

Modification Request No. 2014-50

Olmstead Plan Action Item Code:	Stakeholder Feedback: November 2013 – June 2014 (New section)
Action Item Page Number:	23

Reason for requested modification:
The purpose of this language is to update public comments on the Olmstead Plan from November, 2013 to the present.

Current language for Action item including current date set for completion:
New language

Proposed language of Action Item including any timelines for completion:
<p>Stakeholder feedback: November 2013 – May 2014</p> <p>After adopting the Olmstead Plan in November 2013, the subcabinet continued to solicit input online. The subcabinet also held public listening sessions across the state (Bemidji, Duluth, Mankato, and St. Paul). The Olmstead Implementation Office reviewed the information from all stakeholders and sent comments to state agencies and writing teams for review. All public comments are posted on the Olmstead Plan website. Some of the main themes from stakeholders from November to May include:</p> <ul style="list-style-type: none"> • The Olmstead Plan and implementation should focus more on the mental health system and mental illness. • There should be more attention on the justice system and corrections. • People have differing opinions about employment options. Some are very concerned about how changes will affect organizations, families, and individuals. • There is not enough funding in the social service system; programs have been cut, and reimbursement is too low. • The state should avoid a “one size fits all” approach—individuals and communities are different. • Transportation is a significant issue—inside and outside the Twin Cities Metropolitan area. • People with disabilities should be more involved in policy development and service design—“nothing about us without us.” • People need more information about the Olmstead Plan and about the rights of individuals. • Too many educational settings continue to be segregated; restriction and seclusion practices must be reduced.

- There must be accountability in the Olmstead Plan and in all state services—monitor progress on goals and quality.

The Olmstead Implementation Office and agency teams will continue to review and consider information provided by stakeholders as the state implements the Olmstead Plan. In particular, stakeholder input will be reviewed as part of Overarching Strategic Action Two: Olmstead perspective.

**COURT MONITOR
DECISION:**

GRANTED WITH EDIT

Stakeholder input has been a positive element in the development and refinement of the Olmstead Plan. With the Plan now provisionally adopted by the Court, and a revision shortly to be submitted to the Court for acceptance, a reconceptualization of stakeholder input is appropriate.

Stakeholder input would now best focus on implementation of the Olmstead Plan; is the Plan working? How is implementation succeeding or failing to achieve its measureable goals? Where are the gaps? Where are notable successes? With the Plan an enforceable court order, modifications will be granted in accordance with a standard consistent with that status. It would not be appropriate for stakeholders to be given the impression that their input is a general invitation to seek modification of the Plan.

In light of the above, the first sentence of the final paragraph in the suggested language should read:

The Olmstead Implementation Office and agency teams will continue to review and consider information provided by stakeholders ~~as the state implements the~~ with regard to implementation of the Olmstead Plan adopted by the court as an enforceable order. Is the Plan working? How is implementation succeeding or failing to achieve its measureable goals? Where are the gaps? Where are notable successes?