

**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.

Court Monitor and Independent Consultant

**Report to the Court:
Approval of Revised Olmstead Plan**

August 6, 2014

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

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Appendix A

Person-Centered Planning in Minnesota's Olmstead Plan

Before the Court is the State's July 10, 2014 *Putting the Promise of Olmstead into Practice: Minnesota's 2013 Olmstead Plan* (Doc. No. [326-1]) ("Plan"). This revised Plan was filed pursuant to the Court's Order of January 22, 2014 (Doc. No. [265]), which provisionally approved an earlier submitted plan but required re-submission after certain insufficiencies and gaps identified by the Court Monitor were addressed.¹ See Court Monitor, *Report to the Court: Minnesota's 2013 Olmstead Plan* (Doc. No. [263]).

The Court Monitor respectfully recommends final approval of this revised Olmstead Plan.² Some concerns remain but these may be addressed during the implementation process and through action on the formal recommendations in this report.

The Monitor also suggests that the Court require the parties to respond to the Court Monitor's recommendations first to him and that the Monitor subsequently report to the Court on the status of the recommendations.³

The Plaintiff Class has not objected to adoption of the Plan. In its recent filing, the Plaintiff Class states:

We are hopeful that DHS and the State of Minnesota will take all necessary actions to timely, effectively, and appropriately develop and implement a meaningful Olmstead Plan that supports, protects and serves people with disabilities and their

¹ The Court directed that the first-submitted Olmstead Plan (Doc. No. [247-1]) be revised "based upon the Report by the Court Monitor" and review of other comments. Order of January 22, 2014 at 3 (Doc. No. [265]).

² This report assumes the reader's familiarity with the history of the Olmstead Plan. Settlement Agreement at 18 (Doc. [136-1]) (The State and the Department of Human Services shall "develop and implement a comprehensive *Olmstead* Plan that uses measurable goals"). The Governor appointed a sub-cabinet chaired by the Lieutenant Governor to prepare and oversee plan development, at least initially. The Order of August 28, 2013 requires filing of the Plan along with a chronological list of tasks and an "Implementation Plan." The State's original Olmstead Plan included a timetable for implementation 2013-2016. Plan at App. F, 117 ff.

³ This process differs from that on prior reports, perhaps for good reason. Discussion of the recommendations will require some time; there is no need for that to delay approval of the Plan. Early action on approval of the Plan will benefit the OIO and the State's implementation of the Plan.

families consistent with all applicable laws and the promises they have made under the Settlement Agreement.⁴

I. Resources for the Olmstead Implementation Office.

It is imperative that the OIO have sufficient resources. The OIO is tasked with several functions:

- a. oversight of all state's cabinet-level departments' state-wide activities under the Plan,
- b. ensuring accountability for performance of those activities in compliance with the Plan,
- c. vetting and shepherding necessary modification requests,
- d. verification of status information transmitted from the departments,
- e. management of reporting to the Court,
- f. interaction with beneficiaries of the Plan, stakeholders, legislators and the public, and
- g. liaison with the Court Monitor.

Fulfillment of these functions require a fully staffed office with both professionals and support staff, as well as funding for consultants, outside contracts, and out of pocket costs, including accommodations for people with disabilities (for example, interpreters and other aids for the deaf, and aids for the blind). In-house legal counsel, or some other accessible source of legal counsel, would be appropriate as well. There should be no short-cuts in staffing the office. A number of activities, including surveys and dispute resolution, for example, may also need separate budget lines.

During the most recent legislative session, and after the Court's Order of May 19, 2014 (Doc. No. [308]) (noting the OIO budget question),⁵ the Legislature restored nearly entirely a conference committee cut to the OIO budget as presented in the Governor's Supplemental Budget Request. The Court ordered the Monitor to follow up on the budget issues from time to time, stating, "It is premature for the Court to consider any consequences or responses to future inadequacies in either OIO's performance or resources." *Id.*

⁴ Plaintiff Class July 24, 2014 Letter to the Court (Doc. No. [332]).

⁵ The Court's action followed upon the Court Monitor's *Observations Regarding the State of Minnesota's April 22, 2014 Olmstead Plan Update* (Doc. No. [306]).

II. Person-Centered Planning

The Plan now includes a new section, *Person-Centered Planning in Minnesota's Olmstead Plan*,⁶ attached here as Appendix A, which defines person-centered planning and its background, and states core values and principles.

These provisions, which apply to all agencies and actions, affected by the Olmstead Plan, establishes the underpinning for implementation of the Plan and for its monitoring and judicial enforcement.

The sub-cabinet, OIO, and many others deserve credit for crafting this material. The Monitor is not aware of any state, which has adopted such core values and principles applicable statewide in all domains.

III. Insufficiencies and Gaps.

A. Topical Areas

The Plan responds well to the Monitor's suggestions to include certain topical areas, which had not been included in the original plan.

B. Duration and Judicial Oversight

Unfortunately, the Plan does not address the important question (raised by the Monitor previously) of the duration of active judicial oversight:

The Plan does not provide any suggestions for the State's demonstration of sufficient substantial compliance to enable the Court to relinquish active jurisdiction. Indeed, the Plan includes actions through, for example, 2020; one would hope that the Court's active involvement would have ended before such late dates.⁷

⁶ *Putting the Promise of Olmstead into Practice: Minnesota's 2013 Olmstead Plan* at 27-29 (Doc. No. [326-1]).

⁷ Court Monitor, *Report to the Court: Minnesota's 2013 Olmstead Plan* at 7-8 (Doc. No. [263]).

The Plan is long-term. The Plan is a permanent injunction. However, active judicial oversight should end upon demonstration of substantial compliance.

Although the State was required to provide a full chronological timetable, the Plan's Appendix F includes actions only out to the end of 2016. In fact, the Plan includes deadlines out to 2023:

Year	Number of Required Actions with Deadlines
2017	4
2018	3
2019	1
2020	0
2021	0
2022	0
2023	1

These specifically dated actions are apart from continuing annual updates on actions, and from actions, which will be included in plans yet to be developed.

The Monitor recommends:

A. *The Court's jurisdiction will extended from the current date of December 4, 2014 to December 4, 2016 (congruent with the State's Appendix F), subject to further extension at that time, as may be appropriate.*

B. *The Court Monitor, with input from the State, develops approaches to assessing substantial compliance with the Olmstead Plan.*

IV. Compliance

Given that the OIO is in essence beginning its work, and that the departments are absorbing the demands of operating under a court-adopted Plan, it is no surprise that there have been lapses in compliance with the provisionally-approved Plan.⁸ The Court Monitor has tested progress reports

⁸ *E.g., Olmstead Sub-Cabinet Report to the Court: Status Update March 1, 2014 – April 30, 2014, Report Number 2* (Doc. No. [314]) (two action items for which deadlines were not met).

by selecting items on which verification is then requested from OIO; most selected items have been verified.

One area of serious deficiency is that both treatment in the facility and transition planning for discharges from Anoka Metro Regional Treatment Center and Minnesota Security Hospital significantly fail to adhere to the Olmstead-required person-centered planning standards.⁹ See Section II above.

V. Structure and Specificity

The Plan continues to require refinement with regard to its structure and specificity:

- The Settlement Agreement and the Order of April 25, 2013 (Doc. No. [212]) require that the Olmstead Plan “uses *measurable goals*” to achieve its purposes. (emphasis added). In many of its action steps, the Plan falls short of stating measurable goals.
- The Plan often references future development of baselines upon which future action steps will build.
- The Plan often references future development of recommendations, policies and processes.
- Commitments in the Plan are often phrased weakly, in a manner, which would make it difficult for the State or Court to evaluate compliance.

As baselines, forward-looking recommendations, policies, plans and processes are developed, alongside the existing action items, OIO will need to develop both internal structures to manage their oversight overall, and also new formats/methods for presenting and reporting the information.

⁹ The Monitor reviewed several randomly selected discharge records/plans.

The Monitor recommends:

A. The OIO's periodic compliance updates should include a section on "Addressing the Measureable Goal Requirement" which will examine those action steps, which insufficiently include measureable goals, and how that requirement will be achieved for each of those action steps.

B. The OIO should engage professional planning and organizational experts (within or outside the State) to develop both internal structures to manage their oversight overall, and also new formats/methods for presenting and reporting the information.

VI. Conclusion

The Court Monitor respectfully recommends that the Court APPROVE the Olmstead Plan. The concerns expressed in this report may be addressed during the implementation process.

The Monitor suggests that the Court require the parties to respond to the Court Monitor's recommendations first to him and that the Monitor subsequently report to the Court on the status of the recommendations.

Dated: August 6, 2014

s/ David Ferleger

APPENDIX

A

Person-Centered Planning in Minnesota's Olmstead Plan²⁶

Throughout Minnesota's 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 in the Minnesota Olmstead Plan.

Context of Person-Centered Planning

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 deficits 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 United States 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 "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.

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 Minnesota 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

²⁶ 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."

person-centered plan in the 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 Olmstead Plan. Additional efforts will be taken to clarify and support Minnesota communities and individuals in achieving this vision of planning and organizing services in Minnesota.

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. health, 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 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 is 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.

Appendix D contains additional context and information related to person-centered planning from the Centers for Medicare and Medicaid Services (CMS) and the Substance Abuse and Mental Health Services Administration (SAMHSA).