

**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.

**OBSERVATIONS REGARDING THE STATE OF MINNESOTA'S APRIL 22, 2014
OLMSTEAD PLAN UPDATE (DKT. 293).**

May 14, 2014

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

This report provides the Court with several observations in response to the *State of Minnesota's April 22, 2014 Olmstead Plan Update*, filed with the Court (Dkt. 293) ("Update").¹

1. It is disheartening that, just as it begins its work in earnest, the Olmstead Implementation Office is facing a 50% cut to the budget submitted to the Legislature by the Governor for the next biennium. If this occurs, it is difficult to see how the OIO will be able to meet its obligations under the Court's orders.
 - The OIO prepared a detailed Resource Request for its operations including six professional staff plus an executive assistant, for a total budget estimate of about \$2.1 million annually. The Governor's Supplemental Budget Request for the OIO included \$0.5 million for 2015, and \$2.0 million for each of FY 2016 and 2017. However, ***as of the writing of this report, May 14, 2014, the House-Senate Conference Committee has before it a 50% cut for the OIO, that is, \$1,000,000 for each of FY 2016 and 2017.***
2. The OIO submitted a well-organized and clearly written Update. The staff took the obligation seriously and, several times in the process, checked with the Court Monitor regarding questions on format and content.
3. The Court ordered that the Update Report include "the results of any and all quality of life assessments." (Order of January 22, 2014, Dkt. 265). To its credit, the OIO states that there are no tools in use in Minnesota "for measuring quality of life" of individuals with disabilities. While this is disappointing, OIO's frankness on this point is important to note.
4. The same court order required information on "progress toward moving individuals from segregated to integrated settings" and "the number of people who have moved from waiting lists." OIO has provided some information.
 - The waiting list data is not fully responsive. It reports the number of people who "starting waiver services" (that would include people entering from the community as well as from segregated settings,

¹ For several reasons, the Court Monitor decided that a detailed analysis was not appropriate at this time: a) this is the first such update, b) under the Court's provisional approval order (Dkt. 265), a revised Olmstead Plan is due to be filed this summer, c) the State requested 46 modifications of the Plan, and the Monitor very recently released his disposition of those requests, and d) since the Update was filed, an Executive Director has taken the reins at the Olmstead Implementation Office.

whether or not on a waiting list). It does not report the number moving from waiting lists.

- For November 1, 2013 through February 28, 2014, Anoka Metro Regional Treatment Center (AMRTC) discharged 51 individuals, and Minnesota Security Hospital (MSH) discharged 51.²
 - 52% of AMRTC clients “do not meet hospital level of care and await discharge.”
 - For MSH, 41 clients are in the discharge process. 76% have been in the discharge process for less than 6 months; 25% for more than 6 months.
5. In a verification inquiry, the State demonstrated that it fulfilled 8 of 10 time-bound obligations under the Plan.³ The “verification glass” is more than half full. However, future updates should clearly show what actions are, and are not, on time. The OIO should track that information.
 6. OIO reports substantial progress in meeting deadlines on actions, which were or are due. It is too soon in the Olmstead Plan implementation for a comprehensive review.
 7. The Court Monitor wishes to highlight a report to the Legislature by the Department of Education, titled *A Report on Districts’ Progress in Reducing the Use of Restrictive Procedures in Minnesota Schools* (FY 2014). The emphasis in the report is on prone restraint, a technique known to be dangerous (deaths and other injuries in prone restraint have occurred nationally) and not therapeutic. The report concludes with a statewide plan. The Monitor will not at this time seek to analyze the report or the plan but notes that the report provides extensive data and analysis related to this important topic.

The Court Monitor will continue to follow and review the work of the Olmstead Implementation Office.

² When these data are reported in the future, OIO is requested to include census, admissions and discharge numbers, with quarterly, annual or other longitudinal information to permit comparisons over time.

³ The Court Monitor on May 5, 2014 requested verification regarding 10 items from the OIO task list, which, per the schedule, were to have been accomplished by that date. The items were selected blindly, with no information on the status of the items. 8 of the 10 were verified. Two had not been accomplished. The Monitor was informed that the “delay is due to staff workload, in particular, data staff for the project is not yet on board.”

Respectfully submitted,

/s/David Ferleger
Court Monitor

May 14, 2014