

# **Staley v Kitzhaber**

## **Executive Summary**

### **Background**

The *Staley et al. v. Kitzhaber et al.* lawsuit was filed January 14, 2000. The lawsuit was the result of years of frustration in waiting for appropriate, adequate services and supports to individuals with developmental disabilities, and their families.

The lawsuit alleges that the State of Oregon failed to provide services in the most integrated possible setting to adults with mental retardation and/or developmental disabilities eligible for placement in an ICF/MR (intermediate care facility for the mentally retarded) and that individuals with developmental disabilities are entitled to receive Medicaid-Funded services with reasonable promptness. The Oregon Advocacy Center, Legal Aid Services of Oregon and the law firm of Garvey Schubert & Barer represent the plaintiffs, including five individually named persons with disabilities and The Arc of Oregon.

At the State's request, the attorneys entered into negotiations to settle this lawsuit, ultimately resulting in an agreement. Senate Bill 919, passed in 1999, directed the Office of Developmental Disabilities to outline a Plan for Universal Access to Services and Supports. The Plan for Universal Access to Services and Supports has served, in part, as a basis for developing services and supports outlined in the Agreement.

### **Agreement Summary**

This summary follows the outline of the actual Agreement. The lawsuit is being converted to a Class Action for settlement purposes and is subject to the Federal Court's approval. The State of Oregon agrees to provide specific supports and services to all adults who qualify for services through the Office of Developmental Disability Services, phased-in throughout the life of the Agreement. The Agreement begins upon signing and terminates on June 30, 2007 unless extended in writing, or unless terminated early for specific reasons outlined in the Agreement.

This agreement is intended to provide relief to not only the plaintiffs but also to all other similarly situated individuals with developmental disabilities eligible to receive services under the federal Medicaid program. The lawsuit will become a class action and after court determination, the Agreement will be binding for all members of the class. Individually named plaintiffs receive services immediately, as determined through a Person Centered Planning process.

This Agreement is intended to eliminate or substantially reduce waiting lists and improve provision of services by

1. Increasing the availability of Comprehensive services on a non-crisis basis
2. Providing "Universal Access" to supports for all eligible individuals, and
3. Defining an appropriate planning process and implementation procedures for the services to be provided.

## **Definitions**

“*Individual Support Plan*” (ISP) means a plan for the person, based upon “*Person Centered Planning*”, a process that focuses service planning, funding and delivery on the strengths, capabilities, needs and preferences of the person. The *ISP Team* is the group of people who develop the plan.

“*Comprehensive Services*” are intensive support services costing more than \$20,000 per year, including 24 hour residential care in group homes, supported living, foster care or intensive in-home supports. Intensive supports also include in-home shift care, respite care, employment and other day program supports, community inclusion activities, environmental adaptations, or other services needed to support a person with complex needs.

“*Support Services*” means in-home or personal supports costing up to \$20,000 per year and include services like personal care, job coaching, or employment supports, in-home staffing, respite care, community inclusion activities, minor environmental adaptations, or other supports that help the person live and work in the community.

“*Crisis Services*” are immediate services needed to avoid or stop a critical situation where a person might be endangered. “*Non-Crisis Services*” means either support or comprehensive services needed by a person who does not face an immediate crisis.

## **Comprehensive Services on a Non-Crisis Basis**

Non-crisis access to Comprehensive Services will be available through an Individual Support Planning process. The intention of the Agreement is that access will not compromise the dignity of the person and their family and will supplement or replace natural supports only as necessary. The parties agreed that the State must be able to use limited resources as efficiently as possible, giving the State the ability to propose services that do not have “around-the-clock” staffing.

### *Availability and Eligibility*

- Non-crisis Comprehensive Services will be available to 50 additional individuals and their families each year, for a total of 300 persons during the lifetime of the Agreement. This would not prohibit individuals and families from accessing Comprehensive services through the current Crisis/Diversion process, as appropriate to their situation.
- Individuals shall be eligible to enroll for non-crisis access to Comprehensive Services if the ISP team determines that current supports will not meet the person’s needs and the person and his/her family or representative has requested such services.
- The State is to develop a reasonable priority and allocation system for determining who receives non-crisis access. The priorities are to be determined within 12 months of the effective date of the agreement.

### *Procedures*

- The ISP team documents eligibility for access to non-crisis Comprehensive Services based on set criteria and plans the transition to services, if the person meets the priorities outlined in the administrative rules.
- All non-crisis services shall be requested, planned for and implemented within a 24-month period.

### **Universal Access to Support Services**

Appropriate Support Services will be available to all adults eligible for services, including those enrolled and waiting for non-crisis access to Comprehensive Services. All supports will be driven by the Individual Support Planning process and available in all areas of the State. The parties agree that state and local planning will include regional service models, be cost-effective and efficient, and include consumer involvement (see *Public Participation*).

### *Implementation Procedures*

- Within 12 months of the effective date of this Agreement the Department of Human Services shall adopt administrative rules that:
  - Confirm rights to services
  - Specify the process for ensuring service delivery
  - Provide for adequate data collection, monitoring and quality assurance
- The rules shall address the Individual Plan process, rate setting and adjustment and appeals to decisions made by the State.
- The rules shall not require the State to spend more than \$20,000 per year on Support Services, which will be subject to annual adjustments for inflation.
- Support Services shall be phased in as provided in the rules, with all eligible individuals receiving supports outlined in their ISP by June 2005.
- As of July 2005, eligible individuals shall receive supports as outlined in their ISP within 90 days of eligibility.

### **Fair Hearing Requirements**

If a person is found ineligible for services, denied specific requests or believes the State has taken other actions in error, a grievance procedure shall be followed (or waived by the person), prior to filing for an appeal of the ODDS Administrator's decision. An appeal would provide for a "contested case hearing", which shall comply with the appropriate rules and statutes.

### **Public Participation**

The State shall ensure meaningful involvement of consumers, families and providers at the state and local level in all aspects of rule making, policy development, service design, implementation and evaluation of services pursuant to the agreement.

## **General Provisions**

### *Funding*

- The state will request \$500,000 from the Emergency Board of the Legislature within 60 days for initial expenses in changing the system infrastructure, preparing for a smooth transition to Universal Access.
- The Governor shall request funds in the 2001-03 budget to comply with this agreement. Future Governors will be bound by this Agreement to request adequate funds.

### *Reporting*

- The State will make biennial reports with annual data updates regarding the number of people eligible for both Support Services and non-crisis access to Comprehensive Services. The biennial report will describe who receives services and who waits, how long they wait, and the phase-in plans for providing supports needed.
- Other interim reports may be requested by the plaintiffs regarding the implementation of services provided for in this Agreement.

### *Enforcement*

- The intent of the Agreement is that it is to be a binding contract. All parties agree to attempt to resolve any material breach of this Agreement through negotiations. The court retains the power to enforce compliance with this Agreement.

### *Material Breach Defined*

- Failure to comply with the specific terms of the Agreement. Failure of the state legislature to fund the agreement is still considered a material breach.
- Changing eligibility standards, unless required by federal law.
- Changing crisis/diversion eligibility criteria, unless required by federal law.
- Eliminating services currently available to eligible children or adults, including crisis/diversion services, in order to fund the services to adults in this Agreement.
- Failing to request sufficient funds from the legislature to provide the services outlined in this Agreement.
- Failing to use best efforts to enact statutory revisions required to implement this Agreement.

## **Terms of Agreement**

- This Agreement ends on June 30, 2007 unless terminated as outlined below, or extended in writing. The parties shall meet in 2005 and again immediately before termination to discuss how well the terms have been met and the desire of extending or modifying the agreement.
- Immediate termination shall occur if a court determines that the State is in material breach and enforcing compliance with the Agreement would effectively violate the limitations on future debt set forth in the Oregon Constitution.
- The Agreement is subject to modification if ballot measures 91 and 8 are passed by voters in November 2000 and go into effect. If that should happen, the parties agree to attempt to negotiate a modified Agreement to reflect the State's diminished ability to comply with the terms. The parties agree that if in future years a ballot initiative goes into

effect with similar or greater negative fiscal impacts, they will attempt to negotiate a modified Agreement or if in any case negotiations are unsuccessful, termination through the court may be pursued.

### **Budget Expectations**

The Budget proposed for fully implementing this Agreement are best estimates of expected expenses and Medicaid match. The total Budget is estimated at \$349.8 million over six years. The federal Medicaid match is about 59% of the total, or about \$206.4 million, leaving \$143.4 million for Oregon to pay. It is estimated that the figures break out something like this:

- New non-crisis Comprehensive Services: \$36.9 million.
- Start up for Comprehensive: \$6.7, with about \$3.6 for rent subsidies.
- Support Services (with a cap of \$20,000 per individual each year), provided to nearly 3400 adults: \$138 million and to 1300 children: \$39.3 million.
- Service Brokerage start-up is expected to cost about \$2.4 million.
- Oregon Health Plan expansion: \$5.4 million.
- Service Coordination or Case Management, typically provided by county government, may be provided by non-governmental entities for Support service. Service ratios shall be reduced from 1:95 (one coordinator or case manager per 95 service recipients) to 1:45, at a cost of \$84.9 million.
- Regional and Local administration for service coordination: \$23.1 million and Central administration: \$9.5 million.
- Inflation has not been calculated for the years 2003 through 2007, which will undoubtedly increase the over-all costs for this program.