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**Rosie D. News Stories October 2012**

**Court Considers Whether to Extend Monitoring and Reporting In Order to Assess Outcomes of the Remedial Services**

U.S. District Court Judge Michael A. Ponsor indicated at a status conference on October 10, 2012 that he will not relinquish his active supervision over the *Rosie D*. case until the Commonwealth demonstrates that youth with serious emotional disturbance (SED) are receiving necessary services and making progress.

“I would be irresponsible to step away from the process …and go into a passive role without having some notion of how the outcomes were going,” Judge Ponsor said at the status conference.

Under the *Rosie D*. remedial order, issued five years ago, the Court Monitor’s role and the defendants reporting responsibilities were scheduled to end on July 17, 2012.  The defendants agreed to a short extension until December 31, 2012.  At the status conference in October, Judge Ponsor indicated that while considerable progress has been made, he was concerned that the Commonwealth has not collected sufficient data nor reported on the effectiveness of the remedial services.

Judge Ponsor proposed that the Judgment’s monitoring and reporting requirements be extended to June 30, 2013.  He gave the parties until October 19th to accept or reject his proposal.

The Judge acknowledged the defendants’ efforts at overhauling the children’s mental health system, but asked: “Is this system that’s been created through so much hard work really reaching the population that it’s targeted to?  Are the class members, the children, receiving the services and are they having an impact?”  Noting that the Commonwealth has presented no data demonstrating that children with SED have improved as a result of the *Rosie D.* remedial services, Judge Ponsor stated that: “I do have a commitment to this group of children and I don’t feel comfortable letting go in light of the limited information that I have so far about clinical outcomes.”

Plaintiffs’ attorney, Steven Schwartz, told the Court that due to the state’s failure to collect data, it is not known if the children with SED – whose numbers, based on Medicaid estimates, approach 35,000 – are receiving the home-based services they need in the requisite frequency, intensity, and duration to ameliorate their condition, as mandated under the Medicaid Act.  He pointed out it was not simply whether children received “some services”, but rather whether the mandated services were sufficient and were having some positive effect.  As he stated to the Court, we need to know “whether children’s behavior is changing, whether children are improving, whether there’s been [some improvement] in functioning.”

The defendants, represented by Asst. Atty. Gen. Daniel Hammond, maintained the Commonwealth has complied with the Medicaid Act by developing most of the required remedial services and making them available.  Citing a pending pilot program to assess children who have received the services, he said that the state has data and will develop new methods for collecting additional data sufficient to demonstrate that it has fulfilled its obligations.  Although he acknowledged the Court Monitor’s role to advise and guide the Court about the sufficiency of the defendants’ data collection efforts, he concluded that: “We don’t believe a monitor needs to be in place when those various waves of data come in the future.”

In its [**Response**](http://www.rosied.org/Resources/Documents/Court%20Proposal%20on%20Monitoring.defs%27%20response.pdf) filed on October 19, 2012, the Commonwealth declined to assent to Judge Michael Ponsor’s proposal to extend the Court Monitor’s activities for at least six months.  The defendants maintain they have fully complied with the *Rosie D.* remedial order by developing the services, making them available, and creating a methodology to assess their progress.  They argue that the Court should not and cannot extend the Court Monitor’s role unless it makes judicial findings that they are not in compliance with all provisions of the Judgment, and then identifies the specific provisions where it believes they are non-compliant.  The Commonwealth contends that any extension should specifically limit the Monitor’s role and the defendants’ obligations.

The plaintiffs’ [**Response**](http://www.rosied.org/Resources/Documents/Court%20proposal%20to%20extend%20monitoring.pls%27%20supp.%20response.doc)**,** on the other hand, assented to the proposal and agreed to narrow both the Monitor’s activities and the defendants’ reporting requirements to specific disengagement items.  The plaintiffs’ proposed criteria are outcomes on access to services, utilization of services, and effectiveness of services, as well as basic quality standards for the home-based services.  The plaintiffs suggested that the Court Monitor work with the defendants on developing these outcome measures, program performance standards, and related data collection methods.

The defendants believe these efforts and outcomes are not required by the Judgment nor necessary for their children’s mental health system.  They maintain they will soon have sufficient data to show children with SED have access to remedial services and are using theses services, but acknowledge that this data is not yet available and will not be for some time.  They hope to have some preliminary analysis this winter of data from select portions of the Child and Adolescent Needs and Strengths (CANS) tool used to evaluate youth; a Family Feedback Survey now in its “pilot phase,” with results from the pilot expected sometime later in November; and a still-unscheduled System of Care Performance Review, for which they provide no start-date, except “fiscal year 2013.”

The only current, reliable information about the quality and functioning of the new remedial services are the findings from the Court Monitor’s statewide Community Service Reviews which concluded that 71% of youth in fiscal year 2011 made favorable progress – a statistic that dropped to 63% in fiscal year 2012.  Despite that decline, the defendants contend “the CSR reports show a strong correlation between remedy services and improved clinical outcomes.”

As a result of the opposing positions, the parties are heading back to Court to debate the Commonwealth’s compliance with the *Rosie D.* Judgment, as well as Judge Ponsor’s proposal to extend the Court Monitor’s role and the defendants’ reporting responsibilities.  The hearing, originally scheduled for November 9, 2012, is now rescheduled for December 17, 2012.