

Rolland v. Patrick

United States District Court for the District of Massachusetts

August 2, 2007, Decided

Civil Action No. 98-30208-KPN

Reporter: 2007 U.S. Dist. LEXIS 99028

LORETTA ROLLAND, et al., Plaintiffs v. DEVAL PATRICK, et al., Defendants

Prior History: Rolland v. Patrick, 2007 U.S. Dist. LEXIS 102311 (D. Mass., Aug. 2, 2007)

Counsel: [*1] For Loretta Rolland, Terry Newton, by her parents and legal guardians, Janes and Forrest E. Newton, Bruce Ames, by his legal guardian, Linda Bock, Frederick Cooper, by his mother and legal guardian, Minnie Humphries, Margaret Pinette, Leslie Francis, by his next friend, Rob Fields, Timothy Raymond, by his mother and legal guardian, Mariann Herk. On behalf of themselves and all others similarly situated, ARC Massachusetts, Stavros Center for Independent Living, Plaintiffs: Cathy E. Costanzo, Steven J. Schwartz, LEAD ATTORNEYS, Center for Public Representation, Northampton, MA; Frank J. Laski, LEAD ATTORNEY, Mental Health Legal Advisors Committee, Boston, MA; Matthew Engel, LEAD ATTORNEY, Disability Law Center, Inc., Northampton, MA; Richard D. Belin, LEAD ATTORNEY, Catherine H. Wicker, Jeffrey S. Follett, Foley Hoag LLP, Boston, MA.

For eric voss, Plaintiff: Stephen M. Sheehy, Stephen M. Sheehy, P.C., Waltham, MA.

For Argeo Paul Cellucci, Acting Governor of Massachusetts, Defendant: William W. Porter, LEAD ATTORNEY, Attorney General's Office, Boston, MA; David A. Guberman, Office of the Attorney General, Boston, MA; Deirdre Roney, State Ethics Commission, Boston, MA.

For Frederick A. Laskey, [*2] Secretary of the Executive Office of Administration and Finance, William D. O'Leary, Secretary of the Executive Office of Health and Human Services, Gerald Morrissey, Commissioner of the Department of Mental Retardation, Elmer C. Bartels, Commissioner of the Massachusetts Rehabilitation Commission, Howard Koh, Commissioner of the Department of Public Health, Teresa O'Hare, Director of Region I for the Department of Mental Retardation, all in their official capacities, Defendants: William W. Porter, LEAD ATTORNEY, Attorney General's Office, Boston, MA; David A. Guberman, Office of the Attorney General, Boston, MA; Kenneth W. Salinger, Massachusetts Attorney General's Office, Boston, MA.

For Bruce M. Bullen, Commissioner of the Division of Medical Assistance, Defendant: David A. Guberman, Office

of the Attorney General, Boston, MA; Kenneth W. Salinger, Massachusetts Attorney General's Office, Boston, MA.

For Deval Patrick, Governor of Massachusetts, Defendant: David A. Guberman, LEAD ATTORNEY, Office of the Attorney General, Boston, MA; Deirdre Roney, LEAD ATTORNEY, State Ethics Commission, Boston, MA; William W. Porter, LEAD ATTORNEY, Attorney General's Office, Boston, MA; Kenneth W. [*3] Salinger, Massachusetts Attorney General's Office, Boston, MA.

Judges: KENNETH P. NEIMAN, Chief United States Magistrate Judge.

Opinion by: KENNETH P. NEIMAN

Opinion

ORDER APPROVING REVISED ACTIVE TREATMENT STANDARDS

The Court hereby orders that:

1. The Court hereby approves and adopts the Revised Active Treatment Standards that are attached to this Order, as modified by paragraphs 3 and 4 below, as the criteria for compliance with the requirements specified in the Court's Orders dated April 10, 2007 and May 16, 2007. The Court Monitor shall use the Revised Active Treatment Standards, as modified by paragraphs 3 and 4 below, to develop her *protocol* for conducting active treatment reviews. The Revised Active Treatment Standards consist of certain regulatory references and federal standards, called "Tags," that were developed by the federal Centers for Medicaid and Medicare Services ("CMS") to evaluate compliance with the federal active treatment regulations.

2. The Court Monitor may incorporate or otherwise use any of CMS's Guidelines, Probes, and Facility Practices for the specified Tags listed in the Revised Active Treatment Standards in her review protocol, or new Active Treatment Measurement Device (ATMD), that [*4] she will use to evaluate compliance with the standards set forth in those Tags. Where language in a particular Tag has been modified by paragraphs 3 or 4 of this Order, any of

CMS's Guidelines, Probes, or Facility Practices for that Tag shall be deemed modified so as to be consistent with the Revised Active Treatment Standards and this Order.

3. The Court has previously ordered Defendants to comply with the active treatment requirements set forth in 42 C.F.R. §§ 483.440(a)-(f). In order to ensure consistency between the regulations governing nursing facilities in 42 C.F.R. § 483.1 et seq. and § 483.100 et seq. and the federal ICF/MR regulations on active treatment: (1) references in relevant CMS Guidelines, Probes, or Facility Practices to "the facility" or "the ICF/MR" shall be construed to mean either "Defendants or their designees" (when the reference concerns a standard or obligation) or "Defendants, the nursing facility, day habilitation providers, or other service providers" (when the reference concerns where or by whom services to class members are provided) as appropriate; (2) the thirty day time limits for convening an interdisciplinary treatment team, performing assessments, [*5] and preparing an individual program plan set forth in 42 C.F.R. § 483.440(c) shall be deemed satisfied by (a) the convening of a specialized services interdisciplinary team by the specialized service provider, the development of an interim specialized services plan by that team based on all assessments available at that time, and the provision of interim specialized services pursuant to that interim plan within 30 days after admission, and (b) the completion of all relevant assessments, the development of an individualized services plan, and the provision of specialized services pursuant to that plan within 90 days after admission; (3) the comprehensive functional assessment required by 42 C.F.R. § 483.440(c)(3) may consist of a combination of assessments, including the PASARR assessment, all specialized services assessments,

any relevant nursing facility assessments, and any other assessments done for the person; and (4) Defendants may provide active treatment to class members through a combination of services identified by Defendants and provided by Defendants, the nursing facility, day habilitation providers, or other service providers.

4. In carrying out her responsibilities and [*6] evaluating compliance with the Revised Action Treatment Standards, the Court Monitor shall consider whether there are sufficient trained professional and non-professional staff who are competent to provide active treatment and any behavioral interventions to the class members that they serve, as set forth in the individuals' treatment plans,

5. Compliance with the standards set forth in the Revised Active Treatment Standards, as clarified above, shall constitute compliance with the federal active treatment requirements specified in the Court's orders.

6. The Court Monitor shall, within the next sixty days, develop a review protocol, or new ATMD, and a process for conducting active treatment reviews.

IT IS SO ORDERED.

DATED: August 2, 2007

/s/ Kenneth P. Neiman

KENNETH P. NEIMAN

Chief Magistrate Judge