

Developmental Disability: Consent To Non-Institutional Community Placement Is Required From Patient Or Guardian.

The Americans With Disabilities Act (ADA) requires programs serving the special needs of disabled persons to integrate them as much as possible into the community at large, rather than isolating them in the closed institutional settings that were the fate of many disabled persons before the ADA came along.

Community Integration Mandate

In 1999 the US Supreme Court ruled that unjustified institutional isolation of persons with mental disabilities is a form of illegal disability discrimination.

State programs are required to provide community-based treatment for persons with mental disabilities when:

1. The state's treatment professionals determine that community placement is appropriate;
2. The person does not oppose transfer from institutional care to a less restrictive setting; and
3. The placement can be reasonably accommodated, taking into account the program's resources *vis a vis* the needs of other disabled persons whom the program also has to serve.

The wishes of the patient's legal guardian must be taken into consideration, as the guardian is the one who speaks for the patient if the patient is not mentally competent to agree or disagree with the decision to move her out of an institutional placement into a community setting.

The Americans With Disabilities Act requires community integration of disabled persons, but only if the disabled person does not object.

It would be wrong to say that developmentally disabled individuals who lack the capacity to consent or object can be placed in the community whenever their caregivers decide to do so.

That is not what was intended by the Americans With Disabilities Act.

COMMONWEALTH COURT OF PENNSYLVANIA, 2001.

The Patient In This Case

The patient was seventy-one years old and had been in the institution for fifty-six years. Due to a birth injury she was severely retarded, having cognitive and communicative abilities and daily-living skills in the one- to two-year-old range. She was known to be quiet and withdrawn.

As the facility began the process of placing her in a community group home as part of its program of compliance with the ADA, her nephew had himself appointed her legal guardian with full authority for her medical decisions.

The nephew, as legal guardian, vigorously opposed the plan to move his aunt into a community group home.

The Commonwealth Court of Pennsylvania believed that all three of the US Supreme Court's criteria must be met for a disabled person to be placed in a community setting under the ADA's community integration mandate.

The Commonwealth Court said there is no exception for mentally disabled persons to part two of the Supreme Court's interpretation of the ADA.

Placement of persons who themselves lack the capacity to consent or refuse consent to changes in their placements are not governed only by the judgment of their treatment professionals.

Their legal guardians' preferences must be considered as their own, the court ruled. ***In re Easley*, 721 A. 2d 844 (Pa. Cmwlth., 2001).**

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