UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
Western Division

ROSIE D., et al., Plaintiffs, v. DEVAL L. PATRICK, et al., Defendants	C.A. No. 01-30199-MAP

DEFENDANTS' RENEWED MOTION
FOR CLARIFICATION OF JUDGMENT
AS IT PERTAINS TO MONITOR'S COMMUNITY SERVICE REVIEWS

The Massachusetts Executive Office of Health and Human Services ("EOHHS"), defendant in the above-named action, hereby renews its Motion for Clarification of Judgment with respect to the Community Service Review ("CSR") evaluations currently being conducted by the Court Monitor (the "Monitor").

In support of this Renewed Motion, EOHHS states as follows:

1. EOHHS filed its initial Motion for Clarification regarding this subject on August 20, 2010. In that initial motion, EOHHS noted that the Monitor had begun conducting case reviews under the aegis of the CSR, as a means of carrying out her charge, under the Judgment, independently to evaluate the defendants' compliance with the Judgment. In the motion, EOHHS asked the Court to enter an order barring the Monitor from proceeding with CSR case reviews, or, in the alternative, to order that the CSR be modified to correct methodological flaws identified in the motion. EOHHS

argued that such relief was appropriate because, among other things, the CSR was an inapt tool for evaluating the effectiveness of specific remedy services; the CSR assigned numerical "scores" to each case study, which scores incorporated various "status indicators," such as family and school placements, over which the defendants had no control; that the CSR is particularly ill-suited to evaluate services delivered pursuant to a "wraparound," as opposed to a traditional clinical, model; and that the CSR had never been peer reviewed, and the one extant evaluation of the CSR as a potential compliance-measurement tool found it better suited for use as a quality-improvement tool, not for evaluating compliance.

2. At a hearing on September 30, 2010, the Court denied EOHHS's motion, principally on ripeness grounds. Specifically, the Court noted that EOHHS's criticism of the CSR was speculative in nature, and that EOHHS could not claim to have suffered actual harm as a result of the contemplated CSR review. The Court specified, however, that its denial of the motion was without prejudice to EOHHS's renewal of the motion after the Monitor had completed her first round of CSR case studies, whereupon the defendants, and the Court, would be in a better position to evaluate whether EOHHS's criticisms of the CSR had been borne out in practice.

3. The Monitor has now completed her first round of case reviews, all drawn from the Western Region of the Commonwealth (the "Western Massachusetts Regional Report"). The Monitor, together with several reviewers, also made a public presentation on November 19, 2010, summarizing their initial findings from a second round of case reviews, conducted in November, 2010. Having reviewed these data, EOHHS now renews its request that the Court expressly limit the use of data culled from the CSR,

which in practice – as well as in theory – fails to measure appropriately the impact and quality of the remedy services in this case.

4. In so doing, EOHHS incorporates by reference its Memorandum of Law in support of its initial motion, and the arguments contained therein. It also relies upon the affidavit of Jack Simons, the Assistant Director of Children's Behavioral Health Interagency Initiatives for EOHHS (the "Simons Affidavit"). The Simons Affidavit, attached hereto as Exhibit A, sets forth with greater specificity the ways in which the CSR, "as currently implemented and reported, would be a limited and possibly misleading tool for assessment of system performance." Simons Affidavit at ¶ 4.

5. Mr. Simons, who writes as a PhD. in Clinical and Community Psychology, identifies four distinct methodological flaws with the present iteration of the CSR. Simons Affidavit at ¶ 5. Specifically:

a. The CSR requires reviewers to assign quantitative values to numerous features of each given case study. While quantifying such subjective judgments is not a methodological flaw per se, the CSR fails to assign "error estimates" to these quantitative ratings, as a proper sampling methodology would have done. Mr. Simons explains that error estimates are properly included in a case study of this type to account for two phenomena: sampling error, which accounts for distortions of a given sample size relative to the population as a whole; and measurement error, which accounts for the likelihood that separate reviewers, applying the same criteria to the same cases, would make different judgments as to the appropriate quantitative rating. Simons Affidavit at ¶¶ 6-16. Mr. Simons accordingly concludes that "[a]ll quantitative findings

from the CSR should be disregarded unless and until they are reported in a way that takes both error sources into account." Simons Affidavit at ¶ 7.

b. The rating process lacks transparency and testability. While a reliable measurement tool would be highly transparent about the criteria applied by a given reviewer in assigning a given "score," CSR ratings are "essentially a black box of judgment"; moreover, they are not accompanied by narrative summaries, which would at least give a reader insight into what features of a given case a reviewer found significant. Simons Affidavit at ¶¶ 17, 21. This is particularly problematic because the CSR requires reviewers to make quantitative predictions regarding the likely clinical status of a case study subject six months into the future. Simons Affidavit at ¶ 18. Because the CSR gives no window into the rating process, and provides no empirical data regarding the accuracy of reviewers' six-month forecasts in past case studies, "there is no reason to believe with confidence that raters can predict the future for these youth." Simons Affidavit at ¶ 18.

c. The CSR conflates appraisals of subject children's **status** with measuring the effectiveness of the remedial services. The scoring methodology for the CSR confuses a given child's need for remedy services (i.e., the preconditions that led to his or her SED diagnosis, including family and school problems) with the effectiveness of the remedy services he or she is receiving. Mr. Simons observes that, while "status indicators" such as demographic facts and family/school backgrounds are important contextual points for understanding the complexity of a given case, they should not be used to draw conclusions about clinical practice (i.e., judgments about whether a child is receiving the proper remedy services, or how effectively those services are being

delivered). Simons Affidavit at ¶ 22. He concludes that, for a measurement tool to generate meaningful results, it must be refined to "distinguish conclusions about *status* from conclusions about *practice*." Id. (emphasis in original).

d. Neither the CSR nor the majority of reviewers appears to comprehend, or to make adequate allowances for, the difference between wraparound and traditional clinical practice. One of the cardinal virtues of the Intensive Care Coordination ("ICC") service, as implemented by the defendants under the Judgment, is that it fully embraces the "wraparound" model of service delivery. To oversimplify greatly, wraparound is a model that de-emphasizes precise clinical diagnosis of an SED, in favor of delivering services tailored to a child's specific needs and behaviors, with the child's family/caregivers playing a lead role in choosing from the menu of available services. Simons Affidavit at ¶ 23. As noted, this model represents a sharp break with traditional clinical methods, which tend to place expert clinicians at the center of both diagnosis and treatment decisions. Id. Nonetheless, neither the CSR tool itself, nor many of the reviewers who have been engaged to "rate" case studies pursuant to the CSR, appear to grasp this key distinction. Simons Affidavit at ¶¶ 24-25. At best, the language used in the CSR, and by the reviewers who spoke at the November 19 presentation, appears to construe wraparound as something akin to what Mr. Simons calls "turbo case management" – a fundamental misconception regarding the objectives and procedures that govern wraparound. Id. This, inevitably, will lead to inappropriate "scoring" of ICC cases – a falsely negative assessment of how the ICC system is performing. As Mr. Simons concludes, "[t]he failure to understand the differences between [wraparound and

traditional clinical practice] in the CSR process suggests inadequate understanding of Wraparound and a poor basis for evaluation of Wraparound." Simons Affidavit at ¶ 27.

6. Finally, Mr. Simons observes that there exist commercially-available tools that avoid the CSR's flaws, and are therefore better suited to measure the effectiveness of the remedy services in this case. Simons Affidvait at ¶ 4. One such tool that he specifically identifies is the System of Care Practice Review ("SOCPR"), developed at the University of South Florida. Id. In contrast to the CSR, the SOCPR fully divulges its likely coefficients of error (Simons Affidavit at ¶ 14); is fully transparent about the rating process and the empirical reliability of reviewers' past predictions of clinical success (Simons Affidavit at ¶ 19); and can be tailored properly to evaluate a wraparound system of care. Because the SOCPR avoids many of the conceptual missteps inherent in the CSR, Mr. Simons calls the SOCPR "a superior tool for many of the purposes for which the [M]onitor currently employs the CSR." Simons Affidavit at ¶ 27.

7. By way of conclusion, then, EOHHS persists in maintaining that the CSR, in practice as well as in theory, is ill-suited to the task for which the Monitor purports to be using it.

WHEREFORE, EOHHS renews its respectful request that this Court:

1. Issue explicit orders directing that, in light of the identified methodological flaws endemic to the CSR, data generated by the CSR process shall be used for illustrative purposes only, and that in no event shall the "scores" generated by the CSR process be used as the basis for a claim that the defendants have failed adequately to implement the remedy services set forth in the Judgment;

2. Pursuant to an agreement between the parties, issue a scheduling order granting the plaintiffs through January 7, 2011, to file a response to this Renewed Motion, and giving the defendants through January 21, 2011, to file their reply, if any; and

3. Grant such other relief as the Court may find appropriate under the circumstances.

Respectfully submitted,

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Date: December 15, 2010

I hereby certify that a true copy of this document was served electronically upon counsel of record through the Court's electronic filing system on today's date.

/s/ Daniel J. Hammond

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