

Realizing the Promise of the *Olmstead* Decision

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Anna C. Maki

The Estate Planning and Probate Section held a joint CLE breakfast with the Elder Law Section on October 16, 2019. Marking the 20th anniversary of the decision in *Olmstead v. L.C.*, 527 U.S. 587 (1999), speaker Anna C. Maki presented some of the legal developments and ongoing challenges in fulfilling the promise of community integration for persons with intellectual and developmental disabilities. Maki is the Director of Intake and Assessment for the *Bobby Dodd Institute*, a nonprofit that provides support services to people with differing abilities, helping them to increase their self-sufficiency and integrate more easily into the general population.

Maki began the presentation by revisiting *Olmstead*, the landmark Supreme Court case that held that the unjustified segregation of persons with disabilities violated Title II of the Americans with Disabilities Act. The holding requires public entities to provide community-based services, rather than institutionalization, for persons with intellectual or developmental disabilities. Since *Olmstead*, Georgia has implemented measures to advance compliance, starting with the formation of an *Olmstead* Planning Committee. In 2010, the State reached a settlement agreement with the Department of Justice, whereby it committed to ending admissions of persons with disabilities to state hospitals and to providing them instead with support in community settings. In 2018, the Georgia Department of Behavioral Health and Developmental Disabilities (DBHDD) and the Department of Justice filed a joint status report in the United States District Court for the Northern District of Georgia, describing the continuing collaborative efforts to advance disability services in Georgia.

The key to realizing the purpose of *Olmstead*, Maki emphasized, is ensuring the availability of these services. She highlighted two main challenges to implementation: (1) a lack of funding, and (2) limited access to services for those who do not live in major cities. Additionally, she discussed the challenge of navigating this complex system, describing it as a life-long process of planning for disability benefits.

Maki outlined some of the services that are currently available in Georgia. One of the fundamental ways in which Georgia has implemented the *Olmstead* mandate is through the availability of Medicaid Waivers. These allow recipients to waive access to institutional care in favor of community-based services. The New Options Waiver program (NOW) and Comprehensive Supports Waiver Program (COMP) were designed for individuals with intellectual or developmental disabilities. Eligible persons can receive services such as the Community Residential Alternative, which provides support for the individual to live independently in a group home or host home environment. The program also includes Community Living Supports, which assists individuals with living in their own home environment, with the goal of building self-sufficiency and preparing them to live

independently. The NOW/COMP waivers also offer access to day habilitative programs, such as Community Access Group and Community Access Individual, which are provided by independent agencies through Medicaid funding.

To apply for the NOW/COMP waiver programs, applicants fill out a questionnaire and submit supporting documentation regarding the individual's needs and diagnosis. The Department of Behavioral Health and Developmental Disabilities (DBHDD) then conducts an intake screening and assessment evaluation of the applicant. Once the applicant is determined to be eligible for services, he or she is placed on a planning list. Planning List Navigators then identify those "most in need" based on a variety of considerations.

Despite efforts to advance these programs, progress has been slow. In its 2017 Planning List Report: Multiyear Plan, DBHDD revealed that over 8,500 individuals in Georgia were waiting on the planning list. That year, only 10% of Georgia's population with intellectual and developmental disabilities received services. The report included plans to increase the number of people accessing waiver services through the planning list by 3,500 new participants over five years. However, Georgia lawmakers funded only 125 new NOW/COMP waivers in 2018. To close this gap, Georgia has expanded nonwaiver options such as Family Support Services, Autism Services, Respite Services, and Supported Employment.

The *Bobby Dodd Institute ("BDI")*, with campuses in Atlanta, Decatur, and Jonesboro, helps eligible individuals navigate benefits and maximize available resources through benefits consulting. *BDI* consultants review resources across the Department of Education, the Department of Health, the Social Security Administration, and the Georgia Vocational Rehabilitation Agency with the goal of helping recipients achieve economic stability. Additionally, *BDI* offers vocational support and job training for people with disabilities, as such individuals face an unemployment rate of 65% despite their ability and willingness to work.

The most common source of income for people with disabilities is Social Security. Supplemental Security Income (SSI) provides minimum financial assistance to low-income adults over 65 and to people with disabilities. SSI recipients automatically qualify for Medicaid, which is the gateway to other benefits, including waivers. Social Security Disability Insurance (SSDI), on the other hand, is available to individuals with disabilities who have a qualifying work history. To be eligible, an SSDI applicant must have earned enough work credits and must have paid Social Security tax contributions. When the individual does not have the required work history, he or she may qualify as a Disabled Adult Child, based on the work credits of a parent who is disabled, deceased, or retired. While SSI is income-based and tied to Medicaid, SSDI is based on disability status and work history and tied to Medicare. SSDI recipients generally qualify for Medicare automatically after 24 months of receiving SSDI payments. Understanding the difference between the two, Maki emphasized, is critical to being able to maximize benefits for an individual.

In addition to assisting with benefits planning, *BDI* also provides financial planning support through the Georgia Community Trust, a pooled Special Needs Trust available to any Georgia

resident with a disability, by Social Security Administration standards. Special Needs Trusts allow individuals with disabilities or their loved ones to set aside funds for the future needs of the individuals without jeopardizing SSI and Medicaid eligibility. The Georgia Community Trust (the “GCT”) was founded in 1997 by the nonprofit hospital *Ridgeview Institute, Inc.* In 2015, the GCT was transferred to *All About Developmental Disabilities*, a nonprofit that subsequently merged with *BDI* in January 2018. *BDI* now manages the GCT, maintaining separate sub-accounts for each beneficiary and pooling the sub-accounts for investment purposes. Funds held and managed by the GCT can be used to pay for items like clothing, transportation, cable/internet, travel, tuition/books/tutoring, household furniture, and therapy, among other expenses not covered by Medicaid and SSI. Pursuant to the pooled trust provisions of the Social Security Act, if any assets remain in the beneficiary’s account after his or her death, the state must be reimbursed in an amount equal to the total amount of Medicaid benefits received by the beneficiary.

The focus of these programs is not only to provide economic support to eligible individuals, but to empower them to achieve self-sufficiency and independence. These programs reflect the notion that in order to realize the promise of true integration, we must work to ensure that individuals with disabilities can participate in society in meaningful ways. When asked what one thing would be most helpful in advancing this mission, Maki pointed to the lack of adequate funding as the main barrier to full integration, and she encouraged attendees to contact legislators to voice their concerns.

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