



## State condemned for care of children

By Elinor Nelson

In a decision that blasts the Commonwealth of Massachusetts for failing to provide adequate care to "the most fragile members of our society," US District Court Judge Michael A. Posner on Jan. 26 ruled in *Rosie D. v Romney* that Massachusetts has violated the federal Medicaid Act by letting down an estimated 15,000 children with serious emotional disturbances.

"At present, thousands of SED [seriously emotionally disturbed] children lack comprehensive assessments, treatment occurs haphazardly, with no single person or entity providing oversight and ensuring consistency . . ." stated Judge Posner in the 98-page decision. "This is not a close case; the evidence favoring the plaintiffs is overwhelming," the decision concludes.

The state's failure to provide in-home behavioral services for these children who suffer "extreme functional impairment" has resulted in "thousands of Massachusetts children . . . [being] forced to endure unnecessary confinement in residential facilities or to remain in costly institutions far longer than their medical conditions require," according to the ruling.

"Prompt, coordinated services that support a child's continuation in the home can allow even the most disabled child a reasonable chance at a happy fulfilling life," states the decision. "Without such services, a child may face a stunted existence, eked out in the shadows and devoid of almost everything that gives meaning to the gift of life."

The case had been brought in October 2001 by nine plaintiffs ages five to 16 who had been hospitalized or at risk of hospitalization because of a lack of community mental health services. "Lisa," the mother of one of the named plaintiffs, says "This decision opens the door for children and parents who are searching for treatment in their homes and communities."

Steven Schwartz, J.D., of the Center for Public Representation, co-counsel for the plaintiffs, offers that the decision is "precedent-setting because it relies on federal law and it will impact children everywhere. It reflects both an extraordinary understanding of the suffering of children and the struggles of families to take care of their own."

The plaintiffs' expert had testified that unnecessary hospitalization and residential treatment wasted more than \$68 million, Schwartz adds. "One of the painful ironies of the case," states Judge Posner, is that the state may not need to spend extra funds to comply with the decision.

The next step, Schwartz explains, is that by early February, the plaintiffs' attorneys were scheduled to meet with representatives of the state's Office of the Attorney General, who defended the case. By February 17, they were to submit to the judge a list of issues and a timetable to address them. If they could agree, the list would be joint; if not, they would present separate lists. "We could be marching down the road to a constructive and collaborative remedy or to litigation," Schwartz says.

**Cynthia Kaplan, Ph.D.**, administrative director of Child and Adolescent Services at **McLean Hospital**, has had plenty of experience over the years in providing care for children on Medicaid - experience that validates the Rosie D. decision. Kaplan also works as McLean's program director of Acute Residential Treatment Services (ART), which six years ago launched a pilot program with the Department of Social Services and Medicaid to remove children from the state's "stuck kids" list.

ART offered an unlocked 24-hour program that was a less restrictive setting for children who had been hospitalized elsewhere. McLean's, says Kaplan, offered classrooms, the option for children to cook group meals, field trips around Boston, better access to community services and the hospital's bucolic setting.

Initially, Kaplan says, she and her staff were advocating for the children (many of whom did well in this program) to return to the community in specialized foster care programs. Eventually, however, it became clear that because of the lack of "wraparound" services, like psychologists, psychiatrists, physicians, crisis services and even transportation to school, foster parents were unable to properly care for these children.

"A psychiatric umbilical cord that goes into the community" is what the foster families need, adds Kaplan. Not surprisingly, there was a longer wait list for foster care than for residential care. And, Kaplan observes, without adequate support services, there were many re-hospitalizations of children placed with foster families.

"There is such a dearth of child-trained people," Kaplan says. "They can get whatever reimbursement they want." They don't have to take Medicaid, and "the waiting lists for Medicaid providers are astronomical." Programs like McLean's (ART has 30 beds, about one third of which were filled by children on Medicaid) only reached a "miniscule portion" of Medicaid-eligible children. Kaplan sees a need for some kind of incentive program for clinicians "to work with this difficult population." For starters, it would be helpful to make the reimbursement process easier ("just the signup process for Medicaid took me three months"). "It's wonderful," Kaplan concludes, that the Rosie D. decision orders the state to "move in this direction."

Toby Fisher, MSW, MBA, executive director of The National Alliance for the Mentally Ill of Massachusetts, an organization of families with mentally ill children, agrees. "The time is now for our state administration and legislators to take dramatic steps to improve the lives of distressed mentally ill children," Fisher says.

At *New England Psychologist's* press time, Richard Powers, spokesperson for the Executive Office of Health and Human Services, would say on behalf of the Commonwealth: "We're still reviewing and discussing the court decision and will decide shortly whether we will appeal."