



The COFAR VOICE

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COFAR volunteer does some sweet-talking at Chamber event, story on page 5.



SHOW OF FORCE—Members of COFAR and other family members and advocates for the mentally retarded stand outside the Moakley Federal Courthouse, following November 10 hearing before Judge Tauro.

Tauro urges dialogue ***Calls for hold on Fernald closing***

BOSTON— U.S. District Court Judge Joseph Tauro has warned the Romney administration that its headlong rush to close the Fernald Developmental Center may run afoul of his historic ruling governing care for the mentally retarded in Massachusetts.

In a November 10 hearing in his packed chambers at the Moakley Federal Courthouse, Tauro urged the Department of Mental Retardation to reach an agreement with Fernald families and advocates on how to preserve the current levels of care afforded the facility's current 252 residents. But a negotiating session held the day after the court hearing did not appear to have bridged the differences.

(Please see Tauro on page 2)

Direct care workers **struggle to make ends** **meet**

As provider execs' salaries rise

Each day at work at the privately run group home in Newton is physically taxing for Tracy Adams.

The 22-year-old psychology major at Emmanuel College puts in 40 hours a week at the residence, where she works with a handful of other staffers to care for four men with mental retardation. "All of their needs are met," she says. "There's not a lot of time to sit around."

The men range in age from 34 to 58. All are severely challenged, meaning their IQ's are between 25 and 40, and all are basically nonverbal, although some have some means of communication, she said.

All of five-foot, three inches, Adams, like the other staffers, has to be able to personally lift each man, one of whom weighs close to 200 pounds, from his wheelchair and transfer him to the bathtub. She must change their diapers. She must also do "a great deal" of laundry and help clean the house each day.

It's a job that combines responsibility for the lives and welfare of the residents of the house, with large physical demands. Yet, as assistant manager of the residence, Adams is paid \$11.99 an hour, which equals about \$25,000 a year.

Although she does receive health and dental benefits, it's difficult to make ends meet, she says, because she is paying off school loans and renting an apartment in Boston. The rest of the staff make about \$10 an hour.

Top provider salaries average over \$100,000

Meanwhile, the top executives in the DMR nonprofit provider world are having little trouble making ends meet.

(Please see Wages on page 4)

Tauro warns DMR on closure

(Tauro, continued from page 1)

“Based on what I heard from them (in the negotiating session), the DMR’s attorneys didn’t listen to what the judge had to say,” said Colleen Lutkevich, Executive Director of COFAR. “They didn’t give us any indication that they intend to slow down or alter their facility closure plans in any significant way.”

The November 10 hearing was the first appearance before Tauro in 11 years of the parties in the landmark Ricci v. Okin case, which brought about improvements in care for the mentally retarded in both state facilities and the community between 1972 and 1993. In July, Beryl Cohen, an attorney for the original Fernald, Belchertown, and Monson plaintiffs in the case, filed a motion to reopen the lawsuit, which has been suspended since Tauro disengaged from it in 1993. When he disengaged, Tauro ordered that class members were entitled to comprehensive, lifetime care and that no facility residents could be transferred elsewhere unless the care was certified as equal or better in the new location.

Cohen’s motion to reopen alleged that the administration’s closure plans coupled with budget cuts and staffing reductions at Fernald and other state facilities constituted “systemic violations” of Tauro’s 1993 disengagement order. “You (Tauro) are the last and only hope for thousands of family members of the most needy and disadvantaged persons in this Commonwealth,” Cohen said during the November 10 hearing. Cohen’s motion to reopen was joined by Margaret Pinkham, a new attorney for the Wrentham plaintiffs.

During the hearing, Tauro appeared to accept the argument that a rush to close Fernald and the other facilities without adequate plans for the welfare of their current residents could violate his disengagement order. He also noted that many communities have not accepted group homes for the mentally retarded and that it could be difficult to find placements for Fernald residents.

“What’s the advantage in hurrying to speed up the closing (of Fernald) if it’s going to speed up litigation that’s going to last for five years?” Tauro said in pointed remarks to counsel for the Department of Mental Retardation and DMR Commissioner Gerald Morrissey, who was in attendance. “I don’t know if I’ll accept this case. If I do, I’ll come up with a solution...Let’s get it done right so everyone applauds it.” He gave the parties a week to come up with an agreement.

Tauro also noted that many Fernald residents are elderly, adding that “in the remaining moments of their lives, they ought to be treated with great dignity.” His remark drew strong applause from the close to 200 observers in the courtroom, many of whom were family members of facility residents.

DMR General Counsel Marianne Meacham insisted during the hearing that “there is no rush” to close Fernald and that the

DMR was working “assiduously to guard the rights of the Ricci class members.”

But Tauro said the administration’s policy of closing Fernald and the other state facilities without an adequate plan for the welfare of its current residents “could qualify as a failure to comply with my (1993 disengagement) order.”

Meacham maintained that there was a plan for protecting the residents and that it was similar to the process used to close the Belchertown and Dever State Schools in the 1990s. But Tauro interrupted Meacham, saying her response “seems to assume they’re going someplace. Where are they going to go?” Tauro maintained that the DMR’s primary focus should be the individual plans of care, also known as Individual Service Plans or ISPs, for the facility residents. “I say with great deference and respect to the Governor, you can’t have a wholesale abandonment of any place until you’ve satisfied the ISPs for all individuals. There’s nothing that trumps the ISPs.”

Tauro also drew strong applause from the packed gallery when he objected to Meacham’s statement that some Fernald residents would be relocated to the Wrentham Developmental Center and other facilities that are also scheduled for closure. And Tauro repeatedly asked Meacham what would happen to Fernald’s 252 residents after the facility is closed.

Tauro also appeared to invite Governor Romney to accompany him on a tour of Fernald to ascertain the conditions there first hand.

Cohen ran through a litany of recent problems at Fernald, including infestations of mice and other vermin in many of the buildings and cottages on the Center’s grounds as well as staffing and funding shortages so severe that residents have had to wait months in some cases for such essential items as diapers and padded helmets.

COFAR / VOR brief opposes facility closings High Court ruling at issue in Ricci case

COFAR and the national Voice of the Retarded have jointly filed an amicus brief in the Massachusetts legal battle over resuming federal court oversight of the Department of Mental Retardation.

The brief addresses the narrow but contentious issue of whether the Romney administration’s plans to close state-operated facilities for the retarded are consistent with a 1999 U.S. Supreme Court case, *Olmstead v. L.C.*

The Supreme Court case has become a lightning rod of disagreement between advocates of deinstitutionalization and those who believe state care continues to be needed for some
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of the most severely and profoundly retarded persons.

COFAR, VOR, and a number of plaintiffs in current proceedings before U.S. District Court Judge Joseph Tauro contend that the Olmstead decision is consistent with efforts to keep the Fernald Developmental Center and other state facilities open. In the November 11 hearing in his chambers (see story on page 1), Tauro appeared to back the COFAR/VOR position, saying he thought the brief “accurately cites the Olmstead case. It’s nothing I haven’t said for the last 20 years.”

However, Tauro did allow the Disability Law Center, a state-funded law firm that supports the closure of Fernald, to intervene as a plaintiff in the Ricci v. Okin proceedings to decide whether he will resume his historic oversight of care for the retarded in Massachusetts.

The DLC, which has legal standing to advocate for all persons in Massachusetts with developmental disabilities, contended in its motion to intervene that the closure of Fernald is consistent with Olmstead.

“We think the DLC is wrong about Olmstead and it now appears Judge Tauro recognizes that,” said COFAR President Thomas J. Frain. “That decision did not in any way mandate the closure of facilities like Fernald, as the DMR and the DLC argue.”

In the November 11 hearing in his chambers, Judge Tauro appeared to back the COFAR/VOR position on Olmstead.

In Olmstead, the high court ruled that states are required to provide community-based services for people with mental disabilities if treatment professionals determine that it is appropriate and the affected individuals do not object to such placement. The Court further concluded that states are responsible for community-based placement if they have the available resources to provide community-based services.

Frain noted that in Fernald’s case, not only do many families object to community placement of their loved ones, but the state currently is not providing sufficient resources to provide adequate community-based placement for current facility residents.

The COFAR/VOR amicus brief stated that: “As long as there are Massachusetts citizens with profound mental retardation, there will be a need for institutional care. If Governor Romney’s promise to close all institutions is taken literally, it cannot pass muster under Olmstead. Some form of in-state institutional placement is required to comply with Olmstead.” The brief was written by William Burke, an attorney who previously argued before the Supreme Court in the Olmstead hearings on behalf of the VOR.

The brief noted that in Massachusetts, Tauro’s 1993 disengagement order in the Ricci case provides a context for interpreting Olmstead. Tauro’s order prohibited transfers out of a state facility and into the community unless “the individual to be transferred will receive equal or better services to meet their needs in the new location.”

The brief noted that core holding of Olmstead states that while “unjustified isolation” in an institution is properly regarded as discriminatory, the states also have a “need to maintain a range of facilities for the care and treatment of persons with mental disabilities...” The brief added that the high Court concluded that: “Each disabled person is entitled to treatment in the most integrated setting possible for that person—recognizing that, on a case-by-case basis, that setting may be in an institution.”

The COFAR/VOR brief further disputed a statement in the DMR’s August memorandum opposing the motion to reopen the Ricci case that after Olmstead there has been a “trend” away from institutional services and toward community-based services. The COFAR/VOR brief noted that a review of litigation compiled on websites of the Human Services Research Institute and the National Conference of State Legislatures disclosed no such trend.

The brief stated that Olmstead “resembles the Roman god Janus: it has two faces. One is encouraging, offering community placement where medically feasible and properly chosen. The other is protective, preserving the institutional option where medically feasible and properly chosen.”

The brief added that: “It is certainly fair to state that after Olmstead, people who desire to leave an institution and who are medically able to do so will leave if an appropriate placement is available. But sometimes they must return. And always there are those who can never leave. For those, institutions must remain.”

In the conclusion, the brief stated that: “The only agenda Olmstead supports is choice—the choice of a medically qualified person, with an appropriate and available placement. Depending on the condition of the person, that placement could be in the community, or in an institution.”

Marc Lally, advocate, dies

Marc Lally, a former COFAR Board member and advocate for residents of the Hogan Regional Developmental Center in Danvers, died in October.

Lally had lived in Billerica with his family for the past several years. His primary advocacy was on behalf of his sister, Mary, a client in the DMR system.

In addition to COFAR, Lally served as a member of the Concerned Citizens for the Mentally Retarded, Inc. Board for many years.

Workers struggle on wages **(Wages, continued from page 1)**

A review of 10 state filings by *The COFAR Voice* shows that the top executives of those human service provider firms, which run group homes similar to the one in which Adams works, were making an average of \$117,000 a year.

Vinfen led the pack with an average compensation among its top five employees of \$215,523 in 2003, including salaries and benefits. Vinfen's CEO/President Gary Lamson was paid a total compensation of \$369,275 in 2003, the highest among the executives surveyed.

The other vendors, in order of average salaries for their top five employees were Justice Resource Institute in 2003, where the average salary and benefits was \$172,282; Work Inc. in 2003, where the average compensation was \$121,268; Toward Independent Living and Learning in 2003, \$94,779; South Norfolk Arc, \$89,638; Delta Projects, \$76,646; Greater Waltham Arc, \$63,397; and Cooperative for Human Services in 2002, \$61,935.

The Voice examined 10 financial filings submitted by eight providers. All of the vendors surveyed had signed a memorandum issued by the Arc of Massachusetts in favor of closing Fernald—an outcome which could bring them additional revenue and potentially higher salaries.

In its September 2004 issue, *The Voice* reported that the Arc memo to its membership listed more than 60 organizations, which the memo said “agree with The Arc of Massachusetts that the closure of Fernald as proposed by Governor Romney is the right thing to do.” An analysis by *The Voice* showed that few if any of the organizations listed appeared to be independent advocacy organizations that act on behalf of the severely and profoundly mentally retarded, who comprise the majority of the population at the state facilities.

Colleen Lutkevich, COFAR executive director, maintained that the providers that have joined in the call for Fernald's closure face a conflict of interest if they intend to provide community-based services to former Fernald residents. She contended that many providers “may well see dollar signs and further increases in their salaries in the closing of Fernald.”

Low direct-care salaries a statewide problem

The Massachusetts Council of Human Service Providers has reported that low pay provided to direct care workers has led to high turnover, staff vacancies and compromised service quality. A study by the Providers' Council found that four out of ten workers did not have health insurance even when offered and that many workers were living near poverty levels.

In an effort to begin to address disparities in pay, the Legislature provided \$20 million in the current-year state budget to raise the salaries of as many as 30,000 health care and human service direct care workers. The measure was vetoed by Governor Romney, but the Governor's veto was overridden by the House and Senate.

It's unclear, however, just how much impact the \$20 million in funding will have on the salaries of workers like Adams at the group home in Newton, and whether it will address the issues of turnover and vacancies in residences like hers.

In mid October, Adams's group home lost a daytime staff member, who quit after three days because the work was too stressful, Adams said. She said at least three staff are needed at all times for the four men. There is one staffer in the house who has been working nearly 80 hours a week to make up for the loss of the person who quit, Adams said. He's been working both the overnight and the day shifts.

One staffer in the house has been working nearly 80 hours a week.

Adams said the ratio of three staffers to four residents has been adequate during the week, because residents attend day programs, but on weekends, it's insufficient. Three of the men are in wheelchairs, and when she takes them out on errands, it is difficult for each of the three staffers to push each of the wheelchairs and keep track of the fourth man who is able to walk but needs assistance. Adams said the man must hold onto her arm as she pushes a wheelchair.

On a typical day, Adams said, she arrives at the house at about 4 p.m. and starts making dinner for the men, who will be returning soon from their day programs in a van driven by another staff person. When they arrive, the staff must help each man in the bathroom. The men are not able to toilet themselves. They must also be given baths.



Tracy Adams

Adams said she had been working in the Newton house for three months, and previously worked for two and a half years at a group home run by another company. She left the previous home because the pay there was too low. She started there at \$9.45 an hour, and her wage rose only to \$9.75, she said. “There was frequent turnover in the last house I worked at,” she added.

Faces in the community

COFAR volunteer sweetens the deal

Waltham businessman and COFAR volunteer David Kaloupek did a little sweet-talking recently to sign up new members and supporters of the organization and help support the Fernald Developmental Center.

Kaloupek enlisted a friend and colleague, Michael Adler, owner of In Blossom, a tropical plant store in Waltham, to bring one of the store's "chocolate fountains" over to a Waltham West Suburban Chamber of Commerce event at the Westin Hotel on October 4. There, Kaloupek had set up a table with a banner supporting Fernald and plenty of COFAR brochures and newsletters.

But it was the chocolate fountain (which looked like a large, spinning layer cake), surrounded by dishes containing strawberries, pretzels, and cookies—in short, things that might taste even better when dipped in chocolate—that quickly drew a crowd. As people stuck the strawberries et cetera into the fountain, Kaloupek talked to them about Fernald.

"This is a chance to send the message to several hundred people that there will be no safe place for the residents now at Fernald to live once that facility is closed," Kaloupek said. "So, I'm passing out information about the Village at Fernald and how we can make it work."

At about 1 p.m., two hours after the booth had been set up, Kaloupek said he'd already handed out about 100 COFAR brochures. Among those who stopped by to sample the sweet treats were Waltham Mayor Jeannette McCarthy, State Senator Susan Fargo, D-Lincoln, and Rep. Peter Peter Koutoujian, D-Newton. Most of the reaction, Kaloupek said, had been positive—and that included the reaction to Kaloupek's pitch for Fernald.

Adler, who rents out his chocolate fountains for weddings and other functions, provided the fountain at no cost for the COFAR table. He also donated about 22 pounds—or seven gallons—of melted semi-sweet Guittard chocolate from California.

Adler, who himself has previously worked as a direct-care worker for the mentally retarded, said he first met Kaloupek about a year ago when he came into his shop. Kaloupek soon persuaded him, he said, to join him in fundraising efforts on behalf of COFAR.

As Adler and Kaloupek worked the crowd around the table, two women were admiring Adler's fountain. "This is the coolest thing I've ever seen," said one, as she poked a strawberry into the swirling dark brown glaze. "You *must* rent these," she said to Adler.

Facilities lose out in supplemental budget

Service Coordinators also in jeopardy

A supplemental state budget was approved by the Legislature in September without \$2.5 million that had been sought to reverse a cut in funding this year for Fernald and other state facilities.

COFAR Executive Director Colleen Lutkevich said that while an amendment to the supplemental budget had been requested by Rep. James Fagan, D-Taunton, to restore \$2.5 million of the total \$5 million cut, the funding was never included in the supplemental budget.

The DMR state facilities have been forced to impose major staff layoffs in the past two years because of budget cuts. In the current year state budget, Governor Romney recommended the \$5 million cut in the facilities account. The Legislature didn't restore that money.

However, the House and Senate did override the Governor's veto of an Outside Section of the 2005 budget, enabling the return \$2.5 million to the facilities through a federal intergovernmental transfer program. COFAR volunteers had called members of the House Ways and Means Committee in July, urging restoration of the facilities funding and an override of the veto of the intergovernmental transfer provision.

"...there are going to continue to be staffing and maintenance problems at Fernald..." Thomas J. Frain

In a letter to Rep. John Rogers, the Chairman of the House Ways and Means Committee, Fagan had asked that the supplemental budget include the additional \$2.5 million for the facilities in order to fully restore the total \$5 million cut.

"Without fully restoring the \$5 million cut, there are going to continue to be staffing and maintenance problems at Fernald and other facilities, as cited in Attorney Cohen's brief," said COFAR President Thomas J. Frain. "This raises the question, why isn't the DMR supporting more funding to the facilities, given that the plaintiffs are arguing in ongoing litigation that conditions in them are worsening." (see story on Judge Tauro on page 1.)

The supplemental budget also didn't include additional funds for a regional DMR administration line item, which was cut by \$1 million in the Governor's budget proposal this year, placing the jobs of 20 service coordinators in jeopardy. These service coordinators serve nearly 1,000 mentally retarded persons. The Legislature restored only \$88,000 of that cut.

The Legislature did restore a number of other areas that had been cut in the Governor's budget including funding for community transportation and day programs and clinical team services.

COFAR is a family support, education and advocacy organization funded by member families. **Become a COFAR member and receive your monthly issues of *The COFAR Voice*. For membership information, visit our website at www.cofar-mass.org, or write to:**

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