

Notice of Settlement Agreement and Fairness Hearing for *Dunakin v. Lashway* No. NO. 2:14-cv-00567-JLR, a Case about Services for Private Nursing Facility Residents with Intellectual Disabilities and Related Conditions.

Dunakin. v. Patricia Lashway and Dorothy Teeter, NO. 2:14-cv-00567-JLR, involves Preadmission Screening and Resident Review (PASRR) screening, evaluation, and services for private nursing facility residents with intellectual disabilities and related conditions (ID/RC) in Washington State.

PASRR is a special set of requirements to make sure individuals with ID/RC are not put in nursing facilities against their preferences if they can safely live with supports somewhere else in the community. PASRR also ensures that individuals with ID/RC who live in nursing facilities receive the "specialized services" they need to learn skills and increase their independence. PASRR includes a "Level I screen" to find the people going into nursing facilities who may have an ID/RC. PASRR also includes a "Level II evaluation" to decide what services and settings are appropriate.

The parties have reached an agreement in this case to improve PASRR Level I screening and Level II evaluations, as well as to make sure residents can get recommended services in the right settings. The parties filed this agreement with the Court, which preliminarily approved the agreement. Before the agreement is final, you have an opportunity to review the agreement for yourself and let the court know what you think. The Court will hold a fairness hearing. In this hearing, the Court will consider the comments it receives from people who are interested in the agreement. The Court will then make a final decision about whether the agreement is fair, reasonable, and adequate.

Background About the Lawsuit

The *Dunakin* lawsuit is a class action. In a class action, one individual represents many more people (referred to as the "class") who have the same legal issues. The case was filed in 2014 against the Secretary of the Washington State Department of Social and Health Services (DSHS) and the Director of the Washington State Health Care Authority (HCA) by one individual (referred to as the "class representative"). He is a resident at a privately-operated nursing facility who has a condition related to an intellectual disability.

In April 2015, the Court ruled the outcome of the case will apply to him and others who:

(a) are or will be residents of Medicaid-certified, privately-operated nursing facilities in the State of Washington; and

(b) are Medicaid recipients with an intellectual disability or related condition(s) such that they are eligible to be screened and assessed pursuant to 42 U.S.C. § 1396r(e)(7) and 42 C.F.R. § 483.122 *et seq.* ..

Attorneys from Disability Rights Washington (DRW) and the law firm of Sirianni Youtz Spoonemore Hamburger represent the class.

Summary of the Settlement Agreement

PASRR Services

The Settlement Agreement lists seven goals for improving the PASRR screening, evaluations, and services. The goals of the agreement include:

1. Timely and adequate PASRR Level I Screening
2. Timely, adequate and appropriate PASRR Level II evaluations
3. Post-PASRR Level II Meetings and Monitoring
4. Informed Choice and Transition Planning for Class Members Who Could and Would Prefer to Live in Community-Based Settings
5. Informed Choice and Transition Planning for Class Members Who Could but Would Prefer Not to Live in Community-Based Settings
6. Informed Choice and Transition Planning for Class Members Not Able to Live in Community-Based Settings
7. Ensuring Adequate Community Capacity

For each goal, the agreement includes policy outcomes, training outcomes, and metrics.

The policy outcomes describe the procedures DSHS will use to achieve each goal. The policy outcomes include these key elements:

- Checking Level I screens at Nursing Facilities to ensure these correctly identify individuals with ID/RC who need further evaluations
- Ensuring Level II evaluations clearly indicate whether the individual needs Specialized Services and if so, the full range of specialized services that are recommended
- Establishing a Post-Level II planning and monitoring process to track implementation of Level II recommendations
- Assigning case managers or assessors to develop and implement transition plans for class members who are willing and able to discharge
- Offering Family Mentor Services to residents and their families
- Providing Specialized Services with reasonable promptness

The training outcomes for each goal describe what screeners, evaluators, and case managers will be taught to do in order to correctly follow the procedures in the policy outcomes. The training outcomes include these key topics:

- Level I Screening for hospital and nursing facility employees
- Identification of evidence and documents to make Level II determinations
- Guidance for when Level II evaluations should refer for further specialized evaluations
- Post-PASRR Level II planning and monitoring processes
- Person-Centered Planning for PASRR Assessors

Finally, the metrics for each goal include data that will be reported every three to six months to show whether the policy and training outcomes are being effectively implemented. Key metrics include:

- Percentage of Level I screens that were completed correctly
- Percentage of Level II evaluations that were completed on time
- Percentage of Level II evaluations that document reasons for determinations
- Percentage of class members who receive recommended evaluations and/or specialized services within 90 days
- Percentage of current class members willing and able to discharge who have been placed in a community-based alternative
- Percentage of future class members preferring a community-based alternative who do not remain in a nursing facility for more than one year

The parties anticipate Defendants will complete implementation of the Settlement Agreement on or about September 30, 2020. All obligations under the agreement will end if Defendants meet the agreed standards for all metrics. The metrics are the only measures that can show the state of Washington has met its obligations, and allow the Court to dismiss the case. If the state of Washington is in substantial compliance, the lawsuit will be dismissed.

Attorneys Fees and Costs

The defendants have agreed to pay the class's attorney fees and costs for the time and money Class Counsel has spent on this case. Class counsel estimates that the amount of attorneys fees incurred to date is \$640,000.00, and the amount of litigation costs incurred to date are \$64,000.00. On or before November 28, 2016, Class counsel will file their Motion for Attorneys Fees and Litigation Costs for the precise amount of attorneys fees and litigation costs that they seek. That Motion will be posted on the Class counsel's website. <http://www.disabilityrightswa.org/dunakin-v-lashaway-class-action-behalf-nursing-facility-residents-intellectual-disabilities-and>

If defendants do not oppose Class counsel's Motion for Attorneys Fees and Litigation costs, Class counsel will not seek a 1.5 multiplier of the attorneys fees. If defendants choose to object to Class counsel's Motion for Attorneys Fees and Litigation costs, Class counsel may seek up to a 1.5 multiplier, consistent with relevant law, and defendants may seek a reduction in the amount of attorneys fees and litigation costs sought. The Court will decide at the final hearing whether the payment of attorneys fees and litigation costs by defendants is reasonable.

All fees and costs will be paid by defendants. No class member will have to pay any attorneys fees or litigation costs. Class members who object to or have comments regarding the payment of attorneys fees and costs must submit their comments as described below.

Additional Information

This is just a summary of the Settlement Agreement. If you want to learn more about the Settlement Agreement, you have these options:

Read the entire Settlement Agreement. If you or someone you know may be a class member, learn more about your rights at:

<http://www.disabilityrightswa.org/dunakin-v-lashaway-class-action-behalf-nursing-facility-residents-intellectual-disabilities-and>

There, you will find additional information. The site includes a copy of the full Settlement Agreement. It also includes documents that describe PASRR evaluations and specialized services.

Ask questions. The Settlement Agreement is long and full of detailed information. Disability Rights Washington (DRW) is available to answer your questions. DRW is one of the organizations serving as the attorneys for class members. Talking to DRW does not cost you any money. You can call them toll-free at 1-800-562-2702.

How to Submit Your Comments

Anyone who wishes to comment on the Settlement Agreement and/or Class counsel's Motion for Attorneys Fees and Litigation Costs, either for or against it, may do so by submitting their comments in writing or by attending the fairness hearing.

To submit your comments to DRW or to the Court:

You may submit written comments via mail, e-mail or other means.

Submit comments to Disability Rights of Washington at:
Disability Rights Washington
315 5th Ave. S., Suite 850
Seattle, WA 98104
dunakin@dr-wa.org

Any comments received by DRW, or any listed class counsel in this case, will be provided to the Court.

Statements may also be provided directly to the Honorable Judge, James L. Robart. Written comments must be received by the Judge no later than December 12, 2016. Submit comments to the court at:
United States District Court for the Western District of Washington, Seattle
700 Stewart St., Ste. 15229,
Seattle, WA 98101

To attend the fairness hearing:

Oral comments may be made at the fairness hearing to be held in Seattle on January 9, 2017.

The address to appear for the hearing is:
United States District Court for the Western District of Washington, Seattle
700 Stewart St., Suite. 15229,
Seattle, WA 98101