

THURSDAY, MARCH 22, 2012
WRITTEN TESTIMONY
OF
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TESTIMONY PREPARED FOR:
HOUSE COMMITTEE ON APPROPRIATIONS
(Sub-Committee on Commerce, Justice, Science & Related Agencies)

REGARDING:
DEPARTMENT OF JUSTICE FY 2013 BUDGET REQUEST
AND OVERREACHING ACTIVITIES

I am the mother and legal guardian of an adult daughter (Kim) who is profoundly mentally retarded with multi-handicapping conditions. My daughter has been this way from birth. She is now 37 years of age, and functions and understands at the level of a 15 to 22 month old child. She is the delight of my life, and I have spent my life trying to take care of her, and look after her best interests. Kim spent her first 18 ½ years in our home, and at that time in her life she seemed to want and need some independence away from Mom and Dad. At that point I made the most difficult decision of my life for Kim to live away from us. For the past 18 ½ years she has been a resident of the Conway Human Development Center (CHDC) in Conway, Arkansas. CHDC is an Intermediate Care Facility for the Mentally Retarded (ICF/MR).

My daughter thrived at CHDC from the very beginning, which confirmed to us that the decision for her was a good one. Kim is very happy with her daily life. She spends her days going to class, the gym, the pool, campus activities, church, off-grounds activities, horseback riding/therapy, and many others things too numerous to mention. She receives wonderful care from loving and caring staff members. THIS IS HER HOME! The employees there are HER EMPLOYEES, so to speak. Her home is a Medicaid-certified licensed facility, and is certified by the Commission on Accreditation of Rehabilitation Facilities (CARF) as well.

I have taken great offense to the Department of Justice's (Civil Rights Division/Special Litigation Section) aggressive efforts to attack my daughter's home. For 8 years her home was under much scrutiny from the DOJ. As parents and guardians we worried, cried, and prayed that justice would be done! Finally, after over \$4 million was spent by our State to uphold our HDC, the DOJ was sent packing!! We knew this was justice!

I personally sat through the courtroom day after day to see just how all of this was going to work out. I have to say that the multitude of DOJ lawyers were very disrespectful, smirking, and giggling like school children in the courtroom. Two DOJ attorneys actually laughed and giggled at one of the witnesses that was testifying, and it disrupted her testimony, and she began to cry.

The judge had to take a break for her to be able to continue. The DOJ lawyers twisted things that were said in order to put their own “spin” on the answer. One “spin” they pronounced was, “Wouldn’t you say that a person is more apt to die in the facility than to ever leave there?” They were very arrogant! It was pretty embarrassing!

The DOJ’s interpretation of the Olmstead Decision is very slanted towards their agenda of downsizing or closing all ICFs/MR in the United States. Olmstead says my daughter has the right under federal law to have the choice of institutional care as well as home and community based services. I can say that I have looked at many wavier community based provider programs for my daughter. I compared each offering to the services she receives now at CHDC. For her there is no comparison. She has more freedom to do things at CHDC than she would if she lived in her own apartment or house in the community. She has many more people involved in her daily life at CHDC than she would have in the community. Kim comes to stay with us about once a week, and we are very involved in her life. She would not be happy living in an apartment/house with one caregiver. She would be bored, and feel isolated. I know the only choice she wants is CHDC.

It would be wrong to take my daughter’s home away from her, especially at the discretion of those individuals from the US Dept. of Justice. **THEY DO NOT KNOW WHAT’S BEST FOR HER!!**

Around this great country the Department of Justice is swinging its heavy arm to make states conform to what they have determined to be the only method of care for individuals with severe and profound intellectual disabilities. Even though the state of Arkansas was victorious in the recent lawsuit, other states are not having the same results because of DOJ threats of costly lawsuits. The DOJ/Arkansas lawsuit was unnecessary, and created massive burdens and distractions for our state operated care facility employees. It placed hardships on everyone involved, and used our state dollars to fight federal dollars; while all along the state operated care facility was in compliance with state and federal regulations. **THIS IS NOT RIGHT!** It’s really absurd, and an abuse of power!

My request for you today would be to stop the Department of Justice Civil Right Division - Special Litigations Section from these over-reaching activities by limiting their budgeted funds from being used to continue to “strong-arm” state governments into settlements/agreements that would be harmful and even life threatening to our most vulnerable citizens that choose to reside in licensed care facilities.

Thank you for your time and consideration in these important matters.

Respectfully,

Jan Fortney
Mother of Kim
Vice-President - Conway Human Development Center Parent Association