

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

Emily Fitzmorris, et al. v. Lori Weaver, Commissioner, New Hampshire Department of Health and Human Services, et al.

2026 DNH 039 (D.N.H. 2026) · No. 1:21-cv-25-PB · Decided April 17, 2026

SUMMARY

The United States District Court for the District of New Hampshire addresses cross-motions for summary judgment in a class action brought by participants in New Hampshire’s Choices for Independence Medicaid waiver program. The plaintiffs allege that deficient administration of the program places disabled individuals at serious risk of unjustified institutionalization in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The court denied both motions because material factual disputes remained, including disputes concerning standing, the applicability of Olmstead to serious-risk claims, class-wide injury, causation, and reasonable modifications.

CASE DETAILS

COURT	United States District Court for the District of New Hampshire
WRITING FOR THE COURT	Paul J. Barbadoro
JURISDICTION	United States District Court for the District of New Hampshire
DECIDED	April 17, 2026
DOCKET	1:21-cv-25-PB
DISPOSITION	other
PROCEDURAL POSTURE	The parties filed cross-motions for summary judgment in a certified class action asserting claims under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The court denied both motions because material factual disputes remained for trial.
STANDARD OF REVIEW	Summary judgment is appropriate when the record reveals no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. On cross-motions, each motion is considered separately, with inferences drawn in favor of the nonmoving party for that motion.

PRECEDENTIAL VALUE

Unknown; district-court memorandum opinion resolving cross-motions for summary judgment

TOPICS[ada / disability](#)[public accommodations discrimination](#)[ada standing](#)[reasonable accommodation](#)[summary judgment](#)**PRACTICE AREAS**[Americans with Disabilities Act](#)[Rehabilitation Act](#)[Medicaid](#)[civil rights](#)[federal civil procedure](#)**QUESTIONS PRESENTED**

1. Whether the plaintiffs have Article III standing based on failure to receive authorized community-based services and the resulting increased likelihood of institutionalization.
2. Whether an Olmstead claim under Title II of the ADA may be based on a serious risk of unjustified institutionalization rather than actual institutionalization.
3. Whether the plaintiffs' evidence could establish a class-wide serious risk of institutionalization despite disputes regarding the percentage of participants experiencing service gaps.
4. Whether disputed evidence existed regarding whether DHHS's acts or omissions caused service gaps and whether those gaps placed participants at serious risk of institutionalization.
5. How the burdens of proof apply to reasonable and necessary modifications under 28 C.F.R. § 35.130(b)(7)(i), and whether either party was entitled to summary judgment on the reasonable-modifications or fundamental-alteration issues.

HOLDINGS

1. The plaintiffs have constitutional standing because the alleged injury is the concrete and imminent loss of authorized community-based services, not merely the abstract risk of institutionalization, and that injury is redressable by an order requiring program changes.
2. A disabled person need not already be institutionalized to assert an Olmstead claim; an Olmstead claim may be based on a serious risk of unjustified institutionalization.
3. The defendants were not entitled to summary judgment on the ground that the plaintiffs could not prove a class-wide serious risk of institutionalization.
4. Genuine disputes of material fact existed regarding whether DHHS's reimbursement policies, monitoring practices, contingency-plan oversight, and accountability practices caused or exacerbated service gaps and whether those gaps placed participants at serious risk of institutionalization.
5. An Olmstead plaintiff bears the initial burden of proposing modifications and demonstrating that they are facially reasonable and necessary; the burden then shifts to the public entity to show that the modifications are otherwise unreasonable or unnecessary or that they would fundamentally alter the program.

KEY QUOTATIONS

“That injury is not the “risk of institutionalization”; it is the loss of the benefits that class members are entitled to receive in a community setting.” (at 8)

“Accordingly, the DOJ Statement is worthy of deference, and plaintiffs can thus base their claims on their contention that the defendants’ acts or omissions have placed them at serious risk of unjustified institutionalization.” (at 16)

“Together, Reed and Pollack teach that the reasonable-modifications regulation places the initial burden on the plaintiff to propose the modifications on which their claims are based and demonstrate that those proposed modifications are facially reasonable and necessary.” (at 45)

“In short, neither side has done the hard work that is required to bring this case to a conclusion on a summary judgment motion.” (at 51)

FACTUAL BACKGROUND

The plaintiffs are disabled adults enrolled in New Hampshire's Choices for Independence Medicaid waiver program, which provides home- and community-based services to individuals who would otherwise qualify for nursing-facility care. They allege that DHHS's administration of the program results in substantial gaps between authorized and delivered services, including inadequate provider reimbursement, inadequate monitoring, deficient contingency planning, and insufficient oversight of case-management agencies. Plaintiffs' expert evidence indicated that many participants missed more than half of their authorized critical services and experienced nursing-facility admissions, reliance on unpaid caregivers, or other adverse consequences.

PROCEDURAL HISTORY

Disabled participants in New Hampshire's Choices for Independence Medicaid waiver program sued DHHS and its Commissioner, alleging systemic failures to deliver authorized home- and community-based services placed them at serious risk of unjustified institutionalization. After discovery, both sides moved for summary judgment. The court concluded that disputed issues remained concerning standing, whether an Olmstead claim may be based on serious risk of institutionalization, class-wide risk, causation, service gaps, and reasonable modifications, and denied both motions.

DISPOSITION

other

CASES CITED

- *Bruns v. Mayhew*, 750 F.3d 61, 63 (1st Cir. 2014)
- *Douglas v. Independent Living Center of Southern California, Inc.*, 565 U.S. 606, 610 (2012)
- *Ingram v. Kubik*, 30 F.4th 1241, 1256 (11th Cir. 2022)
- *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 587, 591, 597-606 (1999)
- *G.K. v. Sununu*, 2021 DNH 143 (D.N.H. 2021)

- *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)
- *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)
- *M.G. v. New York State Office of Mental Health*, 572 F. Supp. 3d 1, 11 (S.D.N.Y. 2021)
- *Fisher v. Oklahoma Health Care Authority*, 335 F.3d 1175, 1181 (10th Cir. 2003)
- *Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 600 (7th Cir. 2004)
- *Davis v. Shah*, 821 F.3d 231, 263-64 (2d Cir. 2016)
- *Pashby v. Delia*, 709 F.3d 307, 322 (4th Cir. 2013)
- *Waskul v. Washtenaw County Community Mental Health*, 979 F.3d 426, 461 (6th Cir. 2020)
- *Steimel v. Wernert*, 823 F.3d 902, 911, 917 (7th Cir. 2016)
- *M.R. v. Dreyfus*, 663 F.3d 1100, 1116 (9th Cir. 2011), opinion amended and superseded on denial of rehearing, 697 F.3d 706 (9th Cir. 2012)
- *United States v. Mississippi*, 82 F.4th 387, 392 (5th Cir. 2023)
- *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024)
- *Kisor v. Wilkie*, 588 U.S. 558, 574-79 (2019)
- *United States v. Prather*, 138 F.4th 963, 975 (6th Cir. 2025)
- *United States v. McIntosh*, 124 F.4th 199, 205 n.3 (3d Cir. 2024)
- *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989)
- *Iverson v. City of Boston*, 452 F.3d 94, 100-01 (1st Cir. 2006)
- *Connor B. ex rel. Vigurs v. Patrick*, 774 F.3d 45, 48, 61-62 (1st Cir. 2014)
- *Doe v. Rhode Island Interscholastic League*, 137 F.4th 34, 41 (1st Cir. 2025)
- *Wisconsin Community Services, Inc. v. City of Milwaukee*, 465 F.3d 737, 754 (7th Cir. 2006) (en banc)
- *Nored v. Tennessee Department of Intellectual and Developmental Disabilities*, 2021 WL 3729617, at *11 (E.D. Tenn. Aug. 23, 2021)
- *Woods v. Tompkins*, 2019 WL 1409979, at *10 (N.D.N.Y. Mar. 28, 2019)
- *Henrietta D. v. Bloomberg*, 331 F.3d 261, 280 (2d Cir. 2003)
- *Frederick L. v. Department of Public Welfare*, 364 F.3d 487, 492 n.4 (3d Cir. 2004)
- *Brown v. District of Columbia*, 928 F.3d 1070, 1077 (D.C. Cir. 2019)
- *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 401-02 (2002)
- *Sosa v. Massachusetts Department of Correction*, 80 F.4th 15, 31 n.14 (1st Cir. 2023)

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