

GETTING TO WORK FACT SHEET 3:

Supported Employment and *Olmstead*

People with Serious Mental Illness Can Work

- Many people harbor preconceptions that people with serious mental illness cannot work or handle the stress of work. Studies have consistently found that these assumptions are baseless.¹
- People with serious mental illness are capable of working if they receive appropriate services, including supported employment services.²
- Employment plays a critical role in promoting recovery: it promotes social acceptance and integration into the community, and gives individuals a sense of purpose, self-esteem, and self-worth.³ Work also reduces poverty and dependence, enabling people to become independent and self-sustaining.⁴

Despite Poor Outcomes, Day Treatment Continues to be the Norm

- Instead of supported employment, the primary service that state mental health systems offer to people with serious mental illness during the day is “day treatment.” Virtually all states provide day treatment services, funded largely through the Medicaid program.⁵
- Supported employment services are far more successful in helping people to secure and maintain employment than are day treatment services.⁶

The ADA Requires States to Offer Supported Employment Services In Lieu of Day Treatment

- The Americans with Disabilities Act (ADA) requires states and local governments to “administer services, programs, and activities in the *most integrated setting appropriate* to the needs of qualified individuals with disabilities.”⁷ The U.S. Supreme Court, in *Olmstead v. L.C.*,⁸ a case brought by two women with mental illness and intellectual disabilities who challenged their continued confinement in a state psychiatric hospital, held that needless segregation was a form of discrimination prohibited by the ADA.
- The ADA’s non-discrimination requirements, including the integration mandate, apply to *all* programs, services and activities of state and local government entities⁹—including mental health treatment rehabilitative services and services to promote the employment of people with mental illnesses.¹⁰ Courts have confirmed that the ADA’s integration mandate applies to activities that promote employment. For example, it is discrimination to offer “sheltered workshops” to individuals who could be competitively employed if they received supported employment services.¹¹ *Olmstead* settlement agreements require states to offer supported employment services to people with disabilities who had been placed in service settings that were needlessly segregated.¹²
- The ADA’s integration mandate requires states to offer supported employment services to avoid the needless segregation of individuals with serious mental illness in day treatment as well as residential settings. Consigning clients of public mental health systems to day treatment programs, when they could instead be employed, is as tragic and illegal as relegating people to institutions when they could instead live in the community. State mental health systems are needlessly segregating people with serious mental illness by providing services in day treatment programs instead of at regular job sites through the use of supported employment.

¹ Alexis D. Henry et al., *Inpatient Hospitalizations and Emergency Service Visits Among Participants in an Individual Placement and Support (IPS) Model Program*, 6 *Mental Health Services Research* 227, 234 (Dec. 2004) and Patrick W. Corrigan and Stanley G. McCracken, *Place First, Then Train: An Alternative to the Medical Model of Psychiatric Rehabilitation*, 50 *Social Work* 31, 33 (2005). See also Kelly A. Allot et al., *Relationship Between Vocational Status and Perceived Stress and Daily Hassles in First-Episode Psychosis: An Exploratory Study*, 48 *Social Psychiatry and Psychiatric Epidemiology* 1045 (Jul. 2013).

² Written Testimony of Dr. Gary Bond, Professor of Psychiatry, Dartmouth Psychiatric Research Center, for U.S. Equal Employment Opportunity Commission public meeting on Employment of People with Mental Disabilities (May 15, 2011) (hereinafter Bond Testimony), <http://www.eeoc.gov/eeoc/meetings/3-15-11/bond.cfm>. See also Michael McQuilken et al., *The Work Project Survey: Consumer Perspectives on Work*, 18 *Journal of Voc. Rehab.* 59, 60 (2003) (“most studies suggest that a majority of people with severe mental illness want to work. . . [citing one survey finding that 71 percent of respondents, individuals with serious mental illnesses receiving case management services, who were not employed indicated that they wanted to become employed, and one study finding that 53 to 61 percent of participants, individuals with schizophrenia spectrum disorders following a symptom relapse, who were not working reported an interest in working] . . . Other studies have found similar results.”).

³ Sandra Moll et al., *Supported Employment: Evidence for a Best Practice Model in Psychosocial Rehabilitation*, 70 *Canadian Journal of Occupational Therapy* 298, 298 (Dec. 2003).

⁴ *Id.*

⁵ GAIL ROBINSON ET AL., U.S. DEPT’ OF HEALTH AND HUMAN SERVICES, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, STATE PROFILES OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES IN MEDICAID (2005) (“As of July 2003, among the 51 State Medicaid agencies profiled (Figure 8), 45 (88 percent) covered the service for those with a mental health condition”).

⁶ Edward L. Bailey et al, *Do Long-Term Day Treatment Clients Benefit from Supported Employment?*, 22 *Psychiatric Rehabilitation Journal* 24 (1998). See also, e.g., Deborah R. Becker, *Converting Day Treatment Centers to Supported Employment Programs in Rhode Island*, 52 *Psychiatric Services* 3, 351-357 (Mar. 2001) (rates of employment among participants in community mental health centers that shifted from providing day treatment to providing supported employment rose to between 44.2 and 56.7 percent, as compared with 19.5 percent at a community mental health center offering traditional day treatment); Robert Drake, *Rehabilitative Day Treatment vs. Supported Employment: I. Vocational Outcomes*, 30 *Community Mental Health Journal* 519 (1994) (employment rates in program that shifted from day treatment to supported employment rose from 25.4% to 39.4%, while rates in day treatment program declined slightly from 13.4% to 12.5%; among individuals previously unemployed, 28.3% of supported employment group obtained competitive jobs, compared with 8.2% of day treatment group).

⁷ 28 C.F.R. § 35.130(d).

⁸ 527 U.S. 581 (1999).

⁹ 42 U.S.C. § 12132; *Pennsylvania Dep’t of Corrections v. Yeskey*, 524 U.S. 206 (1998).

¹⁰ See U.S. Dept. of Justice, *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C., and Questions and Answers on the ADA’s Integration Mandate and Olmstead Enforcement*, Questions and Answers 1, 12, 15, available at http://www.ada.gov/olmstead/q&a_olmstead.pdf (integrated settings “provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities;” *Olmstead* implementation efforts must include individuals in “segregated day programs;” and “*Olmstead* remedies should include . . . supported employment.”).

¹¹ *Lane v. Kitzhaber*, 841 F. Supp.2d 1199, 1202-06 (D. Or. 2012). While the plaintiffs’ claims were dismissed based on a pleading issue, the plaintiffs later filed an amended complaint to address that issue, and the court ultimately certified the case as a class action. *Lane v. Kitzhaber*, 283 F.R.D. 587 (D. Or. 2012).

¹² In 2014, the Department of Justice entered an agreement with Rhode Island concerning the needless segregation of individuals with intellectual and developmental disabilities in sheltered workshops and segregated day programs rather than offering them supported employment services. *United States v. Rhode Island* (settlement approved 2014). A fact sheet describing the settlement agreement, as well as the agreement itself, can be found at http://www.ada.gov/olmstead/olmstead_cases_list2.htm. Other Justice Department *Olmstead* settlement agreements include supported employment among the remedies to address needless segregation of individuals with serious mental illness in institutions, including *United States v. New York, O’Toole v. Cuomo* (resolving *Olmstead* claims involving individuals in private adult homes; settlement approved 2014), *United States v. New Hampshire* (resolving *Olmstead* claims involving individuals in state psychiatric hospital and state-operated nursing home; settlement approved 2014), *United States v. North Carolina* (resolving *Olmstead* claims involving individuals in private adult care homes; settlement approved 2012), *United States v. Delaware* (resolving *Olmstead* claims involving individuals in psychiatric hospitals; settlement approved 2011), and *United States v. Georgia* (resolving *Olmstead* claims involving individuals in state psychiatric hospitals; settlement approved 2010).