to apply prospectively absent express legislative authorization. Moreover, the court relied on *Landgraf v. USI Film Prods*., 511 U.S. 244 (1994), which ruled that statutes and agency rules are considered retroactive when they impair the rights a party possessed when acting, increase a party's liability for past conduct, or impose new duties with respect to completed transactions.

The D.C. Circuit clarified that the SSA's adoption of the 2017 listings did not retroactively impair Ms. Cox's rights, increase her liability, or impose new duties on past actions, drawing on reasoning from *National Mining Ass'n v. Department of the Interior*, 177 F.3d 1 (D.C. Cir. 1999) and *Association of Accredited Cosmetology Schools v. Alexander*, 979 F.2d 859 (D.C. Cir. 1992). It emphasized that the existence of prior SSA listings merely provides anticipated benefits without conferring rights to those benefits. Thus, application of the newer 2017 listings to Ms. Cox's unresolved claim, without invoking retroactivity, mirrored analysis in *McCavitt v. Kijakazi*, 6 F.4th 692 (7th Cir. 2021), which identified a judicial determination as the dividing line between anticipated benefits and the vesting of a right to those benefits.

The D.C. Circuit expanded its analysis, premising retroactivity analysis specific to SSA listings as inconsistent with the fact that listings are regularly updated to reflect medical advancements, and are not meant to be static. Indeed, Judge Millet wrote that claimants "who would benefit from medical updates to the regulatory regime would be harmed if the agency were required to apply outdated modes of analysis simply because of the date a claim was submitted" (*Cox*, p 992). The court found such updates did not impose any new obligations or duties on Ms. Cox, nor did they affect her legal obligations or economic liabilities. Furthermore, they did not deprive her of the opportunity to prove her disability in subsequent steps of the evaluation process.

In *Flemming v. Nestor*, 363 U.S. 603 (1960), the Supreme Court found the Social Security Administration possesses a grant of "flexibility and boldness in adjustment to ever-changing conditions which it demands" (p 610–611) that would be significantly constrained if the process for evaluating disabilities were locked in the moment a claim was filed, no matter how long it took to adjudicate in the face of evolving medical standards.

Next, the court found error in the ALJ's weighing of evidence from Ms. Cox's treating physician, underscoring the importance of the treating physician rule. That rule, which requires deference to the clinical opinions of treating physicians because of their unique perspective on the claimant's condition, was not adequately applied by the ALJ. The appeals court mandated that the ALJ must either give controlling deference to the treating physician's opinion or provide a substantively reasonable explanation for not doing so. The ALJ's selective consideration of evidence and failure to provide a comprehensive rationale for discounting the assessment was noted as a significant error, meriting remand for further consideration.

Discussion

Cox v. Kijakazi exemplifies how courts balance the necessity of updating agency regulations with procedural protections. Here, the court clarified the balance between updated SSA listings reflecting current medical understanding and claimant rights, outlining the technical requirements for impermissible retroactivity. This case highlights further the difference between loss of entitlement or a "settled expectation" of resources and denial of unadjudicated applications (*Cox*, p 993). Retroactivity applied to expectations must be based on what a party might reasonably rely on, with the D.C. Circuit further deeming it unreasonable to expect regulations to remain unchanged.

Of equal importance, the treating physician rule in effect when this case was originally heard no longer applies for claims on or after March 17, 2017, per 20 C.F.R. §§ 416.920(c), 416.927 (2016). Complete deference to clinicians was replaced with considering factors such as the supportability of the opinion with medical signs and laboratory findings, consistency with the totality of the record, and the specialization of the source offering the opinion.

Forensic and general psychiatrists should be aware of these procedural holdings, which significantly affect patient access to future resources. These potential impacts on patient access to care and healthier living environments are likely to be especially concentrated in socioeconomically marginalized groups reliant on supplemental security income and other government benefit programs.

Group Homes and Zoning Laws

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Group Home for Disabled Persons Challenges County's Occupancy Limits as Discriminatory

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Key words: Americans with Disabilities Act (ADA); facial discrimination; Fair Housing Amendments Act (FHAA); group home; intentional discrimination

In the matter of *Courage to Change Ranches Holding Co. v. El Paso Cnty.*, 73 F.4th 1175 (10th Cir. 2023), an operator of a facility for persons with substance use disorders filed suit against the county, alleging that county policies violated the Fair Housing Amendments Act (FHAA), Americans with Disabilities Act (ADA), and the Rehabilitation Act (RA). The Fourth Circuit ruled that the county's occupancy caps were facially discriminatory based on disability. The court reversed and remanded for further proceedings to address an intentional discrimination claim related to the county's prohibition of therapeutic activities that were allowed in other group home and single-family residential settings.

Facts of the Case

Courage to Change Ranches Holding Company, now known as Soaring Hope Recovery Center, was a treatment provider for persons with substance use disorders. In Fall 2014, Soaring Hope began renting a home on Spruce Road in El Paso County, Colorado to provide housing and operate a treatment program for individuals recovering from addiction. In April 2016, a special-use permit was submitted by Soaring Hope to El Paso County, which detailed Soaring Hope's operations. The county responded that Soaring Hope's current operations were "categorized as a rehabilitation facility" (*Change*, p 1182) and not a group home for disabled persons (which was the current classification). The county determined that the Spruce Road home violated the code, and an enforcement file was opened. Soaring Hope was given the option to appeal the decision, apply for a variance, or "bring the use into compliance by eliminating the rehabilitation facility uses and bringing the use and number of residents into compliance with a group home use" (*Change*, p 1183). In August 2016, the county issued a notice of violation to Soaring Hope for operating a rehabilitation facility in a residential area. Soaring Hope then moved all therapies and most activities to its commercial office.

During a zoning hearing in October 2016, the county asked Soaring Hope to agree to a "stipulation to settle the zoning dispute" (*Change*, p 1184). Under the stipulation, Soaring Hope would agree that it violated the code and agree to "curtail any rehabilitation facility uses immediately" (*Change*, p 1184). In exchange, the county agreed "to allow Soaring Hope time to file a variance application and to work with the County to identify appropriate uses of the Spruce Road home" (*Change*, p 1184-5). Soaring Hope agreed with the stipulation and ultimately elected to come into full compliance with the code as a group home in November 2016. In February 2018, the enforcement case for the Spruce Road home was closed as Soaring Hope had "complied with the terms of the Stipulation" (*Change*, p 1185). Soaring Hope faced increased financial hardship following the zoning dispute and stipulation in 2016. The Spruce Road home closed in May 2019.

Soaring Hope sued El Paso County in the U.S. District Court for the District of Colorado, alleging 12 total claims, including intentional discrimination, disparate impact, and failure to provide reasonable accommodation under the FHAA, ADA, and RA. Under the FHAA, Soaring Hope also claimed interference, coercion, or intimidation, "challenged the County's actions under the Equal Protection Clause, and it challenged the County's code as unconstitutionally vague and overbroad" (*Change*, p 1185).

The district court granted summary judgment to the county for most of the claims, including the claim that the county "intentionally discriminated against it by 'zoning out' all rehabilitation facilities" (*Change*, p 1186). The district court did not grant summary judgment to either side regarding Soaring Hope's facial discrimination claims concerning the Code's occupancy limits. Instead, these facial discrimination claims went on to a jury trial, at which the jury found that Soaring Hope "had not proven its FHAA or ADA claims against the County by a preponderance of the evidence" (*Change*, p 1186). The district court subsequently entered judgment for the county. Soaring Hope appealed on multiple grounds.

Ruling and Reasoning

The Tenth Circuit Court of Appeals overturned the judgment on facial discrimination regarding occupancy limits and disagreed with the district court's grant of summary judgment to the county on Soaring Hope's "zoning-out" claim. It reversed and remanded the district court to address the argument for discrimination.

In determining the merits of Soaring Hope's discrimination challenge to the Code's occupancy limits, the Tenth Circuit compared the Code's treatment of "group housing for disabled persons to its treatment of similarly situated groups" (*Change*, p 1193). Soaring Hope and the County disagreed on the relevant comparator for this determination. Soaring Hope argued that relevant comparators are "group homes for the aged and other categories of structured group-living arrangements in the code" (*Change*, p 1193), and the county maintained that relevant comparators are "groups of unrelated roommates," which the code limited to five per dwelling.

On examination of the county's code, the Tenth Circuit found that group homes for disabled persons were treated "much more like group homes for the aged than like groups of five unrelated roommates" (*Change*, p 1194). Furthermore, on review of the Colorado Revised Statute §30-28-115 (2014), the Tenth Circuit noted that "apparently the County found it necessary to honor the 'eight persons' language in §30-28-115 for group homes for the aged but not for group homes for persons with developmental disabilities or mental illnesses" (*Change*, p 1195). The Tenth Circuit concluded that the county's code "'single[s] out' disabled persons by applying five-person occupancy limits to group homes for disabled persons while allowing eight or more occupants in all other structured group-living arrangements" (*Change*, p 1196) and that "the County has failed to adequately justify that discrimination" (*Change*, p 1199).

Regarding the "zoning out" claim, the Tenth Circuit examined Soaring Hope's argument that the county zoned out rehabilitation facilities from residential areas and the county "relied on the rehabilitation-facility definition to prohibit therapeutic activities in the Spruce Road home while allowing those same activities in other structured group-living arrangements and single-family homes" (*Change*, p 1202). The Tenth Circuit observed that the district court had granted summary judgment to the county based on Soaring Hope's failure to identify other treatment facilities in residential areas. But it noted that the district court did not address the second part of the argument regarding the county's use of the rehabilitation facility definition to prohibit therapeutic activities otherwise allowed in single-family homes and group-living arrangements.

The Tenth Circuit reasoned that, to establish a discrimination case, Soaring Hope would need to "establish that the County treated it differently from a similarly situated group of nondisabled persons" (*Change*, p 1202). It noted that single-family homes were allowed to "hold civic meetings and receive treatment from doctors, nurses, and mental-health professionals in their homes without violating the Code" (*Change*, p 1203). Additionally, the code allowed for "fitness instructors, physical therapists, doctors, nurses, and mental-health professionals to work with residents in structured group-living arrangements, including group homes for the aged" (*Change*, p 1203). But, to comply with the code, Soaring Hope was "forced to relocate all its therapies—including mental-health therapies and yoga—to a commercial zoning area" (*Change*, p 1203). The Tenth Circuit concluded that Soaring Hope had established a genuine issue of material fact as to whether the County discriminated against it by prohibiting certain activities. It reversed and remanded the district court to address the argument.

Discussion

Since the beginning of deinstitutionalization, group homes and community residences have played an essential role as an alternative for housing for individuals with mental illness. Community living can afford opportunities for employment, education, and reintegration, which in turn can help individuals achieve their maximum potential. Although the FHAA prohibits discrimination in housing based on disability, group homes that attempt to open in single-family residential areas often face concerns from the community regarding reduced property values or undesirable neighbors. This situation has historically resulted in zoning ordinances or policies that place significant limitations on group homes for the disabled without legitimate justification (Kanter AS. A home of one's own: the Fair Housing Amendments Act of 1988 and housing discrimination against people with mental disabilities. Am U L Rev. 1994; 961–962).

This case provides an excellent illustration of the importance for forensic psychiatrists to think beyond the strict medical model of disability. Although a medical model of disability primarily focuses on an individual's restrictions and limitations, the social or civil rights model of disability "emphasizes eliminating barriers in the society that keep persons with disabilities from being fully integrated" (Weber MC. AAPL guideline for forensic evaluation of psychiatric disabilities: A disability law perspective. J Am Acad Psychiatry Law. 2008; 36(4):558–62). In this case, we observe potentially disparate treatment via the barriers placed on disabled persons with addictions compared with other groups. These barriers could significantly affect the recovery process, as they may have affected treatment methods and community integration. It is essential to safeguard the rights and privileges of group homes from any discriminatory policies or regulations that may limit the advantages of community living to ensure that disabled groups can benefit from this living arrangement.

University's Duty to Protect Students

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University's Duty to Use Reasonable Care to Protect Its Students Exists When Student Is On Campus or Engaged in University-Sponsored Activities

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Key words: duty to protect; university; special relationship; violence; foreseeable

In *Barlow v. State*, 540 P.3d 783 (Wash. 2024), the Washington Supreme Court ruled that a special relationship exists between a university and its students for campus activities, which gives rise to a duty to use reasonable care to protect students from the foreseeable harms from other students. The scope of the duty is predicated on the student's participation in on-campus or university-controlled activities.

Facts of the Case

In August 2017, Madeleine Barlow started undergraduate studies as a freshman at Washington State University's (WSU's) main campus in Pullman, Washington. On August 20, 2017, Thomas Culhane, a fellow WSU student, raped Ms. Barlow at a party at his off-campus apartment. This situation resulted in Mr. Culhane being expelled from WSU and later convicted of second-degree rape.

Prior to the sexual assault on Ms. Barlow, Mr. Culhane was a student at WSU's Vancouver campus until Spring 2017, where he had been the recipient of two sexual misconduct complaints. One student filed a complaint that Mr. Culhane had sent her sexual comments via electronic communication. Another student complained that, during a school trip, Mr. Culhane sat next to her on a university bus and put his hands on and between her legs and continued even after she requested him to stop. The Office of Student Conduct found Mr. Culhane responsible for violating student conduct. During the investigation, Mr. Culhane requested and was granted transfer to the WSU Pullman campus. Because of the hearing, WSU suspended Mr. Culhane for nine days on August 1, 2017 and assigned him to write a paper on his understanding of consent as part of his sanctions for his sexual misconduct. But Mr. Culhane demonstrated that he did not understand the concept of consent, and the university instructed him to rewrite the paper. He did not complete all of the terms of his sanctions. Two weeks after the sanctions were imposed, he sexually assaulted Ms. Barlow at the Pullman campus at WSU.

On January 28, 2020, Ms. Barlow filed a civil suit against WSU in the superior court for Thurston County for negligence. WSU removed the case to federal court. Ms. Barlow's negligence claim relied on WSU having a special relationship with its students, alleging a duty to control and protect the students, with the knowledge of Mr. Culhane's past sexual misconduct making the offense foreseeable.

WSU moved for summary judgment, arguing that Ms. Barlow's claims failed as a matter of law because the assault occurred off campus. The district court granted WSU's motion for summary judgment. Ms. Barlow then appealed to the Ninth Circuit Court of Appeals, and that court certified two questions to the Washington Supreme Court: whether, first,