

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 **UNITED STATES OF AMERICA,**

4 **Plaintiff,**
5 **v.**

6 **COMMONWEALTH OF PUERTO RICO,**
7 **et al.,**

8 **Defendants.**

CASE NO. 99-1435 (GAG-MEL)

9 **ORDER re: DSPDI FY 2021–2022 Budget**

10 One of the Court’s priorities over the years in this consent decree case has been to
11 adequately safeguard the budget of the Commonwealth Health Department’s Division of
12 Services for Persons with Intellectual Disabilities (DSPDI). Accordingly, the Court has
13 continuously emphasized the need for the full utilization of annual program funds. Moreover,
14 the Court has issued a series of orders to the effect that DSPDI funding is not to be constrained,
15 nor that services to participants be interrupted. Otherwise, all progress and momentum towards
16 meeting the participants’ needs will become undone. See Section II-C of the JCAP (Docket No.
17 1185-1); see also Orders at Docket Nos. 1368, 1652, 2032 & 2562.

18 In its filings before the Court, the Commonwealth has committed itself to ensure that
19 each fiscal year the DSPDI budget is adequate so as to: (1) enable the Commonwealth to
20 develop and implement needed remedial measures to ensure compliance with the JCAP and
21 existing Court orders; (2) meet the needs of all participants with developmental disabilities; and
22 (3) request an increase in the budget and obtain the required approval when warranted. See
23 Docket No. 2738. Further, the government administration that commenced in January 2, 2021

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1 has pledged to “aggressively work towards compliance” with the JCAP. See Docket No. 3489
2 ¶13.

3 An analysis of the proposed use of \$52,700,000 Commonwealth budget for Fiscal Year
4 2021–2022 reveals that its increase from Fiscal Year 2020–2021 is principally for the
5 implementation of the Burns and Associates new provider rate structure, as well as for the
6 opening of new homes. The latter is of extreme importance to the well-being of participants and
7 community integration and constitutes a recurring yearly expense. The Court, nonetheless, is
8 concerned that such expansion of community services may not be sustainable if the budgetary
9 increase is not guaranteed in future fiscal years.

10 In view of the above, consistent with the JCAP, and in order to guarantee the continuity
11 of the protections, support and essential services provided to participants, the Court hereby
12 approves the proposed budget of \$52,7000,000.00 for Fiscal Year 2021–2022 as set forth in
13 detail by the parties in their Joint Status Report at Docket No. 3697. This amount constitutes the
14 baseline for future fiscal years which will guarantee no regression in progress once the
15 \$20,000,000.00 in replenished “swept funds” and rollover funds have been adequately utilized.

16 In addition, and as a preventive measure to ensure the adequate funding of the DSPDI,
17 the Court hereby orders the Commonwealth to set up a budgetary reserve of \$10,000,000. This
18 fund will be specifically earmarked and if unused will be rolled over to the next fiscal year. The
19 same is essential, more so now, given the DSPDI’s 9% all time overall compliance with the
20 consent decree as of the close of 2020. See Monitor’s April 23, 2021 Semi-Annual Report
21 (Docket No. 3493-1). Such reserve will always guarantee the availability of funds necessary for
22 compliance efforts by the Commonwealth and its DSPDI, given the immense task ahead. In
23 other words, this reserve will be used for matters that in the past DSPDI would have run out of

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1 funds. As examples, (1) for the opening of specialized community homes to address the clinical
2 needs of the participants; (2) for the establishment of specialized centers for the detoxification
3 of participants with medical polypharmacy; (3) for transitional centers for participants in the
4 process of moving to community homes from an institutionalized settings, and (4) respite and/or
5 behavioral stabilization centers for participants prior to an psychiatric hospitalization and
6 similar events.

7 The \$10,000,000 in reserve funds shall be allocated and used only upon agreement by
8 the parties, the recommendation of the JCC supported by experts, and as approved by the Court.

9 **WHEREFORE**, the Court hereby **ORDERS** the Commonwealth to allocate a
10 \$52,7000,000.00 budget for its DSPDI program for Fiscal Year 2021–2022. In addition, the
11 Commonwealth is further **ORDERED** to allocate a \$10,000,000.00 reserve also for Fiscal Year
12 2021–2022. Said funds shall be exclusively used for the DSPDI program.

13 **SO ORDERED.**¹

14 In San Juan, Puerto Rico this 5th day of May 2021.

15 *s/ Gustavo A. Gelpí*
16 GUSTAVO A. GELPI
United States District Judge

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22 ¹ The JCC shall furnish copy of the present order to the Financial Oversight and Management
23 Board, through its Executive Director, as well as to the Director of the Commonwealth Office of
24 Management and Budget (OMB), Presidents of both the House of Representatives and Senate of
Puerto Rico.