UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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LATOYA RAMOND, individually and on behalf of all others similarly situated, and JAN JAVIER SANTIAGO GARCIA,

Plaintiffs,

-v- 9:20-CV-1380

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, ANTHONY J. ANNUCCI, Acting Commissioner, in his official capacity, and THE STATE OF NEW YORK,

Defendants.

- -

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United States District Judge

DECISION and ORDER

I. INTRODUCTION

On November 6, 2020, named plaintiff Latoya Raymond ("Raymond") filed this civil rights class action against defendants New York State Department of Corrections and Community Supervision ("DOCCS"), Acting Commissioner Anthony J. Annucci[1] ("Commissioner Annucci"), and the State of New York (the "State") (collectively "defendants"). Dkt. No. 1. Thereafter, Raymond amended her pleading to join a second named plaintiff: Jan Javier Santiago Garcia ("Garcia") (collectively "named plaintiffs" or "plaintiffs"). Dkt. No. 11.

Broadly speaking, plaintiffs' amended complaint challenges defendants' policies governing participation in a six-month accelerated or early release program for non-violent offenders known as the Shock Incarceration Program ("Shock" or the "SIP"). According to plaintiffs' two-count amended complaint, defendants medically disqualify incarcerated individuals who are otherwise

[1] Commissioner Annucci is sued in his official capacity.

eligible for the Shock program—but who have not been ordered to participate in it by their sentencing court—on the basis of their disabilities in violation of Title II of the Americans with Disabilities Act ("ADA") and/or Section 504 of the Rehabilitation Act ("Section 504").

On June 1, 2021, the named plaintiffs moved under Federal Rule of Civil Procedure ("Rule") 23 to certify a declaratory and injunctive relief class that consisted of:

> all persons (1) currently incarcerated or who will be incarcerated in a New York State prison; (2) who are or will be disqualified and either excluded or removed from the SIP for medical or mental health reasons; (3) who are not judicially ordered to be enrolled in the SIP by the sentencing court; (4) are otherwise eligible to enroll in the SIP; and (5) are denied an alternative six-month pathway to early release from prison.

Dkt. No. 18. After briefing, plaintiffs' motion to certify the Class was granted on January 11, 2022. Dkt. No. 42. At that time, the Court certified the Class for the purpose of determining the "common question" of whether defendants' refusal to create an avenue for inmates protected by Title II of the ADA or by Section 504 of the Rehabilitation Act to volunteer for the opportunity to earn early release eligibility in six months amounts to a denial of public benefits in violation of either or both of those anti-discrimination statutes. *Id*. at 12.

On February 6, 2024, the named plaintiffs moved under Rule 56 seeking partial summary judgment on defendants' liability as to (1) the two named

plaintiffs' individual claims for money damages; and (2) the Class's claims for prospective declaratory and injunctive relief. Dkt. No. 88. Defendants have opposed and cross-moved for partial summary judgment on liability in their favor. Dkt. No. 96. They have also moved to decertify the Class. *Id.*

The motions[2] have been fully briefed and will be decided on the basis of the submissions without oral argument.

II. BACKGROUND

A. New York's Shock Incarceration Program

Since 1987, DOCCS has administered a six-month program called Shock or SIP. Pls.' Facts, Dkt. No. 88-2 ¶ 1. The "Shock" or "SIP" program includes substance use disorder treatment, education, pre-release counseling, and life skills counseling, and a highly structured routine of discipline, regimentation, exercise, and work. *Id.* As relevant here, a non-violent felony offender who successfully completes the six-month Shock program becomes immediately eligible for release from prison, despite having time left on their minimum prison sentence.[3] *Id.* ¶ 9.

[2] The named plaintiffs also moved to strike certain portions of a declaration submitted by defendants. Dkt. No. 101. That motion has also been fully briefed and will be resolved *infra.*

[3] As defendants point out, completion of Shock *technically* only renders a person eligible for an appearance before the Board of Parole or for conditional release, depending on whether their term of incarceration was "indeterminate" or "determinate."

Over the years, the New York State Legislature has repeatedly expanded access to the Shock program by loosening its eligibility requirements. Pls.' Facts ¶¶ 2–4. The current iteration of the statute limits eligibility for Shock to individuals who: (1) are under age 50; (2) are serving a sentence for a non-violent felony offense or certain burglary or robbery offenses; (3) are within three years of eligibility for release to supervision, regardless of the length of their sentence; and (4) have not served a previous sentence for violent felony offense. N.Y. CORR. LAW § 865(1).

B. DOCCS's Screening Criteria

In addition to the statutory eligibility criteria, DOCCS has established its own suitability requirements that further restrict eligibility to participate in Shock. Pls.' Facts ¶ 15. This includes medical and mental health screening criteria. *Id.* The two screening policies at issue in this case are DOCCS Directive 0086 and DOCCS Health Services Policy 1.26. *Id.* ¶¶ 17, 19.

Under DOCCS Directive 0086, DOCCS excludes from Shock eligibility any person who has "a serious medical problem which automatically precludes his or her participation in the program." Pls.' Facts ¶ 16. But as of 2019–2020, the determination of whether someone has a disqualifying medical condition was left to the discretion of individual medical care providers at the DOCCS facilities. *Id.* ¶ 17.

Likewise, at least under the version of DOCCS Directive 0086 in effect up until July 29, 2021, DOCCS excluded from Shock eligibility any person with a designated mental health service level of 1, 2, or 3. Pls.' Facts ¶ 21. These levels, which are assigned by the State's Office of Mental Health ("OMH"), include any person who has been diagnosed with a serious mental illness, regardless of their current psychiatric condition, as well as any person who has been prescribed medication for any mental illness. *Id*. ¶ 22.

Under DOCCS Health Services Policy 1.26, medical providers are given a list of considerations to evaluate whether a prospective Shock participant is medically suitable for the program. Pls.' Facts ¶ 18. For instance, Policy 1.26 states that the Shock program "demands high physical exertion and stamina" and "individuals with illnesses, conditions and disabilities that may preclude participation will be carefully identified and evaluated with [the program's] requirements in mind." *Id*. ¶ 19.

Notably, Policy 1.26 does not define or specify the "[S]hock requirements" or contain a list of specific physical tasks or functions that participants must be able to perform.[4] *Id*. ¶ 20. Instead, Policy 1.26 lists disabilities and medical conditions that may preclude participation in the Shock program. Ex. H to Stecker Decl., Dkt. No. 88-11.

[4] Elsewhere, the parties agree that the staff charged with administering the Shock program do not view the physical training component of the program as a limiting factor and have routinely modified or limited the required exercises based on an individual's ability. Pls.' Facts ¶ 13.

Together, these extra-statutory, policy-based medical and mental health screening criteria have resulted in the exclusion of thousands of people from the benefits of the Shock program. For instance, between January 1, 2015 and December 31, 2020, data shows that DOCCS excluded 1,514 otherwise-eligible individuals from Shock based on medical reasons, and 3,915 people individuals based on mental health reasons. Pls.' Facts ¶ 41.

C. DOCCS's Alternative Shock Programs

In 2009, New York enacted the Drug Law Reform Act ("DLRA"), which, as relevant here, permitted a sentencing court to *order* the enrollment of an eligible person accused of a felony drug offense into the Shock program. Pls.' Facts ¶ 28. As part of this new statutory enactment, the DLRA specifically required DOCCS to create a six-month alternative program for court-ordered Shock participants who would be excluded from the program for medical or mental health reasons. *Id*. ¶ 29.

DOCCS did not create an entirely new alternative program to comply with the DLRA's command. Pls.' Facts ¶ 31. Instead, DOCCS adopted a policy whereby it enrolls court-ordered, otherwise-ineligible Shock participants into its pre-existing substance use disorder treatment programs. *Id*. ¶ 32. As a general matter, DOCCS places these "Alternative Shock" participants into two different programs: men are placed into Phase I of the Comprehensive Alcohol and Substance Abuse Treatment ("CASAT") program, while women

are placed into the six-month-long Alcohol and Substance Abuse ("ASAT") program.[5] *Id.* ¶ 32. Although these programs do not ordinarily lead to early release, Alternative Shock participants who complete Phase I of CASAT or ASAT are treated in the same manner as if they had successfully completed the normal Shock program. *Id.* ¶ 33.

From 2009 until November 2021, DOCCS maintained a policy whereby it only provided one of these alternative shock program placements to medically disqualified individuals who were court-ordered to participate in the Shock program (the "Challenged Policy"). Pls.' Facts ¶ 39. Under the Challenged Policy, if a person was medically disqualified from the Shock program and had *not* been court-ordered to participate in Shock, DOCCS did not place them in one of its Alternative Shock programs or otherwise provide them with a comparable path to early release. *Id.*

D. Named Plaintiffs Raymond & Garcia

As a result of this Challenged Policy, Raymond and Garcia were deprived of an opportunity to earn early release. Raymond is 39 years old and suffers from Type I diabetes. Pls.' Facts ¶ 44. She has successfully completed other drug treatment programs with physical training components. *Id.* ¶ 48. In November of 2019, DOCCS staff at Albion Correctional Facility screened her

[5] CASAT and ASAT are not the only alternatives used by DOCCS. Depending on an individual's circumstances, DOCCS has also used other alternative placements. Pls.' Facts ¶ 33.

for admission to the regular Shock program, reviewed her medical suitability, and determined that she was medically cleared to participate in the Shock program. *Id* ¶ 50.

However, immediately after Raymond was transferred to Lakeview Shock Incarceration Facility to begin the program, Facility Health Services Director Dr. Ian Caisley medically disqualified her because of her Type I diabetes diagnosis. Pls.' Facts ¶¶ 52, 54. DOCCS did not offer Raymond a chance to participate in an Alternative Shock program. *Id*. ¶ 57. If she had been able to complete a Shock program or a comparable alternative, she would have been eligible for early release in July of 2020. *Id*. ¶ 59. Instead, Raymond remained incarcerated until February 14, 2022. *Id*. ¶ 60.

Garcia's experience in DOCCS custody was similar. He is 45 years old and suffers from degenerative disc disease, spondylosis, and spinal stenosis. Pls.' Facts ¶¶ 66, 68. In August of 2020, DOCCS staff at Franklin Correctional Facility screened him for admission to the Shock program, reviewed his medical suitability, and determined that he was eligible to join. *Id* ¶ 71.

However, immediately after Garcia was transferred to Lakeview Shock Incarceration Facility to begin the program, Facility Health Services Director Dr. Ian Caisley medically disqualified him because of his lumbar disc disease

diagnosis.[6] Pls.' Facts ¶¶ 72. DOCCS did not offer Garcia an opportunity to participate in an Alternative Shock program. *Id.* ¶ 76. If he had been able to complete a Shock program or a comparable alternative, Garcia would have been eligible for early release in March of 2021. *Id.* ¶ 78. Instead, Garcia remained incarcerated until July 22, 2022. *Id.* ¶ 79.

E. DOCCS's Recent Changes to its Shock Policies

DOCCS's Shock policies have not remained static. After plaintiffs filed this civil action, DOCCS began making changes to how its Shock program policies apply to individuals who suffer from a disability. *See* Pls.' Facts ¶ 87.

On July 27, 2021, DOCCS revised Directive 0086 by making two changes to the medical and mental health criteria. As to mental health, the Directive no longer categorically excludes individuals with an OMH-designated mental health service level 3. Pls.' Facts ¶ 90. As to the medical requirements, the revised Directive now states that "any incarcerated individual deemed not appropriate due to a serious medical condition will be referred to Central Office Health Services for review." Pls.' Facts ¶ 91.

On November 3, 2021, DOCCS issued a memorandum that substantially revised its policy on Alternative Shock program placements. Pls.' Facts ¶ 92.

[6] According to the named plaintiffs, Dr. Caisley disqualified Garcia after he confirmed that he received Social Security disability benefits. Pls.' Facts ¶ 73. Plaintiffs contend that Dr. Caisley failed to discuss even the possibility of an accommodation or modification that might allow Garcia to participate in the Shock program. *Id.* ¶ 75.

This memorandum states that "[e]ffective immediately, Lakeview [Shock Incarceration Facility] is accepting previously unsuitable medical conditions and level 3 OMH participants." *Id.* This memorandum also states that any individual who is otherwise eligible and suitable for the Shock program (but deemed unsuitable for medical or mental health reasons) will be offered an Alternative Shock placement at another facility, regardless of whether their state criminal sentence included court-ordered Shock participation.[7] *Id.* ¶ 94.

Under these revised Shock policies, the current Acting Facility Health Services Director has testified that neither Raymond nor Garcia would have been medically disqualified. Pls.' Facts ¶¶ 63, 83. Further, even if Raymond and/or Garcia were somehow medically disqualified, the Acting Director has testified that under the new policies the named plaintiffs would be offered an Alternative Shock placement at another facility. *Id.*

III. LEGAL STANDARD

The entry of summary judgment is warranted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). An issue of fact is material for purposes of this inquiry if it "might affect the outcome of the suit

[7] In November of 2021, DOCCS also created a new Form #3316, entitled "Shock Incarceration Correctional Facility Medical Limitations Form." This form includes a list of exercises that form the physical training component of the regular Shock program and permits medical staff to indicate whether an individual should be exempted from one or more of them. Pls.' Facts ¶ 99.

under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). And a dispute of material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id*.

In assessing whether there are any genuine disputes of material fact, "a court must resolve any ambiguities and draw all inferences from the facts in a light most favorable to the nonmoving party." *Ward v. Stewart*, 286 F. Supp. 3d 321, 327 (N.D.N.Y. 2017) (citation omitted). Summary judgment is inappropriate where a "review of the record reveals sufficient evidence for a rational trier of fact to find in the [non-movant's] favor." *Treglia v. Town of Manlius*, 313 F.3d 713, 719 (2d Cir. 2002) (citation omitted).

IV. DISCUSSION

Plaintiffs' amended complaint asserts claims for disability discrimination under Title II of the ADA (Count One) and Section 504 of the Rehabilitation Act (Count Two). Dkt. No. 11. Plaintiffs have moved for summary judgment on the liability component of: (a) their individual claims for damages; and (b) the Class's claims for prospective declaratory and injunctive relief. Dkt. No. 88-1 at 13.[8]

[8] Pagination corresponds to CM/ECF.

A. Named Plaintiffs' Claims

Under Title II of the ADA, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

Likewise, under Section 504 of the Rehabilitation Act, "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a).

Disability discrimination claims under these two statutes are sufficiently similar that courts lump them together for purposes of the analysis. *See, e.g.*, *Wright v. N.Y. State Dep't of Corr.*, 831 F.3d 64, 72 (2d Cir. 2016). In order to establish a prima facie violation, the plaintiff must show: (1) he is a qualified individual with a disability; (2) the defendant is an entity subject to the acts; (3) he was denied the opportunity to participate in or benefit from the entity's services, programs, or activities, or was otherwise discriminated against by reason of his disability. *See id*.

As an initial matter, defendants argue that they are entitled to summary judgment on Raymond and Garcia's damages claims. Defs.' Mem., Dkt. No. 96-10 at 17. According to defendants, the Supreme Court recently held that

compensatory damages are not available under the Rehabilitation Act, *id.* (citing *Cummings v. Premier Rehab Keller, PLLC*, 142 S. Ct. 1562, 1576 (2022), and, because of the substantial overlap in these disability statutes, compensatory damages are therefore unavailable under Title II of the ADA, too, Defs.' Mem. at 18.

Upon review, this argument must be rejected because it sweeps far too broadly. As plaintiffs explain, *Cummings* held only that emotional-distress damages were unavailable under the Rehabilitation Act. Pls.' Reply, Dkt. No. 102 at 7. While plaintiffs concede that the Second Circuit recently extended *Cummings*'s limitation on emotional-damages recovery to Title II of the ADA, *id.* at 8 (citing *Doherty v. Bice*, 101 F.4th 169, 174 (2d Cir. 2024), plaintiffs emphasize that they are only seeking ordinary contract damages based on their expectation interest; *i.e.*, Raymond and Garcia "can recover damages to put them in as good a position as they would have been in had they been given the opportunity to participate in and receive the benefits of the SIP, including loss-of-liberty damages for the additional time they spent in prison." *Id.* at 9. Because a review of the case law cited by plaintiffs confirms

the validity of their argument, defendants' argument vis-à-vis compensatory damages will be rejected.[9]

The remaining question is whether plaintiffs have established, as a matter of law, that defendants' conduct met the requisite elements.

1. Qualified Individual with a Disability

The first element the plaintiff must show is that he or she is a qualified individual with a "disability." The ADA and the Rehabilitation Act define a "disability" as (A) "a physical or mental impairment that substantially limits one or more major life activities of such an individual"; (B) "a record of such an impairment"; or (C) "being regarded as having such an impairment." 42 U.S.C. § 12102(1); 29 U.S.C. § 705(9)(B).

Although courts should be careful to distinguish between an impairment that merely *affects* a plaintiff's major life activity from one that *substantially* limits an activity, *B.C. v. Mt. Vernon Sch. Dist.*, 837 F.3d 152, 160 (2d Cir. 2016), this substantial-limitation requirement is "not an exacting one," *Woolf v. Strada*, 949 F.3d 89, 94 (2d Cir. 2020), and the bottom-line question of

[9] Defendants also argue that Eleventh Amendment sovereign immunity bars plaintiffs' claims under Title II of the ADA. Defs.' Mem. at 12–17. As defendants point out, this issue raises difficult questions about whether, and under what circumstances, Congress validly abrogated state sovereign immunity. A review of plaintiffs' reply memorandum strongly suggests they have the better of this argument. Pls.' Reply, Dkt. No. 102 at 12–15. But for reasons explained *infra*, a trial on damages for plaintiffs' Rehabilitation Act claims would proceed regardless of the outcome of this thorny constitutional dispute. *Id.* at 12 n.5 (citing *Ross v. City Univ. of N.Y.*, 211 F. Supp. 3d 518, 528 (E.D.N.Y. 2016)). Accordingly, the Court will defer a decision on this legal issue.

whether an individual's impairment actually qualifies as a disability "should not demand extensive analysis." 28 C.F.R. § 35.101(b).

Upon review, plaintiffs have established that Raymond and Garcia are "disabled" under all three statutory definitions. Raymond suffers from Type I diabetes, which is an impairment that substantially limits the functioning of her endocrine system, 28 C.F.R. §§ 35.108(b)(2), (d)(2)(iii)(H), and, when left untreated with insulin, substantially limits her major life activities of seeing, eating, walking, standing, and working. Pls.' Facts ¶ 45. In sum, Raymond qualifies as disabled under the "actual disability" prong.[10] *See, e.g.*, *Levy v. N.Y. State Dept' of Env't Conservation*, 297 F. Supp. 3d 297, 319 (N.D.N.Y. 2019) (finding Type I diabetes satisfies the relevant statutory definitions).

Likewise, Garcia suffers from severe lumbar disc disease, an impairment that substantially limits the functioning of his musculoskeletal system. 42 U.S.C. § 121012(2)(B); 28 C.F.R. § 35.108(c)(1)(ii). This substantially limits his ability to walk, run, life bend, jump, and exercise, Pls.' Facts ¶ 67, which are all major life activities, 28 C.F.R. § 35.108(c). Garcia's back condition also substantially limits his ability to work. Indeed, he has been found disabled by the Social Security Administration. Pls.' Facts ¶¶ 67–68. In sum, Garcia

[10] Raymond also qualifies as having (B) "a record of such an impairment"; or (C) "being regarded as having such an impairment." DOCCS's own records reflect Raymond's life-long Type I diabetes diagnosis, Pls.' Facts ¶ 44, and DOCCS regarded her as disabled when it medically disqualified her on the basis of her Type I diabetes diagnosis, Pls'. Facts ¶ 54.

qualifies as disabled under the "actual disability" prong.[11] *Sinisgallo v. Town of Islip Hous. Auth.*, 865 F. Supp. 2d 307, 338 (E.D.N.Y. 2012) (finding that Social Security recipients typically meet the relevant statutory definitions).

Further, plaintiffs have established that they were "qualified" for the Shock program. The term "qualified individual with a disability" means a person with a disability "who, with or without reasonable modifications to rules, policies, or practices, . . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2).

The "essential eligibility requirements" of a public service or program are generally determined with reference to the regulations and policies that govern the program in question. *See, e.g.*, *Fulton v. Goord*, 591 F.3d 37, 43 (2d Cir. 2009) (examining DOCCS regulations). Importantly, though, courts must conduct an independent analysis of eligibility requirements for a public program or benefit rather than simply deferring to a set of formal eligibility requirements that an entity has imposed. *Mary Jo C. v. N.Y. State & Local Ret. Sys.*, 707 F.3d 144, 159 (2d Cir. 2013).

The eligibility requirements for the Shock program are set forth in New York Correction Law § 865(1). The record reflects that DOCCS staff screened

[11] Garcia also qualifies as having (B) "a record of such an impairment"; or (C) "being regarded as having such an impairment." DOCCS's records documented Garcia's back condition, and DOCCS disqualified him from Shock on the basis of his back condition. Pls.' Facts ¶ 72.

Raymond and Garcia for admission to the Shock program, determined that both plaintiffs met the eligibility requirements and were medically suitable, and transferred them to Lakeview. Pls.' Facts ¶¶ 50, 71. Although DOCCS staff at Lakeview medically disqualified both plaintiffs, there is no evidence in the record of any particular exercise or other Shock program component that either named plaintiff could not perform.

To the extent that the ability to perform any specific physical tasks might be considered an eligibility requirement, the record is clear that performance of the physical training component of the Shock program is not "essential" for purposes of the ADA and Rehabilitation Act. First off, although the statute contemplates "rigorous physical activity," the statute's eligibility criteria omit any reference to physical fitness. *Compare* N.Y. CORR. LAW § 865(2), *with* § 865(1). Second, the record reflects that DOCCS had a longstanding practice of modifying and, in some cases, eliminating the program's physical training requirements on an *ad hoc* basis. Pls.' Facts ¶¶ 13–14. Third, and relatedly, DOCCS made available alternative means of receiving the same early release benefits of the Shock program to medically unsuitable individuals who were court-ordered to participate. *Id.* ¶ 35.

Further, the record shows that DOCCS has since revised its policies to partially or wholly exempt individuals with "previously unsuitable medical conditions" from the physical training requirements if necessary. Pls.' Facts

¶¶ 61–62, 93. In addition, these revised policies permit individuals who are still deemed medically unsuitable to be afforded an opportunity to participate in an Alternative Shock program. *Id.* ¶¶ 63, 94. Indeed, Lakeview's current Facility Health Services Director testified that, under these revised policies, someone with Raymond or Garcia's clinical presentation would not have been medically disqualified. *Id.* ¶¶ 62, 81–82.

2. The Entity is Subject to the Acts

The second element the plaintiff must show is that defendant is an entity subject to the ADA and the Rehabilitation Act. It is well-established that DOCCS is subject to these statutes. *See, e.g.*, *Wright*, 831 F.3d at 72. In fact, the Supreme Court has explicitly held that the ADA applies to prison-based boot camp programs with criteria similar to the Shock program at issue in this litigation. *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 209 (1998).

3. Denied the Benefit of the Shock Program

The third element the plaintiff must show is that he or she was denied the opportunity to participate in or benefit from the entity's services, programs, or activities, or was discriminated against by reason of his or her disability.

Where, as here, a plaintiff presents direct evidence of discrimination, the burden of proof shifts to the defendants to show that they would have made

the same decision regardless of discriminatory animus.[12] *See Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1985). If the defendant makes that showing, the burden is back on the plaintiff to show that discrimination was a but-for cause of the denial of benefits. *Beckhorn v. N.Y. State Dep't of Corr. & Cmty. Supervision*, 2019 WL 234774, at *5 (W.D.N.Y. Jan. 16, 2019).

The record demonstrates that DOCCS medically disqualified Raymond on the basis of her diabetes diagnosis, Pls.' Facts ¶ 54, and disqualified Garcia on the basis of his back condition, *id.* ¶¶ 72. Notably, both named plaintiffs had already been screened by DOCCS staff at other facilities, determined to be eligible and medically suitable for participation in the Shock program, and transferred to Lakeview for that purpose.

This unrebutted showing by plaintiffs establishes that the discrimination was sufficiently "intentional" to support a claim for damages. *See, e.g.*, *Felix v. City of N.Y.*, 344 F. Supp. 3d 644, 664 (S.D.N.Y. 2018) (quoting *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 275 (2d Cir. 2009)). This showing further establishes, as a matter of law, that the discrimination was a but-for cause of the adverse decision. *See, e.g.*, *Doe v. Deer Mountain Day Camp*, 682 F. Supp. 2d 324, 345 (S.D.N.Y. 2010) (holding "no reasonable jury could find that [plaintiff's medical condition] was not a substantial factor—or, indeed, a

[12] Otherwise, the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) would apply to these claims. *See, e.g.*, *Ben-Levy v. Bloomberg, L.P.*, 518 F. App'x 17, 18 (2d Cir. 2013) (summary order).

but-for cause" of plaintiff's exclusion where defendants' justifications for exclusion all related to plaintiff's [medical condition]").

In defense of this kind of claim, a public entity can demonstrate, as an affirmative defense, that modifications would fundamentally alter the nature of the program at issue. 28 C.F.R. § 35.130(b)(7)(i). But this argument fails for substantially the reasons articulated in plaintiffs' briefing. Pls.' Mem., Dkt. No. 88-1 at 20–21. This includes the record evidence establishing that DOCCS could (and sometimes did) modify individual elements of the Shock program to accommodate others, the evidence showing that DOCCS could (and routinely did at least for court-ordered Shock participants) provide the same early release benefits under an Alternative Shock program. *See id*.

In opposition, defendants argue that expansion of the Alternative Shock program to non-court-ordered individuals would impose a "substantial and undue burden" on their operations. Defs.' Mem., Dkt. No. 96-10 at 22. This argument will be rejected. As an initial matter, plaintiffs point out that this "undue burden" defense relies principally (if not entirely) on facts that have been introduced through the Declaration of Assistant Commissioner Rachel Young. Dkt. No. 96-3. Because Ms. Young was never disclosed as a witness in defendants' mandatory disclosures, and for substantially the reasons set out in plaintiffs' motion to strike, Dkt. No. 101, the declaration will be struck and not considered. But even accounting for the merits, this "undue burden"

defense must be rejected for substantially the reasons set forth in plaintiffs' reply memo. Pls.' Reply, Dkt. No. 102 at 5–7.

In sum, Raymond and Garcia are entitled to partial summary judgment on liability.

B. Class Claims

Plaintiffs seek non-monetary relief on behalf the Class. They argue that the Class is entitled to declaratory and injunctive relief based on the record that has been assembled. According to plaintiffs, it is undisputed that the Challenged Policy operates as a rule that denies reasonable accommodations to individuals who have been medically disqualified from the regular Shock program and that DOCCS's method of administering the Shock program has the effect of discriminating against individuals on the basis of their disability by denying them an equal opportunity to earn early release.

Upon review, plaintiffs' briefing establishes that the Class is entitled to summary judgment on both a failure-to-accommodate theory and a disparate-impact theory of relief. As an initial matter, the ADA requires public entities to engage in an individualized inquiry before denying an accommodation to a disabled individual. *See, e.g.*, *Wright*, 831 F.3d at 77. The record establishes that Raymond, Garcia, and others were medically disqualified without the benefit of an individualized inquiry as a result of DOCCS's application of Directive 0086. These medically disqualified individuals were not offered an

opportunity to enroll in the kind of Alternative Shock program that DOCCS made available to similarly situated court-ordered Shock participants. For the reasons discussed *supra*, extending this alternative is neither an undue burden nor a fundamental alteration of the Shock program. Accordingly, the Class is entitled to summary judgment on a failure-to-accommodate theory.

Upon review, plaintiffs' briefing also establishes that the Class is entitled to summary judgment on a disparate-impact theory of relief. Implementing regulations for the ADA and the Rehabilitation Act provide that a public entity may not utilize criteria or methods of program administration that that the effect (intentional or otherwise) of subjecting qualified individuals with disability to discrimination on the basis of those characteristics. 28 C.F.R. §§ 35.130(b)(3), 42.503(b)(3). The commentary on these regulatory provisions state that they are intended to prohibit "blatantly exclusionary policies or practices" and "nonessential policies and practices that are neutral on their face, but deny individuals with disabilities an effective opportunity to participate." 28 C.F.R. Pt. 35, App. B.

Likewise, ADA regulations prohibit "eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered." 28 C.F.R. § 35.130(b)(8). The

guidance on this regulation states that it "makes it discriminatory to impose policies or criteria that, while not creating a direct bar to individuals with disabilities, indirectly prevent or limit their ability to participate." 28 C.F.R. Pt. 35, App. B. In fact, these ADA regulations specifically require prisons to ensure that qualified individuals with disabilities are not excluded from, or denied participation in, public programs. 28 C.F.R. § 35.152.

Plaintiffs' briefing establishes that the Challenged Policy runs afoul of this general body of law. To succeed on a disparate-impact claim, the plaintiff must show that an outwardly neutral practice has a significantly adverse or disproportionate impact on individuals with disabilities. *B.C. v. Mount Vernon Sch. Dist.*, 837 F.3d 152, 158 (2d Cir. 2016). Once a plaintiff makes this showing, "the burden shifts to the defendant to 'prove that its actions furthered, in theory and in practice, a legitimate, bona fide governmental interest *and* that no alternative would serve that interest with less discriminatory effect.'" *Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 617 (2d Cir. 2016) (quoting *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 575 (2d Cir. 2003)).

The record shows that New York State created and implemented a six-month, early-release program called Shock and that DOCCS screened out thousands of otherwise-eligible individuals on the basis of medical and mental health qualification requirements. In short, the record establishes

that defendants' method of administering the Shock program had a significantly adverse or disproportionate impact on people with disabilities.

Even assuming that DOCCS's method of administering the Shock program might have been intended to further some legitimate correctional goals, the record shows that a far less discriminatory alternative was available: DOCCS already had an *ad hoc* practice of modifying or eliminating physical elements of the program to accommodate individuals and an established practice of placing medically unsuitable (but court-ordered) individuals into Alternative Shock programs.

In opposition to these straightforward conclusions, defendants contend that DOCCS recent policy changes render the Class's claims moot. According to defendants, "it is undisputed that DOCCS modified its administration of the [Shock program] to achieve the exact outcome that the Plaintiffs seek in their requested injunction." Defs.' Mem. at 10–12. In defendants' view, the "metaphysical possibility" that DOCCS might revert to its old policies is not a sufficient basis on which to award injunctive relief. *Id*. at 12.

"A case becomes moot only when it is impossible for a court to grant 'any effectual relief whatever' to the prevailing party." *Am. Freedom Defense Initiative v. Metro. Transp. Auth.*, 815 F.3d 105, 109 (2d Cir. 2016) (citing *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012)). "The voluntary cessation of challenged conduct will not "ordinarily render a case

moot because a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed." *Knox*, 567 U.S. at 307. "[I]n such cases, an injunction provides 'effectual relief' because it precludes the defendant from reviving the challenged conduct in that manner." *Am. Freedom Defense Initiative*, 815 F.3d at 109.

"Accordingly, courts will find a case moot after a defendant voluntarily discontinues challenged conduct only if (1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *Am. Freedom Defense Initiative*, 815 F.3d at 109 (quoting *Cnty. of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979) (cleaned up).

Measured against this general legal standard, defendants have failed to show that either prong has been met. First, the DOCCS policy changes are currently enshrined in a November 3, 2021 memorandum. Neither Directive 0086 nor Health Services Policy 1.26 have been formally amended. Further, as plaintiffs' briefing explains, evidence provided in discovery shows that DOCCS's informal changes to the Challenged Policy have continued to result in some number of non-court-ordered individuals being removed from the traditional Shock program for medical reasons without being placed in an Alternative Shock placement. Pls.' Facts ¶¶ 97–98. In addition, DOCCS has yet to take the kind of "concrete steps"—such as by re-training Lakeview's

staff or by providing individuals with ready access to new official forms—that would tend to show there is no "reasonable expectation" that the challenged violation will recur. Accordingly, and for the reasons explained at length in plaintiffs' opposition to defendants' cross-motion, Dkt. No. 102 at 20–25, this argument will be rejected.

V. CONCLUSION

Raymond and Garcia are entitled to partial summary judgment insofar as they have established defendants' liability on their claims for non-emotional-distress compensatory damages. Likewise, the Class is entitled to partial summary judgment on the issue of defendants' liability. Because plaintiffs' motion will be granted, defendants' cross-motions will be denied.

The parties are directed to set up a conference with U.S. Magistrate Judge Christian F. Hummel to discuss settlement of the outstanding issues and, in the exceedingly unlikely event that this meeting fails to produce a negotiated result, to propose a joint schedule for briefing and adjudicating the remaining matters.

Therefore, it is

ORDERED that

1. Plaintiffs' motion for partial summary judgment (Dkt. No. 88) is GRANTED;

2. Defendants' cross-motion for summary judgment and to decertify the Class (Dkt. No. 96) is DENIED;

3. Plaintiffs' motion to strike (Dkt. No. 101) is GRANTED;

4. Plaintiffs' letter motion seeking permission to file a reply (Dkt. No. 106) is GRANTED; and

5. The parties are directed to contact U.S. Magistrate Judge Christian F. Hummel's chambers to set up a conference to discuss a global settlement of the outstanding issues.

The Clerk of the Court is directed to terminate the pending motions.

IT IS SO ORDERED.

David N. Hurd
U.S. District Judge

Dated: September 19, 2024
Utica, New York.