

Appeals Court: Missouri Medicaid Policy Appears Unreasonable

by David A. Lieb
Associated Press

Jefferson City — A lawsuit over last year's Medicaid cuts gained new life today as a federal appeals court suggested it was unreasonable of Missouri to deny coverage of certain medical equipment to most low-income adults.

A panel of the 8th U.S. Circuit Court of Appeals overturned the denial of a preliminary injunction last September by a trial judge and instead directed him to reconsider the case.

In doing so, the appeals court said Missouri's policy of covering some durable medical equipment but not others appears unreasonable under federal Medicaid rules and court precedent. The court also said the plaintiffs — several disabled Missourians — had shown a likelihood of legal success.

In 2005, Republican Gov. Matt Blunt and the GOP-led Legislature enacted numerous cost-cutting changes to the Medicaid health care program for the poor. One of those eliminated coverage of such things as wheelchair batteries, catheters, bed rails and communication devices to most adults while continuing the coverage for the blind, pregnant, homebound and children.

The Legislature this year voted to restore coverage of wheelchair accessories but not of the other items. That change is to take effect with the next state budget July 1.

The appeals court ruling said states have discretion to determine the optional services in their Medicaid plans. But "failure to provide Medicaid coverage for non-experimental, medically necessary services" within a Medicaid category is both "unreasonable and inconsistent with the stated goals of Medicaid," the court said.

The ruling should serve as roadmap for a trial judge to block the continued enforcement of the medical equipment cuts, said Thomas Kennedy, an Alton, Ill., attorney who represents the disabled plaintiffs.

"It is a wonderful decision for the plaintiffs," Kennedy said. "Some of our clients would be able to breath; some of our clients would be able to have their wheelchairs fixed."

There originally were seven plaintiffs, but one — Joseph Everett, 21, of New Haven — died in December. Everett had suffered a brain injury and partial paralysis in a vehicle accident four years earlier and as a result of the cuts had lost some medical services he depended upon, Kennedy said. The attorney said he did not know whether that contributed to his death.

A spokeswoman for the Missouri Department of Social Services said today that attorneys were still reviewing the decision and the agency had no comment.

In refusing to block the coverage changes last September, U.S. District Judge Dean Whipple had rejected arguments that it was illegal for Missouri to provide the medical equipment to blind adults while not doing so for other categories of adults. Whipple noted the state had applied for a federal exception from the normal comparability requirement.

That exemption later was denied, so Missouri instead proposed to pay for services to the blind using only state money — relieving itself from the strings that come with federal funding. The appeals court cited the new approach while concluding Missouri was not violating the federal comparability standard.

But the appellate panel said Whipple had not addressed claims that Missouri's list of covered medical equipment was so limited that it failed to meet Medicaid's objectives of providing medically necessary services and enabling people to care for themselves.

State attorneys claimed Missouri met those federal mandates, because Medicaid recipients still could seek an exception to the cuts or continue to receive coverage of the medical equipment if they qualified for home health care services.

But the appeals panel said those options were empty. None of the seven plaintiffs appear to qualify for home health care, and Missouri was told in April that its homebound guidelines did not comply with federal policy anyway, the court said.

Additionally, the state's exception process does not appear to provide a reasonable way to gain coverage, the ruling said.

Kennedy said the appeals court ruling essentially disposed of all the state's arguments against issuing an injunction.

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