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Washington Supreme Court strikes DSHS rules that discriminate against disabled children

Thousands of Washington children with severe disabilities will benefit.

Seattle, WA, May 27, 2011 – Yesterday, the Washington State Supreme Court held that Washington’s Department of Social and Health Services must assess children’s needs for Medicaid personal care services individually, rather than based upon generic assumptions about children’s age and living situation. The Court struck down two state regulations that reduced children’s personal care hours based upon generic assumptions about their age and living situation, re-affirming the Court’s prior holding in *Jenkins v. Department of Social and Health Services*, that “[o]nce a person is assessed to require and receive a certain number of [Medicaid personal care] hours, the assessment cannot be reduced absent a specific showing that fewer hours are required.”

The plaintiff, Samantha A., is a 15 year old with multiple, severe disabilities who lives with her mother. Samantha requires constant supervision and care, and was initially assessed by DSHS to need 96 hours of Medicaid personal care per month. In 2006, DSHS applied the two regulations to Samantha’s assessment, reducing her care from 90 to 39 hours per month, a 59% reduction in Medicaid benefits. Most children had their Medicaid personal care services reduced by similar amounts. Samantha’s mother appealed and won in an Order issued by Judge Anne Hirsch, Thurston County Superior Court. DSHS appealed Judge Hirsch’s Order. The Washington Supreme Court’s decision marks the conclusion of the lengthy state court appeals process. Samantha A. was represented by Regan Bailey and Susan Kas of Disability Rights Washington and Eleanor Hamburger of Sirianni Youtz Spoonemore.

“I am thrilled with the outcome,” said Samantha’s mother Andrea. “With the right supports, Samantha is a beautiful and engaging teenager with a terrific sense of humor and a future full of independence and hope. Families come in all shapes and sizes, and there are many single parents or grandparents who cobble support systems together, to the best of their ability, to care for a child with a developmental disability. I’m so grateful the Court recognized the importance of taking this into consideration. Having Medicaid personal care services was a lifesaver for Samantha. But even more importantly, the Court’s decision will make sure the same support is there for other children in Washington.”

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Plaintiff's counsel believe that all of the more than 3,000 children who receive Medicaid personal care services in Washington state will benefit from this decision. "Samantha's case was not unique," said Ms. Hamburger. "All children who received MPC services since 2006 suffered a similar unfair reduction in their personal care benefits - many experienced even greater cuts than Samantha did."

Disability Rights Washington called upon Secretary Susan Dreyfus and DSHS to take immediate corrective action. "Thousands of children have gone without the personal care they have been assessed to need during the years that this litigation moved through the court system," said Ms. Kas. "Now that there is a final ruling, DSHS should move quickly to fix the MPC assessment process for kids."

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