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SIXTH CIRCUIT TO DECIDE WHETHER MEDICAID-ELIGIBLE CHILDREN HAVE REDRESS IN FEDERAL COURT SYSTEM

By Jamie Rutkowski

In March 2001, the federal district court in the Eastern District of Michigan held that children did not have a right to sue state officials in federal court on the ground that they are not receiving basic medical care under Medicaid. *Westside Mothers v. Haveman*, 133 F.Supp.2d 549 (E.D. Mich. 2001). Since *Westside Mothers*, at least six federal courts, including an Illinois district court, have disagreed with this ruling and found that the children do have redress in the federal court system. The Sixth Circuit heard arguments in January to decide whether it will rule in opposition to 35 years of case law favoring redress.

The Michigan court decided that it would not allow private individuals redress in the federal courts regarding medical care they claimed to be entitled to under the Medicaid Program. The court in *Westside Mothers* stated that since the state's participation in the Medicaid program is a consensual contract, it does not give the beneficiaries of the program a private right to sue in the federal courts.

In *Westside Mothers*, two parents' organizations sued Michigan's state officials because children were being denied the basic Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT). EPSDT, a program under Medicaid, is a comprehensive, preventive health program for children under 21 years old. Though a commendable act by Congress to address underprivileged children's health care, the program has not met its expectations. The United States is still trailing behind other countries in

children's preventative medicine.

There is a means to redress the lack of medical care given by Medicaid itself. Under Medicaid, a beneficiary can use the administrative proceedings known as "Fair Hearings." Though the federal courts are not the only means, they have frequently been used and have proven to be the most effective. This is evidenced by the six recent federal court rulings since *Westside Mothers* allowing the children to go forth with their claim. The Michigan court also suggested that the parents seeking redress regarding their children's entitlement to medical care could exercise their First Amendment rights by handing out fliers, lobbying Congress, or requesting that the Department of Health and Human Services cut off Medicaid funds to the state.

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-- Gregg Haifley, Children's Defense Fund

Gregg Haifley, health department director at the Children's Defense Fund in Washington, D.C., said that there have been few instances where the federal government has cut off state funds for not complying with federal requirements. "The only meaningful redress is the courts," Haifley said. "This kind of stripping of rights from beneficiaries has significant consequences for the beneficiaries of other programs. If individuals can't

enforce rights under Medicaid, what's to stop a court from saying the elderly can't enforce their rights under Medicare or Social Security?" he added. The Children's Defense Fund in Washington, D.C. filed one of the *amicus curiae* briefs in support of the parents' organizations.

Pediatricians and advocates of children's healthcare also expressed opinions against the Michigan District Court ruling because they fear that the decision could prevent children from getting the most basic of health care services. If the courts refuse to give beneficiaries of Medicaid proper redress, states could theoretically stop funding the Medicaid program. As a result, physicians may be more hesitant to participate in the program or, fearing that they might not be reimbursed, stop the program altogether. The issue also raises the possibility of limited medical care for low-income children.

Organizations for limited federal government such as the Texas Justice Foundation and the Michigan Municipal League have a different view however. These organizations supported Michigan state officials in *Westside Mothers* by filing *amicus curiae* briefs. These organizations contend that because there is no fundamental constitutional right to be healthy, the federal courts are not a proper venue for redress.

Westside Mothers may be a premonition about how courts will deal with the plentiful Medicaid redress cases in the future. A potentially great number of U.S. citizens involved with federal assistance programs could be affected by the Sixth Circuit's resolution of the issue.