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Older People with Disabilities Sue to Halt Adult Day Health Care Cuts

On August 18, 2009 several elderly plaintiffs with disabilities filed a class action lawsuit, *Brantley, et al. v. Maxwell-Jolly, Director of California Department of Health Care Services*, to stop devastating cuts in Adult Day Health Care (ADHC) services. ADHC provides daytime health and nursing care, therapies and other services to low-income seniors and people with disabilities. The cuts, if implemented, would place as many as 8,000 recipients at immediate risk of institutionalization, hospitalization, injury or death. Among those affected is Plaintiff Lillie Brantley, who is typical of other people who receive ADHC services. Mrs. Brantley's grand-niece, Chauncey McLorin, says she would have to put her aunt in a nursing home if her ADHC services are cut to only three days a week. "My Aunt Lillie has Alzheimer's disease. She lives with me and cannot be left alone because she is not safe. I work full-time and can't afford to quit my job to care for her. I love her very much but I would be forced to place her in a nursing home if she can't go to ADHC five days a week and that would be devastating for our family."

The lawsuit was filed in federal court in the Northern District of California by Disability Rights California, AARP Foundation Litigation, and the National Senior Citizens Law Center, alleging violations of the Americans with Disabilities Act (ADA) and federal Medicaid law. "Without adequate ADHC services, many older people with disabilities who could otherwise remain at home or in the community will be forced into nursing homes," says Barbara Jones, attorney with AARP Foundation Litigation.

The lawsuit challenges the legality of two aspects of the cuts which are contained in ABx4 5, one of a number of bills enacted in response to California's budget crisis. First, on August 27, the maximum number of days Medi-Cal will fund ADHC services for all participants will be reduced from five to three per week regardless of the seriousness of the participant's health problems.

Second, if the State allows the maximum number of days to return to five per week, new restrictive eligibility criteria will be triggered, which will make untold thousands of current participants permanently ineligible for any ADHC services.

“Ironically, these cuts will not only cause irreparable harm to the thousands of people and ADHC programs affected by the cuts, but they will also result in increased costs to the State and counties in hospitalization, nursing facility placements, Adult Protective Services, and emergency services,” says Elizabeth Zirker, attorney with Disability Rights California. Gilda Garcia, a Plaintiff in the case, expressed her fears, “I live alone and even though I can do a lot of things for myself, my diabetes is so unstable that I still end up in the hospital sometimes. The nurses at ADHC check me every day, five days a week. On the weekends, I just pray not to have problems. If I lose ADHC, I know I will end up in the hospital a lot more.

Plaintiffs will be seeking a Temporary Restraining Order to prevent the cuts from five to three days per week from taking effect on August 27. In addition, Plaintiffs are asking the Court to declare that the new eligibility requirements, although not yet operational, violate the law. Plaintiffs are requesting that all affected participants be individually assessed to determine what, if any, replacement services they may be entitled to through Medi-Cal and that anyone who would be forced into an institution by the cuts retain their full services.

“The State cannot shirk its obligation to provide medically necessary services to each and every Medi-Cal participant. If the State chooses to reduce ADHC services across the board, it still must, according to federal law, provide the skilled nursing and therapy services people receive in the centers to the people who need them” says Anna Rich, attorney with National Senior Citizens Law Center.

The 36,000 Californians who participate in ADHC average 78 years old and take six or more medications a day, for which nearly 2/3 require supervision or assistance. More than 2/3 also face at least three serious medical challenges including cardiovascular disease (39%), dementia (13%), and diabetes (10%). The overwhelming majority (92%) are entirely dependent on Medi-Cal funding for their care.

Go to www.disabilityrightsca.org for more information on the lawsuit.

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