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Caselaw Developments in the Aftermath of Westside Mothers v. Haveman: Emerging Trends

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January 2002

Introduction

This Policy Brief examines caselaw developments in the wake of *Westside Mothers v. Haveman*.[1] This decision overturned the longstanding, federal right of Medicaid beneficiaries to sue state officials to prevent ongoing violations of their benefit guarantees. If affirmed on appeal, the decision would overturn nearly a century of federal Constitutional law and thousands of cases (including dozens of Supreme Court cases). All of these prior cases hold that federal laws such as Medicaid, which are enacted pursuant to Congress' Spending Clause powers, constitute the supreme law of the land. These cases also hold that in certain instances (including cases arising under the Medicaid statute), individuals can bring a lawsuit for injunctive relief (rather than monetary damages) against federal officials who are alleged to have violated their federal rights. Because of the unprecedented nature of this decision and its potential ramifications for the Medicaid program (not only for beneficiaries but also for participating health care providers), we have prepared this Policy Brief updating readers on the outcome of cases decided in the aftermath of the decision.

The *Westside Mothers* case was appealed by the beneficiaries (Medicaid-enrolled children and their parents) to the United States Court of Appeals for the 6th Circuit and oral argument is scheduled to take place in Cincinnati, Ohio on January 24, 2002. Amici supporting the children include Catholic Charities, USA, the City of Detroit, Members of Congress, the National Association of Public Hospitals and Health Systems, and the American Academy of Pediatrics. The United States Department of Justice has also filed a brief on behalf of the children. Amici supporting the state defendant include eight states,[2] the Texas Justice Foundation, and the Michigan Municipal League and Governor John Engler (R-MI).

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[1] 133 F. Supp. 2d 549 (E.D. Mich 2001).

[2] The eight states are Ohio, Tennessee, Alabama, Florida, Indiana, Mississippi, Nevada and Oklahoma.

Following a brief overview of the *Westside Mothers* decision, we summarize subsequent rulings that have considered the "Westside Mothers" defense. To date, every court that has had occasion to consider the "Westside Mothers" defense has rejected the district court's reasoning and continued to adhere to Supreme Court precedent.

I. Background and Overview: the *Westside Mothers* Decision

The ability on the part of individuals to enforce their legal rights under the program sets Medicaid apart from other more general public health financing programs and elevates it to the status of insurance. Indeed, the ability to enforce the right to coverage has parallels in virtually all other forms of insurance protected under state or federal law (e.g., state contract enforcement rights in the case of state regulated insurance; Medicare enforcement rights; and civil enforcement rights under the Employee Retirement Income Security Act).

The *Westside Mothers* case focuses on two fundamental principles of law, both of which are absolutely crucial to an individual Medicaid beneficiary's ability to bring suit to enforce coverage rights.

The first principle is whether the Eleventh Amendment to the United States Constitution shields state officials who allegedly are acting in violation of federal law from lawsuits to enjoin ongoing violations of federal requirements. In 1908, the United States Supreme Court ruled in *Ex Parte Young*[3] that Eleventh Amendment immunity does not apply to this narrow class of suits (i.e., suits to enjoin ongoing violations of federal law by state officials), since state officials who violate federal law by definition are acting outside the scope of their official status and thereby lose their official shield of immunity.

The second major legal principle concerns beneficiaries' ability to bring Medicaid enforcement actions under a more than century-old federal civil rights law providing individuals the right to go to court to protect federal legal rights granted under the Constitution or federal laws. For several decades, the Supreme Court has recognized Medicaid enforcement suits as falling within the purview of this federal civil rights law codified at 42 U.S.C. §1983.

In *Westside Mothers*, a federal district court effectively overturned these two longstanding principles in a detailed analysis, finding that the U.S. Constitution bars Medicaid beneficiaries from bringing an individual enforcement action against state officials to enjoin the ongoing violation of their federal Medicaid rights.

Westside Mothers was a "typical" Medicaid case, much like thousands of others. The case concerns the right of Medicaid-eligible children to Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services, a comprehensive health benefits package for Medicaid-eligible children under age 21. A group of parents filed suit against state officials on their children's behalf alleging "the continued denial of covered benefits by state officials and the systemic deprivation of ***EPSDT services." The plaintiffs sought injunctive relief and the appointment of a special master to ensure that EPSDT services be provided to Medicaid-eligible children.

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[3] 209 U.S. 123 (1908).

In a far-reaching decision, the court concluded that federal courts lack the jurisdiction to hear suits for injunctive relief that involve claims of violation of federal Medicaid rights by state officials and dismissed the case prior to hearing the merits of the arguments asserted. Some of the major points and rationales in the court's decision are summarized below.

- The Medicaid statute, unlike Medicare, does not specifically authorize aggrieved persons to sue state officials in cases in which they claim that their federal rights have been violated. The statute creates a contractual relationship of equals between the federal and state government. Medicaid authorizes the Secretary of DHHS (which administers the Medicaid program) to cut off funds in the event that a state violates the terms of the statute; this power constitutes the exclusive means by which the federal Medicaid requirements can be enforced.[4]

- Even were the Medicaid statute held to imply a private right of action, and even if the right to sue the state under separate civil rights laws were permitted, Congress has no power under the Spending Clause to allow an individual to sue a state official for federal benefits in the absence of a state's consent to suit. In addition, the court notes that plaintiffs' claim that the state has consented to be sued by participating in the Medicaid program is wrong—i.e., it cannot be said that a participating state has knowingly entered into a contractual arrangement that includes private enforcement rights.

- Medicaid is not the supreme law of the land. It is merely a contract between state and federal governments. The very fact that Medicaid gives the Secretary no power to sue the state for specific performance of its federal duties, but simply limits the federal government to a complete elimination of funds, underscores the sovereign status of the state. Since the statute is merely contractual, and since the state has not consented to be sued as a result of its participation in Medicaid, plaintiffs could succeed in suing state officials only if the officials fell within the doctrine of *Ex Parte Young* which permits suits for injunctive relief to redress ongoing violations of federal law by state officials.

- Federal civil rights laws that have formed the basis for Medicaid litigation for 35 years in fact do not – and cannot – authorize Medicaid litigation, because Medicaid is merely a Spending Clause statute and is not the type of right secured under the federal civil rights laws. Furthermore, federal civil rights laws cannot extend to Medicaid, because the Medicaid statute provides an exclusive remedy in the form of enforcement actions brought by the DHHS Secretary.

[4] However, federal Medicaid law does not leave beneficiaries without any protections since the law also gives beneficiaries fair hearing rights in the event that they are denied services under the state plans, as well as managed care grievance and appeal rights. The court does not discuss the fact that neither the state fair hearing systems nor the managed care grievance process is empowered to hear claims that a state official's conduct violates federal law, rather than the state plan.

II. Subsequent Cases Considering the *Westside Mothers* Defense

Following the *Westside Mothers* decision in March 2001, a number of other state defendants facing allegations of federal Medicaid legal violations in other cases raised the "Westside Mothers" defense. To date the defense has been rejected by all courts that have considered it, either explicitly or in reviewing claims similar to those raised by the Michigan defendants. Nine decisions by federal district courts throughout the country affirmed the rights of Medicaid beneficiaries to bring a lawsuit under §1983 or denied the state's 11th Amendment argument to dismiss the case.

- **Foster Children Bonnie L. v. Bush, S.D. Fla., 2001 US Dist. Lexis 21028 (December 3, 2001)** Florida foster care children brought suit challenging the state's pattern and practice of failing to fulfill the constitutional and statutory obligations regarding safety, stability and health of children. In a ruling on a motion to dismiss the case, the court dismissed some claims, but the court found that the challenges brought to enforce the EPSDT benefit for these children were allowed under §1983. The foster care children were able to demonstrate that the right to EPSDT services meets the requirements that: (1) services were intended by Congress to benefit them; (2) the right to EPSDT services is not so vague and amorphous that enforcement would strain judicial competence; and (3) the state is bound by federal law to provide such services. The plaintiffs were ordered to file an amended complaint to address the §1983 and other surviving claims.

- **Rancourt v. Concannon, Civil No. 01-159-B-C, 2001 WL 15054221, (USDC, D. Me) (November 28, 2001)** Three adults waitlisted for services sued Maine's Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services. The plaintiffs claim that the agencies are not providing services in a "reasonably prompt" manner. The state filed a motion to dismiss the case based on a number of the defendant's arguments in *Westside Mothers*. A Maine District court denied the motion to dismiss by finding that plaintiffs do have a private right of action to bring suit to enforce "reasonable promptness" requirements of Medicaid. The order explains that the rationale from *Westside Mothers* on which the state relied is not controlling precedent and has already been rejected by another judge in the federal Eastern District of Michigan court (see *Markva* below).

- **Bryson v. Shumway, 2001 U.S. Dist. LEXIS 17413 (N.H.) (October 23, 2001)** *Bryson* was brought in a federal district court in New Hampshire. People with acquired brain disorders sued state officials over their application of acquired brain disorder/home and community-based health care services. Judge McAuliffe stated that the law in the 1st Circuit does not follow *Westside Mothers*; if a state official violates federal law, that official is not protected by the 11th Amendment and "may be sued for prospective injunctive relief."

- **Memisovski v. Patla, 2001 U.S. Dist. LEXIS 16963 (N.D. Ill.) (October 17, 2001)** Plaintiffs, pregnant women and children enrolled in Medicaid, brought suit against the

state because they could not find a doctor to treat them. Judge Lefkow denied defendants' motion to dismiss stating that they have "mischaracterized" plaintiffs' claims. She denied 11th Amendment immunity defense by the state because plaintiffs have sought prospective injunctive relief and because EPSDT is a right enforceable through §1983.

- **Markva v. Haveman, 2001 U.S. Dist. LEXIS 16288 (E.D. Mich) (October 11, 2001)** *Markva* is the only subsequent case within the 6th Circuit that has cited to *Westside Mothers*, and was decided by a different judge in the same federal district court in Michigan. Grandparents of minor children in Michigan sued state officials to end the distinction between parents and non-parent caretakers in financial assessments. Parents are allowed to exclude a certain amount from household incomes that is designated to the care of a minor child, but other caretakers were barred from that benefit. The plaintiffs won summary judgment and permanent injunctive relief. The state defendants, however, are not currently relying on *Westside Mothers,* but may raise such arguments if the *Westside Mothers* decision is upheld on appeal in the 6th Circuit.

- **Dajour v. City of New York, 2001 WL 830674 (S.D. NY) (October 3, 2001)** Plaintiffs are homeless children with asthma who are part of or who have applied to be a part of New York City's homeless shelter program. They claim that they have been denied EPSDT services under Medicaid that are required by federal law. Judge Koeltl ruled that plaintiffs have an enforceable right under §1983 to EPSDT. He stated that congressional language makes EPSDT screenings mandatory and cites to numerous other cases that have allowed private rights of action under §1983 to enforce EPSDT provisions. Furthermore, Judge Koeltl stated that Congress has not taken any "explicit or implicit action" to exclude action under §1983.

- **Lewis v. N.M. Dept. of Health, 2001 WL 930006 (10th Cir. N.M.) (August 16, 2001)** Plaintiffs are disabled persons who are eligible for Medicaid services, but who have been placed on a waiting list for as many as seven years. The plaintiffs sued alleging impermissible delay in the provision of Medicaid services. State officials asserted that the case should be dismissed because of state's immunity to such a suit under the 11th Amendment. Judge Tacha denied defendants' motion to dismiss because the plaintiffs properly sued state officials, rely on sections of the Medicaid law that bind the state, and seek equitable prospective relief. In addition, the decision rejects the state's argument that the case "invaded special sovereignty interests," because the case only challenges the administration of the state's Medicaid program, and therefore does not implicate any of the sovereignty interests.

- **Boudreau v. Ryan, 2001 WL 8405832 (N.D. Ill.) (May 2, 2001)** Five developmentally disabled and mentally retarded Medicaid-eligible adults brought suit against state officials for failing to provide Medicaid services. In a memorandum opinion, many of the *Westside Mothers* arguments were rejected by the court in denying the state's motion to dismiss. For example, the judge rejected the arguments that 11th Amendment bars such a case and that the Spending Clause is inferior to other laws, and noted that the Supreme Court has made no mention of such a distinction. He

stated that the plaintiffs are seeking to enforce the Medicaid Act, a federal law, which is not merely a contract. Finally, the judge stated that *Ex Parte Young* doctrine does not fit within the fact pattern because plaintiffs are not asking the federal court to tell state officials how to provide services, but that they are asking the court to prevent the state from altogether withholding services.

- **Antrican v. Buell, 158 F. Supp. 2d 663 (E.D. NC 2001) (April 17, 2001)** Judge Howard issued his ruling on motions for summary judgments. Plaintiffs sued for lack of adequate dental care under North Carolina's Medicaid program. Judge Howard denied defendants' motion for 11th Amendment immunity because a state's interest in administering the Medicaid program, which is funded partially by the federal government, does "not implicate core aspects of state sovereignty." This case is on appeal to the 4th Circuit, and state officials will likely use the ruling of *Westside Mothers* as a basis for appeal.

III. Pending Action by the United States Supreme Court

The outcome of the ruling in *Westside Mothers* (in the 6th Circuit, as well as other circuits hearing similar appeals) may be influenced by a case argued before the United States Supreme Court on November 27, 2001. *Falvo v. Owasso Independent School District No I-011*[5] concerns the challenge to certain academic grading practices as a violation of the 14th Amendment and a federal education privacy statute.[6] Although the parties did not raise enforceability of the federal statute under §1983 as an issue, the 10th Circuit reviewed applicable case law regarding subject matter jurisdiction over the case and found that because the provisions of FERPA are intended to benefit the plaintiffs through privacy protections afforded to students and parents, the provision in question was enforceable under §1983. The court further determined that as under the Medicaid program, the only remedy Congress provided for violations of FERPA was a federal funding cut off for educational institutions found in violation. This same point regarding Medicaid's remedial scheme was also addressed in the *Westside Mothers* decision. The 10th Circuit went on to find that termination of federal funding is not a comprehensive remedial scheme; actions also may be brought under §1983 for violations of the federal law.

Although the §1983 matter was not raised in the petition for certiorari to the Supreme Court, both parties (as well as numerous amici) have filed briefs that address the availability of §1983 as a remedy for violation of FERPA. Because of the similarity to the arguments in *Westside Mothers* and the fact that Medicaid, like FERPA, contains no statutory-based remedial scheme other than the termination of federal funding, the Supreme Court's analysis and ruling on §1983 in this case may carry implications for future Medicaid litigation.

[5] 233 F3rd 1201, cert. granted, 121 S.Ct. 2547 (2001).
[6] Family Education Rights and Privacy Act (FERPA), 28 U.S.C. §1291.