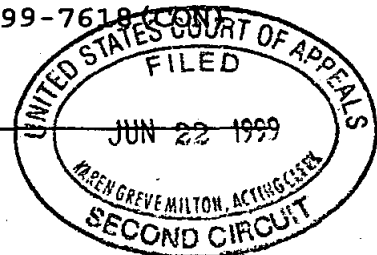


99-7572

99-7586 (CON), 99-7588 (CON), 99-7604 (CON), 99-7618 (CON)



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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JUANA RODRIGUEZ, by her son and next friend, Wilfredo Rodriguez,
AMELIA RUSSO, MARY WEINBLAD, by her daughter and next friend,
Susan Downes, CHRISTOS GOVATSOS, SIDONIE BENNETT, individually
on the behalf of all others similarly situated,

Plaintiffs-Appellees,

MOLLIE PECKMAN, by her son and next of friend, Alex Peckman,

Intervenor-Plaintiff-Appellee,

-against-

CITY OF NEW YORK, IRENE LAPIDEZ, Commissioner Nassau County
Department, COMMISSIONER OF THE WESTCHESTER DEPARTMENT OF SOCIAL
SERVICES, NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES,
COMMISSIONER, SUFFOLK COUNTY DEPARTMENT OF SOCIAL SERVICES,

Intervenors-Defendants-Appellants.

DENNIS WHALEN, Commissioner of the New York State Department of
Health, BRIAN WING, Commissioner of the New York State Office of
Temporary and Disability Assistance,

Defendants-Appellants,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF INTERVENOR-DEFENDANT-APPELLANT COMMISSIONER OF THE
SUFFOLK COUNTY DEPARTMENT OF SOCIAL SERVICES

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STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

Intervenor-Defendant-Appellant SUFFOLK COUNTY DEPARTMENT OF SOCIAL SERVICES adopts the Statement of Appellate Jurisdiction and Subject Matter Jurisdiction as submitted by State Defendants-Appellants Whalen and Wing¹ and adds the following:

Intervenor-Defendant SUFFOLK COUNTY DEPARTMENT OF SOCIAL SERVICES, filed a Notice of Appeal in the District Court on May 21, 1999.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the Medicaid Act and its regulations, Sec. 504 of the Rehabilitation Act and the Americans With Disabilities Act require defendants to include safety monitoring as a separate task on their TBA forms, assess the need for safety monitoring as part of the total personal care services hours authorized for both applicants and recipients?

Whether plaintiffs met the burden of proof necessary for entry of a permanent injunction?

STATEMENT OF THE CASE

Intervenor-Defendant-Appellant, SUFFOLK COUNTY DEPARTMENT OF SOCIAL SERVICES, adopts the statement of the facts as submitted by the State Defendants-Appellants WHALEN and WING, and adds the following:

Suffolk County Department of Social Services has appealed the Judgment and Order of the District Court because it has

¹Intervenor-Defendant-Appellant Suffolk County Department of Social Services is submitting a truncated brief, adopting that submitted by the State Defendants-Appellants Whalen and Wing.

unjustifiably required Suffolk County Department of Social Services to amend its determinations without any support whatsoever that Suffolk County inappropriately administered the Task Based Assessment Program in the first instance. Notably, not one named plaintiff is from Suffolk County.

In its Opinion and Order dated April 19, 1999, the District Court ordered inter alia, that the County of Suffolk, Department of Social Services, include safety monitoring as a separate task on their TBA forms, assess the need for safety monitoring as a separate task, and calculate any minutes allotted for safety monitoring as part of the total personal care services authorized for both applicants and recipients. See Opinion and Order, p.57. It is from this Opinion and Order that the Commissioner of the Suffolk County Department of Social Services appeals.

SUMMARY OF THE ARGUMENT

The United States District Court abused its discretion by issuing a permanent injunction against Suffolk County Department of Social Services when there was no evidence whatsoever that Plaintiff-Appellees would be irreparably harmed unless safety monitoring was included as a separate task for personal care services. In addition, there was no evidence that any individual within Suffolk County was not receiving the appropriate care necessary to adequately meet their needs. Consequently, the District Court's Opinion and Order issuing a permanent injunction should be reversed.

POINT I

THE DISTRICT COURT IMPROPERLY OVERRODE THE
STATE'S STATUTORY DISCRETION IN ADMINISTERING
THE MEDICAID PERSONAL CARE SERVICES PROGRAM

Intervenor-Defendant-Appellant COUNTY OF SUFFOLK DEPARTMENT OF SOCIAL SERVICES adopts the argument submitted by State Defendants-Appellants WHALEN and WING.

POINT II

PLAINTIFFS FAILED TO DEMONSTRATE A
VIOLATION OF FEDERAL MEDICAID
"COMPARABILITY" PROVISIONS

Intervenor-Defendant-Appellant Suffolk County Department of Social Services adopts the argument submitted by State Defendants-Appellants WHALEN and WING.

POINT III

THE DISTRICT COURT ERRED IN FINDING
VIOLATIONS OF MEDICAID REGULATIONS 42 C.F.R.
§440.230 (B) AND (C).

Intervenor-Defendant-Appellant Suffolk County Department of Social Services adopts the argument of State Defendants-Appellants WHALEN and WING.

CONCLUSION

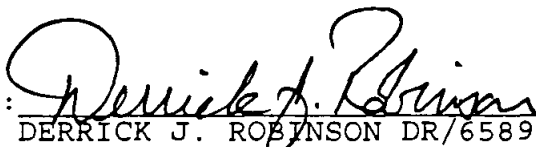
For the foregoing reasons, the Suffolk County Department of Social Services respectfully requests that an Order be entered reversing the April 19, 1999 Opinion and Order of the United States District Court of the Southern District of New York (Scheidlin, J.) Insofar as it issued a permanent injunction and directed Intervenor-Defendants to include safety monitoring as a separate task on their TBA forms, assess the need for safety

monitoring as a separate task and calculate any minutes allotted for safety monitoring as part of the total personal care services authorized for applicants and recipients.

Dated: Hauppauge, New York
June 21, 1999

Respectfully submitted,

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