

Dependent Children (AFDC) - families that received AFDC automatically received Medicaid. In 1996 Congress repealed AFDC and established the Temporary Assistance for Needy Families (TANF) block grant program. At the same time, Congress sought to protect access to Medicaid and assure that eligibility restrictions in states' TANF programs would not lead to a loss of Medicaid. It did this by "delinking" TANF cash assistance and Medicaid. A provision of the 1996 law, section 1931 of the Social Security Act, requires states to provide Medicaid coverage to low-income families who meet the 1996 AFDC income and resource standards. Section 1931 also gives states the option to expand Medicaid eligibility by adopting less restrictive income and resource standards than those in their AFDC programs.

During the unprecedented economic growth and expansion of the late 1990's, many states, including Missouri, took advantage of the option under Section 1931, and expanded their Medicaid eligibility and resource standards. Missouri had expanded its Section 1931 program to cover those with incomes up to 100% of the federal poverty level.

In the face of a budget crisis this year, however, effective July 1, 2002, the Missouri General Assembly reduced the income limit for custodial parents and caretaker relatives receiving Section 1931 Medicaid from 100% of the federal poverty level to 77% of the federal poverty level; the General Assembly in no way directed Missouri not to provide transitional Medicaid. The Missouri Department of Family Services issued an implementing policy memorandum directing workers not to provide transitional Medicaid benefits to families whose Medicaid benefits were being discontinued because their income was more than 77% of the federal poverty level.

Advocacy Efforts

After learning of Missouri's intention to deny eligible families transitional Medicaid benefits, the Legal Services of Eastern Missouri (LSEM) attempted to educate the Missouri welfare agency as to the illegality of its actions and the unsoundness of its healthcare policy. In addition to clearly

demonstrating why the Agency's actions were illegal, in writing to the Director of the State Agency, LSEM asserted, "[t]here are additional reasons why providing TMA to these families would be sound health policy. First, health insurance is often not available to low-income families through the workplace. Research indicates that approximately 75% of the families entering employment after receiving cash assistance do not have employment-based health care coverage. Because these families do not have other health care coverage available to them, transitional Medicaid is particularly critical. TMA can help low-income working families retain their jobs and avoid entering or re-entering the Temporary Assistance for Needy Families (TANF) program. Put simply, families with medical needs may be forced to turn to TANF cash assistance sooner if they are uninsured and need medical attention. Further, because individuals will not be as likely to prolong seeking health care due to having TMA, bouts of illness that might cause them to miss work or lose their jobs will likely be avoided. Also, individuals affected by the Section 1931 cuts will be better able to retain their jobs if they are not distracted by concerns about family health and how to obtain needed care without any health insurance."

Despite these efforts, Missouri continued to insist that these families were not eligible for transitional Medicaid. It said that although LSEM had made "important points for why health insurance coverage for parents is valued . . . the budget cut funding for the parents in these families resulting in the loss of their healthcare benefits," and nothing could be done. It became clear to advocates across the state that only a lawsuit could compel the State to provide the legally-mandated transitional Medicaid benefits.

The Missouri Lawsuit: White v. Martin

Because neither Legal Services of Eastern Missouri nor any other legal services program in the state could bring class action litigation to enforce the federal transitional Medicaid requirement, Missouri advocates contacted the Welfare Law Center. The Welfare Law Center, along with the National Health Law Program, then brought

a class action on behalf of Missouri families struck by the devastating change in Missouri Medicaid policy. On July 22, 2002, they filed the complaint and a motion for a temporary restraining order and preliminary injunction.

Plaintiffs charged that the Missouri policy violates federal protections designed to preserve Medicaid benefits as an entitlement program for families moving from welfare to work. Under federal law, plaintiffs argued that families with earnings whose Medicaid is terminated are entitled to transitional Medicaid. Also, under federal law, in order to avert interrupted healthcare coverage or delays in re-applications, a state is required to determine whether a Medicaid recipient is eligible for coverage under other programs before terminating coverage due to earnings. Following a telephone hearing that occurred over two days and was argued by Welfare Law Center staff, on July 26, 2002, the Court certified the class and granted a class-wide temporary restraining order mandating the restoration of Medicaid to all class members. The Court also ordered an expedited discovery schedule, setting the preliminary injunction hearing for August 16, 2002. After all discovery took place, the preliminary injunction hearing was held, resulting in a ruling from the bench that Missouri was to continue the Medicaid benefits of the class.

The October 3, 2002 written order denied defendants' motion to decertify the class, directed the defendants to provide TMA to class members and continue the TMA of class members for whom TMA was provided pursuant to the earlier orders, and ordered that defendants have an affirmative obligation to conduct an *ex parte* review to ensure that all entitled to TMA receive it. As the time of this writing, it is unclear whether the State of Missouri will appeal all or part of the judge's decision.

The Welfare Law Center is available to participate in similar challenges to state Medicaid policies or practices – please contact Rebecca Scharf (scharf@welfarelaw.org) or Marc Cohan (cohan@welfarelaw.org). For a copy of both orders and other materials visit the Welfare Law Center website (www.welfarelaw.org).

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