

9th Cir. Rejects 1983 Claim to Enforce Medicaid Methods and Procedures Provision

Sanchez v. Johnson, No. 04-15228, ---F.3d---, 2005 WL 1804195 (9th Cir. Aug. 2, 2005)

The Ninth Circuit has rejected a claim by developmentally disabled individuals and medical providers that the lower wages California pays to community-based providers compared to employees of state institutions resulted in unnecessary institutionalization. The court found that the Medicaid provision, 42 U.S.C. § 1396a(a)(30)(A), did not create rights enforceable under 42 U.S.C. section 1983. The court also rejected claims under the Americans with Disabilities Act and section 504 of the Rehabilitation Act, finding that the requested relief would result in the fundamental alteration of an already adequate program for deinstitutionalization.

The opinion contains some broad language about the “rare” cases in which section 1983 can be used to enforce a Spending Clause statute. But the opinion also distinguishes section 30(A) from other parts of the Medicaid Act in ways that may actually be helpful for section 1983 claims under other provisions.

Legal/Factual Claims.

Section 30(A) provides:

A State plan for medical assistance--[must] provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan . . . as may be necessary to . . . assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area[.]

The plaintiffs claimed that the low wages paid to community based-providers resulted in high turnover, inexperienced staff, gaps in service provision, lengthy waits to receive services, and serious problems with the quality of services. (Note that the plaintiffs’ allegations are not discussed in the court’s opinion.)

Section 1983 Ruling.

The court began by observing that the Supreme Court’s decision in *Pennhurst State School & Hosp. v. Halderman*, 451 U.S. 1 (1981), established that the remedy announced in *Maine v. Thiboutot*, 448 U.S. 1 (1980) – which held that section 1983 may be used to enforce statutes as well as the Constitution – “was to be applied sparingly” to Spending Clause statutes. The court characterized *Wilder v. Virginia Hosp. Ass’n*, 496 U.S. 498 (1990), which enforced a different Medicaid provision, as an “anomalous decision” that “[i]n hindsight . . . was merely a rare case in which . . . a statute ‘explicitly conferred specific monetary entitlements upon the plaintiffs . . . [and] Congress left no doubt of its

intent for private enforcement” (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 280 (2002)). The court also quoted Justice Stevens’ dissent in *Gonzaga*, which suggested that *Gonzaga* effectively overruled *Wilder* – implying that he was correct.

Despite this broad language, the court’s analysis of the specific Medicaid provision at issue will help advocates to distinguish this case from others involving different provisions:

[Section 30(A)] has an aggregate focus ...The statute speaks not of any individual’s right but of the State’s obligation to develop ‘methods and procedures’ for providing services generally. Indeed, the only reference in § 30(A) to recipients of Medicaid services is in the aggregate, as members of ‘the general population in the geographic area.’

Notably, the court focuses on the language of section 30(A) itself, not the general state plan language of the Medicaid Act, in finding an aggregate focus. Earlier in the opinion, the court mentions “an opaque item of legislative history” that makes state plan language irrelevant, 42 U.S.C. § 1320a-2, but concludes that the provision “does not disturb the Supreme Court’s reasoning in *Pennhurst*” or the general framework for analyzing section 1983 claims.

The court also noted that “§ 30(A) is concerned with a number of competing interests” – efficiency, economy, and quality of care – and the “tension between these statutory objectives” indicates that the provision is concerned with “overall methodology,” not individual rights, and requires balancing competing goals which “would involve making policy decisions for which this court has little expertise and even less authority.”

The court distinguished and did not disagree with the decision in *Sabree v. Richman*, 367 F.3d 180 (3d Cir. 2004), which found that 42 U.S.C. §§ a(a)(8) and a(a)(10) create enforceable rights. Section 8 requires that medical assistance be provided “with reasonable promptness to all eligible individuals.” Section 10 contains the list of mandatory Medicaid services that the state “must ... provide ... to ... all individuals.” The *Sanchez* court observed that those two provisions “specifically focus on entitlements,” in contrast to section 30(A), which focuses on the methods and procedures for balancing incompatible goals.

Like section 30(A), section 8 and 10 are part of a list of required elements of Medicaid state plans:

Although 42 U.S.C. § 1396a(a) sets out a comprehensive list of requirements that a state plan must meet, it does not describe every requirement in the same language. Some requirements, such as those addressed in *Sabree*, focus on individual recipients, while others are concerned with the procedural administration of the Medicaid Act by the States and only refer to recipients, if at all, in the aggregate.

Thus, the court seemed not merely to distinguish *Sabree* but to agree with its holding. This fact should help temper the broad language at the beginning of the opinion.

ADA/504 Ruling

The court also upheld the district court's dismissal of the ADA and section 504 claims, which had been dismissed on three alternative grounds: the plaintiffs failed to show that increased wages would redress the alleged violation; the request for an additional \$1.4 billion in expenditures is not a "reasonable modification"; and the remedy would involve a fundamental alteration of an already acceptable plan for deinstitutionalization. The Ninth Circuit discussed only the third ground, finding that the record supported the district court's holding.