

RALEIGH, N.C.---The U.S. Court of Appeals for the Fourth Circuit Tuesday denied North Carolina's request for a rehearing in *Pashby v. Delia*, upholding an important ruling protecting the rights of persons with disabilities to receive crucial Medicaid services.

The appellate court affirmed U.S. District Court Judge Terrence Boyle's decision that enjoined a North Carolina Medicaid policy and halted cuts to in-home personal care services. "This decision is an important victory for thousands of North Carolinians relying on Medicaid. The court correctly held that some of North Carolina's policies had the potential to shift individuals who currently live at home into institutions, putting their health at risk and removing them from their support networks," said Sarah Somers, an attorney with the National Health Law Program (NHeLP), who represented the plaintiffs.

The Appeals Court affirmed the lower court's conclusion that North Carolina law created a dilemma in which it was harder for individuals living at home to qualify for personal care services compared to those living in adult care homes (ACHs). This case marks the first time that the Fourth Circuit has held that the Americans with Disabilities Act (ADA) integration mandate protects people at risk of institutionalization, as well as those who have already been institutionalized, and provides that they receive services in the most integrated setting to allow them to live healthy and full lives.

Because these services allow the plaintiffs to live in their homes and communities safely, they were forced to choose between moving into a facility in order to get those services, or remaining at home and risking their health and lives.

"We are pleased that the Fourth Circuit has joined other federal courts of appeals around the country and recognized that a person should not have to actually be in an institution to fall under the ADA's integration mandate," said NHeLP attorney Sarah Somers.

In addition, the Appeals Court agreed with Judge Boyle's conclusion that ACHs are "institutional settings that segregate residents from the community." The Appeals Court also rejected the state's argument that budgetary concerns were a legitimate reason to stop providing in-home personal care services to people with disabilities when other conditions have not changed.

"The state's bias towards institutionalizing people with disabilities violates the ADA," said Vicki Smith, executive director of Disability Rights North Carolina, who also represented the Medicaid beneficiaries. "We hope the court's decision will end North Carolina's reluctance to acknowledge that adult care homes are institutions. This decision should emphasize the need for a permanent solution for providing services without creating an institutional bias. Providing support services within communities is cheaper and complies with federal law---a double win for North Carolina taxpayers."

The class action lawsuit was filed on May 31, 2011 to stop the N.C. Department of Health and Human Services from implementing cuts to in-home services. The state planned to cut assistance with bathing, dressing, toileting, mobility, and eating - cost-effective services on which individuals with disabilities, who have no other caretaker, depend to avoid more costly placement in institutions such as adult care homes. At the time the lawsuit was filed, nearly 3,000 people with disabilities would have been negatively impacted if the State's policy had gone into effect in June 2011.

Lawyers from Disability Rights North Carolina, Legal Services of Southern Piedmont, and the National Health Law Program are representing the plaintiffs in this lawsuit.