

RICHMOND, Va.---A federal Appeals Court on Friday dismissed a challenge to a lower court ruling in a Medicaid class-action suit against North Carolina, finding that the defendant, a Medicaid managed care plan, could not maintain its appeal without the state's involvement.

Last year, a federal District Court ordered North Carolina to halt reductions to home and community-based services and restore lost services until the state's Medicaid agency and its managed care contractor, PBH Healthcare (since renamed Cardinal Innovations Healthcare), provided beneficiaries with adequate notices and opportunities for impartial hearings when their services were denied, reduced or terminated. Members of the plaintiff class -- children and adults with severe developmental disabilities -- were threatened with deteriorating health, financial strain and forced to go to institutions to get care.

In Friday's decision, the Fourth Circuit dismissed PBH's challenge to a lower court ruling finding that because PBH alone appealed, the court could not disturb the lower court's order. The court held that as an agent of the state, PBH had no authority to challenge North Carolina's decision not to join the appeal.

"Today's decision is important because it tells state governments that they cannot simply hand Medicaid programs over to private contractors and then walk away, leaving beneficiaries without crucial, mandatory legal protections," said National Health Law Program Legal Director Jane Perkins. Doug Sea, Senior Attorney at Legal Services of Southern Piedmont added: "Because of this decision, scores of our most vulnerable citizens who desperately need the services that were illegally taken away from them will continue to benefit from the lower court ruling and will receive due process."

District Judge Louise Flanagan's 2012 decision found that the plaintiffs were entitled to a preliminary injunction because they were likely to succeed on the merits of their legal claims that the Medicaid agency and PBH were not complying with the most basic federal, constitutional and Medicaid statutory requirements.

The suit, *L.S., et al. v. Delia, et al.* (No. 5:11-CV-354FL), was brought by Medicaid beneficiaries who suffer from chronic developmental disabilities and require significant medical or personal care. North Carolina operates a home and community-based care program (North Carolina Innovations Waiver), which provides plaintiffs with access to services so that they can remain in

their homes and avoid costly institutionalization. In March of 2011, PBH began implementing a new budgeting system which reduced beneficiaries' services, even though their underlying conditions had not changed and without proper legal notice.

"Once again, the courts have confirmed that state Medicaid agencies must assure that their agents do not deny due process," said Disability Rights North Carolina Litigation Director John Rittelmeyer.

The firms representing the plaintiffs are Legal Services of the Southern Piedmont, of Charlotte, NC; Disability Rights NC, of Raleigh; and the National Health Law Program's Carrboro, NC office. Pro bono assistance was provided by the Washington, DC office of Akin, Gump, Strauss, Hauer, & Feld.

Click [here](#) to view the court's decision.

For questions or comments about the case, contact:

Doug Sea
Legal Services of Piedmont
dougs@lssp.org
704-971-2593

Jane Perkins
National Health Law Program
perkins@healthlaw.org
919-968-6308

John Rittelmeyer
Disability Rights NC
John.rittelmeyer@disabilityrightsn.org
919-856-2195

