

The Middle District of Pennsylvania has issued an important opinion in a Medicaid dental case on cross-motions for summary judgment. This class action was filed on behalf of Medicaid recipients with disabilities to ensure prompt access to dental care. In *Clark v. Richman*, No. 4:00 CV-1306 (M.D. Pa. Oct. 8, 2003), the court held that:

(1) Plaintiffs' claims could be brought under Section 1983, notwithstanding the Supreme Court's decision in *Gonzaga Univ. v. Doe*, including: (a) plaintiffs' claim under 42 U.S.C. § 1396a(a)(10) for dental services; (b) plaintiffs' claim under 42 U.S.C. § 1396a(a)(8) for reasonable promptness; (c) plaintiffs' claim under the "equal access" provision, 42 U.S.C. § 1396a(a)(30)(A), for failure to pay adequate rates for dentists; and (d) plaintiffs' EPSDT claims under 42 U.S.C. §§ 1396a(a)(10), 1396a(a)(43);

(2) Summary judgment should be entered for the defendant on plaintiffs' claims to an entitlement to dental services and to receive such services with reasonable promptness. The court ruled that the "medical assistance" to which recipients are entitled is merely payment for services. The entitlement is not to the services themselves. As long as some dentists are paid for some services, this would appear to be all that is necessary to comply with 42 U.S.C. §§ 1396a(a)(8) and 1396a(a)(10). This reasoning is based upon the Seventh Circuit's dicta in *Brugeman v. Blagojevich*, 324 F.3d 906, 910 (7th Cir. 2003); and

(3) both parties' summary judgment motions on the equal access claim and on the EPSDT claims should be denied because significant factual disputes remain.

The court has placed the case in the trial pool for January 2005. The Disabilities Law Program is lead counsel on this case. Thanks to Mark Murphy of DLP for the summary.