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The Sixth and Fourth Circuit Courts of Appeal have issued unanimous opinions rejecting state governments' claims of sovereign immunity from suits by private individuals to enforce the Medicaid Act. Since February of last year, Medicaid beneficiaries and their advocates have been dealing with a radical decision by Judge Robert Cleland, *Westside Mothers v. Haveman*. In his ruling, Judge Cleland said the Medicaid Act can never be enforced by beneficiaries. Since the opinion was issued, similar arguments have been made to federal judges by a number of state governments. Four of the federal circuit courts of appeal are currently looking at this issue, affecting people living in 16 states.

On May 15th, 2002, the Sixth Circuit reversed the *Westside Mothers* decision. One week earlier, the Fourth Circuit had rejected the arguments in a case called, *Antrican v. Odom*, also a Medicaid case. The issue is still before the Fifth and First Circuit courts.

### The *Westside Mothers* Decision

If it had been accepted by the Sixth Circuit, Judge Cleland's decision would have caused radical changes in the enforcement of Medicaid and other federal legislation enacted pursuant to Congress' spending clause authority. Under the spending clause, Congress ties federal funding to participating states' agreements to adhere to the conditions placed on the funding by Congress. According to Judge Cleland, only the federal government could enforce the terms of the spending clause enactments.

To reach this conclusion, Judge Cleland took a quite literal reading of two previous Supreme Court decisions. Citing *Pennhurst State School and Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) (describing spending power legislation as "much in the nature of a contract") and Justice Scalia's concurring opinion in *Blessing v. Freestone*, 520 U.S. 329, 349 (1997) (describing the person who receives the benefit of the exchange of promises between the state and federal governments as a "third party beneficiary"), Judge Cleland had decided that Medicaid was merely a contract to pay money, not a federal law. 133 F. Supp. 2d at 558.

The Sixth Circuit rejected this holding: “[T]he [Supreme] Court” is using the term “contract” metaphorically, to illuminate certain aspects of the relationship formed between a state and the federal government. It does not say that Medicaid is *only* a contract. The Supreme Court has held that the conditions imposed by the federal government pursuant to statute upon states participating in Medicaid and similar programs are not merely contract provisions; they are federal laws. Indeed, the Circuit Court “reaffirmed well-established precedent holding that laws validly passed by Congress under its spending powers are supreme law of the land” under the United States Constitution.

The Sixth Circuit went on to hold that private individuals can enforce the Medicaid Act against states by using the “*Ex parte* Young exception” to sovereign immunity, which “gives life to the Supremacy Clause” by allowing private individuals to bring actions against state officials for prospective injunctive relief to halt ongoing violations of federal law.

Finally, the Sixth Circuit found that the Medicaid beneficiaries and provider organizations who filed *Westside Mothers* could enforce the specific Medicaid Act EPSDT provisions that form the basis for the suit. The court found these provisions were enforceable through a civil rights statute, 42 U.S.C. § 1983.

### The Fourth Circuit Decision

On May 9th, 2002, the Fourth Circuit Court of Appeals became the first circuit court to decide this novel set of sovereign immunity issues. The case, *Antrican v. Odom*, was a unanimous decision written by Judge Niemeyer.

*Antrican* involves Medicaid-eligible children in North Carolina who have been unable to obtain dental care as the Medicaid Act requires, due in large part to a lack of Medicaid-participating dentists. The children also claim that the Medicaid provisions for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) are being violated.

After District Judge Malcolm Howard rejected the state’s motion to dismiss, the State Attorney General appealed the decision to the Fourth Circuit. There, the State Attorney General cited Judge Cleland’s *Westside Mothers* decision to raise a number of state sovereign immunity claims. Significantly, they argued that private individuals can never enforce the Medicaid Act or any other spending clause enactment. As the Attorney General’s office noted during the oral argument, it was not federal enforcement the state minded, it was suits by private Medicaid

beneficiaries.

The Fourth Circuit rejected each of the Attorney General's numerous arguments. Notably, it decided that Medicaid is the Supreme Law of the Land. As in Michigan, the state argued that Medicaid and other Spending Clause enactments are not enforceable through *Ex parte Young* because, lacking the power of compulsion, these statutes are mere contracts, not the Supreme law of the Land. The Court quickly dispensed with this argument, finding the "novel position" to be "at odds with existing, binding precedent."

The Fourth Circuit also rejected a number of other sovereign immunity claims. Under the *Ex parte Young* exception, noted above, the plaintiffs in the case can seek prospective injunctive relief, but not retroactive relief or damages. Because the suit would require expenditure of funds from the state fisc, the state argued that the relief sought, at its core, was not truly prospective.

The Court rejected this argument: "Simply because the implementation of such prospective relief would require the expenditure of substantial sums of money does not remove a claim from the *Ex parte Young* exception."

The state also argued that there was no ongoing violation (also a requisite of the *Ex parte Young* exception to state sovereign immunity) because the plaintiffs were presently receiving dental treatment.

The Court found this argument "misreads the substance of the plaintiffs' complaint," which did not rest on the notion that children could obtain no dental services but rather alleged that the state was failing to provide a Medicaid program under which beneficiaries could obtain prompt and adequate dental services on an ongoing basis as would be available to the general public.

The Attorney General next argued that the state has a special sovereignty interest in determining how its limited Medicaid funds will be spent and that this should insulate the state from suit in federal court.

The Court rejected this argument, saying: “North Carolina *elected* to participate in the federal Medicaid program and, therefore to be bound by the requirements of the Medicaid Act. If the State did not want to face this federal involvement, it was free to decline federal funds and operate a State program for medical assistance using its own standards or to decline to operate such a program at all.”

The Court also found *no merit* to the state’s argument that the Medicaid Act includes a “remedial scheme” that precludes resort to *Ex parte Young*’s injunctive relief: “[I]n designing an act in which a State could participate entirely or not at all, such as the Medicaid Act, Congress has not prescribed a detailed remedial scheme for dealing with noncompliance with the Act once a State elects to participate. On the contrary, the Supreme Court has concluded that the Medicaid Act does not provide this type of detailed remedial scheme that would supplant an *Ex parte Young* action.”

The National Health Law Program is co-counsel in the *Antrican* (4th Circuit) case, along with the North Carolina Justice Center, and Womble, Carlyle, Sandridge & Rice. In the *Westside Mothers* (6th Circuit) case, NHeLP is co-counsel with Dechert, Price & Rhoads, Michigan Legal Services, and the Public Interest Law Center of Philadelphia.