

## Appeal Set in Dismissal of Class Action for Disabled

*At issue: Whether Plaintiffs have right to file lawsuit in funding dispute or must work through state's administrative process*

An appellate battle is lining up between defense counsel for the Georgia government and plaintiffs lawyers who claim that the state has illegally reduced by millions of dollars in funds for disabled people and the agencies that serve them.

The Court of Appeals recently agreed to hear the plaintiffs' appeal of a Fulton County judge's dismissal of their potential class action.

The lawsuit, filed in August, seeks to recover money set aside by the Georgia Legislature since 2008 and allegedly never paid to 300 service providers for more than 12,000 people who suffer from severe developmental and intellectual disabilities.

Superior Court Judge Doris Downs dismissed the case in November, saying the plaintiffs' claims were barred by their failure to exhaust their administrative remedies. The plaintiffs made a discretionary appeal of the Downs ruling, which the Georgia Court of Appeals granted on Jan. 15. The lawyers are now awaiting the transfer of the record and docketing.

This appeal will be limited to the question of whether the plaintiffs have a right to file a lawsuit or if they must work through the state's administrative process for airing their dispute.

"I knew the state would claim we hadn't exhausted our administrative process. I thought we were clear that didn't apply," said Eric Jon Taylor of Parker, Hudson, Rainer & Dobbs. The reason he cited reflects the allegations in the lawsuit, that the state systematically and secretly reduced payments for services without notice.

"It's encouraging that the Court of Appeals took a discretionary appeal on the question," said Taylor. "This is one of those nine inning games. If you win, they're going to take it up. If they win, you're going to take it up."

**Josh Belinfante** of **Robbins Ross Alloy Belinfante Littlefield** and Mark Cohen of Troutman Sanders are handling the case for Attorney General Sam Olens. Belinfante argued that the state complied with its contract with the groups helping the disabled, but noted that the judge didn't rule on the substance of the dispute because she found for the state on the jurisdictional question.

The state maintained that the law allows for disputes such as this to be handled internally. Said Belinfante, "Absolutely measures are in place for grievances."

Many people affected by the dispute are severely disabled adults who require one-on-one care 24 hours a day and also depend upon day programs where they receive meals, therapy, social interaction and community support. The nonprofit organizations that provide those services have continued to do this work without being fully reimbursed by the state, Taylor said. If the Court of Appeals sends the case back to the trial court, he hopes discovery in the lawsuit will show what happened to the money and why it wasn't fully paid to the care providers.

Others on the plaintiffs' team include health care attorneys Jonathan Rue of Parker Hudson and Deepak Jeyaram of Jeyaram & Associates. The case was filed on behalf of two classes: disabled Georgians and agencies that serve them, including United Cerebral Palsy of Georgia, Coastal Center for Developmental Services, Hope Haven of Northeast Georgia and Creative Community Services.

Defendants are the Georgia Department of Behavioral Health and Developmental Disabilities and its commissioner, Frank Berry; and the Georgia Department of Community Health and its commissioner, Clyde Reese III. Each agency has a general counsel, but once a lawsuit is filed, the agencies are represented by the AG's office.

The complaint claims that the agencies breached contracts and violated state and federal laws and constitutions "as a result of insufficient disclosures, violations of basic due process rights and improper calculations and underpayments of Medicaid reimbursements for care to some of Georgia's neediest citizens and their healthcare providers."

Some of the Medicaid recipients described in the lawsuit as members of the class are severely disabled adults who live in small group homes and require constant care for medical and personal needs. They also travel to day programs where they're involved in enrichment activities. These are adults whose parents have become too elderly to care for them and who live on fixed incomes. The lawsuit alleges that payments for all these services have been improperly reduced. The lawsuit alleges that the defendants have used "unapproved and secretive methods to reduce payments" to the providers of services to the class.

The case is *United Cerebral Palsy of Georgia v. Georgia Department of Behavioral Health and Developmental Disabilities*, No. 2013CV234856.