

Dec. 22, 2008

### **Federal Court Orders Tennessee to Halt Cuts in Home Health Services**

NASHVILLE, Tenn., Dec. 22, 2008 -- A federal District Court in Nashville has ordered the state of Tennessee to halt cuts in home health services for 20 plaintiffs who challenged a new state program that reduces home health services for people who require significant medical or personal care. The court said that the cuts would force them into nursing homes and would cause many of them to suffer medical problems and even die. About 1000 people who need significant home health care may have to go into nursing homes because of cuts required by the new state policy.

In granting the injunction, the Court found that the plaintiffs would likely be successful in proving that they would be forced into nursing homes. Placing them in nursing homes, without first evaluating the economic, medical or social impact of the decision would likely violate the American with Disabilities Act. The Court's decision suggested that, until the state evaluated alternatives, forcing people into nursing homes would cause the "unjustifiable isolation" that Congress was trying to avoid when it adopted the ADA.

The decision was made in response to a suit filed in Nashville by people who faced drastic cuts in their home health services and private duty nursing care. The state told people of the cuts without making an assessment of their impact and without giving them the right to a hearing to explain the impact.

The plaintiffs were represented by Michael Abelow, a private attorney in Nashville; Steve Gold, a private attorney in Philadelphia; attorneys with the National Health Law Program based in North Carolina; and attorneys with the Legal Aid Society, in Oak Ridge and Nashville.

"The court's decision confirmed what our clients have been saying all along, said National Health Law Program Attorney Sarah Somers. "These cuts will force them into nursing homes. Nursing homes will still have to provide intensive services that may cost as much or more than care in their homes and the disruption to their children, their families and themselves will be devastating."

The state began its policy of cutting back on home health services in August. It claimed that Tennessee's home health services costs were higher than those of other Southern states and that caring for some people in nursing homes would be cheaper. The Court suggested that Tennessee's comparison to other states was flawed and that it did not study the real cost of providing the level of services that people with serious disabilities will need in a nursing home.

Legal Aid Society attorney Lenny Croce added, "We were especially encouraged that the Court noted a recent government report ranking Tennessee's nursing homes as the third worst in the nation. Tennessee nursing homes don't need a thousand new residents who require around-the-clock personal and medical services."

The injunction was issued in the case of *Crabtree, et al. v. Goetz, et al.* (No. 3:08-0939). The court's 51-page decision began with detailed descriptions of many of the plaintiffs' medical problems and the impact of cuts in home health services. It cited testimony from plaintiffs who would be separated from their children and spouses and who've already had poor experiences in nursing homes.

Florence Adams of Cookeville has suffered from muscular dystrophy since she was six. Her husband also has muscular dystrophy and uses a wheelchair. Being placed in a nursing home would separate her from her husband and three-year-old daughter. Her physician specifically found that care at home would be her best treatment.

Megan Allen is 21 and has had cerebral palsy since birth. She was an honor student in high school and has been trying to attend college. Her nurse practitioner found that being placed in a nursing home would cause isolation and depression and would likely shorten her life.

Carl Anders suffered a stroke in 2004. His doctor says that Anders requires close personal care and observation. He testified, "Without constant monitoring, if he chokes, he would be unable to ring his call button to summon assistance. At a nursing home, he would be at risk of not being able to breathe. If . . . Anders had to go a nursing home, very soon afterwards he would be back in the hospital."

Croce added that "one of the most disturbing aspects of this case is evidence that the state tried to force doctors to sign new orders for reduced home health services even when it was their medical opinion that reduced services would be medically inadequate and might even be life-threatening."

"All of this potential harm is especially frustrating because the court noted that TennCare is paying Managed Care Organizations far more per hour to care for these men and women at home than the MCOs are paying the actual caregivers," Croce concluded. "We hope that this decision will encourage TennCare to try harder to make home-based services more cost-effective before it starts cutting them out."

The Legal Aid Society is a nonprofit law firm that gives free legal aid to people who have nowhere else to go. It has eight offices serving 48 counties in Middle and East Tennessee.

###