

To: Tracy Vedder, KOMO TV
From: Office of the Attorney General and the Department of Social and Health Services
Subject: Rekhter Case
Date: January 18, 2013

Introduction

The taxpayer dollars available to public assistance programs are limited. In this case, people received the care provided for under Medicaid, and their caregivers were paid for the number of service hours awarded. The effect of the trial court judgment is to allow benefit awards that have been final and closed to be reopened years later and to give care providers contract rights to challenge benefit decisions DSHS makes for Medicaid recipients. The judgment in this case is unprecedented and undermines the fiscal planning needed for all DSHS programs. This is detrimental to the people who rely on funding for DSHS services, the taxpayers, and the continued viability of public assistance programs. Consequently, an appeal of this trial court judgment of almost 100 million dollars is appropriate and necessary.

Shared Living Rule

From 2003 to 2007 DSHS applied a version of the “shared living rule.” Home care clients who lived with their care providers had an automatic reduction of approximately 15 % in their hours. This reduction took into consideration that these providers perform all or parts of certain home care tasks, such as meal preparation and housekeeping, that benefit them. The rule maximized the distribution of limited Medicaid funds to needy individuals. The rule did not reduce the care a client received; it recognized a legal requirement that Medicaid funds not be used to pay for services that benefit non-Medicaid clients. Providers, moreover, were aware of the number of hours granted as public assistance, and received the agreed upon payment for those hours.

In 2007, the Washington State Supreme Court in the *Jenkins v. DSHS* case held that the automatic reduction aspect of the shared living rule was invalid because it was inconsistent with a federal Medicaid requirement. But, until that time, the rule was in effect. A lower court decision to invalidate the law had been stayed by the court of appeals and the Supreme Court.

The month after the *Jenkins* decision, DSHS repealed the rule. Thereafter, as DSHS home care clients were reassessed following the Supreme Court’s decision and rule repeal, clients were provided increased public assistance awards.

Procedural Background of the Rekhter Case

The *Jenkins* case involved three Medicaid clients, was not a class action, and did not involve the providers or their contracts. However, immediately after *Jenkins*, multiple class action lawsuits were filed and consolidated into one lawsuit made up of two classes

of plaintiffs: DSHS clients who had “live-in” care providers, and the live in care providers for those clients. A jury returned a verdict that DSHS did not violate a term of its contracts with providers. The jury also found that the use of the rule breached an implied duty of good faith and fair dealing.

The jury awarded the provider class over \$57 million dollars in contract damages. The trial court added \$38 million in prejudgment interest. The court also ruled that the parallel claims of the client class were not barred. But the court denied providing separate damages to the client class, who had received all the home care services they required.

The Appeal of the Rekhter Case

DSHS is asking the Washington State Supreme Court to reverse the provider class judgment. DSHS shows that the provider class claim is contrary to Washington contract law, and that it creates unprecedented liability by converting public assistance assessments regarding Medicaid clients into contract rights for providers. The *Jenkins* decision, which involved only three DSHS clients who timely appealed their public assistance awards, is being used after the fact to leverage class action relief for public assistance awards made years before. As a matter of Washington law, the DSHS public assistance decisions applying the shared living rule were long closed and final. The finality of these awards is further undermined by allowing care providers to use their contracts with DSHS to provide damages based on DSHS application of rules for determining the number of service hours for clients under public assistance laws.