

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

GARY MCGREW,

Appellant,

v.

STATE OF ALASKA, DEPARTMENT
OF HEALTH AND SOCIAL SERVICES,
DIVISION OF SENIOR AND
DISABILITIES SERVICES,

Appellee.

Case No. 3AN-06-06612CI

ORDER

Motion Sequence #6

Appellee moves for the Court to reconsider its previous decision reversing the Division of Senior and Disability Service's ("Division") decision to deny respite services to Appellant under Rule 77(k), which allows a party to move the Court to consider its ruling if the party feels the court has misapplied a material aspect or standard of its ruling.

Specifically, the Division asserts that the Court misstated the rational basis test it used to determine whether the Division's respite limitations violated the equal protection clause of the Alaska constitution. On Page 5 of its Order, the Court stated that the Division's policies regarding respite must bear a "fair and substantial relation to Mr. McGrew's

interests." The Court amends this sentence to read "fair and substantial relation to the purpose of the regulation."

Even given this correction, the Court remains unconvinced that the limitation for respite bears a fair and substantial relation to the Division's interests. In its Motion for Reconsideration, the Division again emphasizes that the purpose of the respite limitations is to "minimize fraud and abuse of the Medicaid system by families" and the risk that Medicaid would become over-utilized by families who should be performing these services through "informal family supports." Division's Motion for Reconsideration at 2. As it stated in its original Order, the Court does not find the Division's respite policies to be a reasonable or rational fit regarding prevention of fraud, nor does the Court find that a family member PCA provider is any likelier to commit fraud against the Division than family member who is not a PCA provider.

Secondly, the Division contends that "if the Division provides all the services to consumers who choose to have their family members care for their needs, the consumers and families who choose an unrelated individual to provide services would be at a disadvantage." Id. at 3. Although the Division objects to any disparate treatment these families may feel, the Division simultaneously finds acceptable discrimination against parents

who choose to be personal care assistants for their children. Under the Division's policy, hypothetically Family A would be able to employ a family member from Family B as their primary PCA and Family B would be able to employ a family member from Family A as their primary PCA; both families would maintain their ability to receive respite. If Family A and Family B choose to employ their respective family members as PCAs, both families lose their ability to receive respite. The Court finds this policy irrational.

The Court's ruling does not imply that the Division is obliged to provide respite time for the McGrews as part of a "benefits package." Id. at 3. However, the Court finds that if the Division offers respite services to any class of family members, its disparate treatment of family members based on their preference to care for a Medicaid recipient is unreasonable, given the Division's stated objectives.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 12th day of September 2007.

Peter A. Michalski

PETER A. MICHALSKI
Superior Court Judge

I certify that on 9/12/07 a copy of the
above was mailed/faxed to each of the following
addresses of record:

D. Deacon

Judicial Administrative Assistant

Att. Legal Services - Nelson
ADD - Christensen / Kraly / Celik