

# **EPSDT Mental and Behavioral Health Case Docket**

**Child Health Law and Policy Project  
National Health Law Program**

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## Reported federal decisions:

*Westside Mothers v. Haveman*, 133 F. Supp. 2d 549 (E.D. Mich. 2001) (on appeal)

*Westside Mothers* was filed by children who are not receiving sufficient and timely medical, dental, and developmental health services through Michigan's Medicaid managed care program. The case was dismissed when the court found **neither jurisdiction nor a cause of action** because, among other things, individual could not bring actions under *Ex parte Young* against state officials to enjoin ongoing violations of spending clause programs such as Medicaid.

*Chisholm v. Hood*, 133 F. Supp. 2d 894 (E.D. La. 2001), *same case*, 110 F. Supp. 2d 499 (E.D. La. 2000)

*Chisholm* is filed on behalf of **children with mental health care needs who are waiting for home and community-based waiver services**. A class has been certified (1998 WL 92272 (E.D. La. 1998)). To date, this case is being resolved through incremental partial settlement and summary judgement rulings. In February 2001, the state was required to provide access to community-based psychological and behavioral services to children with autism. In a decision from 2000, the court found it a violation of EPSDT to restrict therapy services to school settings and to limit home health services to only those mandated by federal regulations. In an unpublished partial settlement, the state agreed to improve outreach and informing of this population.

*Kirk v. Houstoun*, Civ. No. 99-3253, MEDICARE & MEDICAID GUIDE (CCH) & 300,503 (E.D. Pa. June 23, 2000)

**This case orders summary judgement for children receiving psychiatric care under the Medicaid program where the state failed to provide timely needed care. The evidence showed this forced plaintiffs to wait months for behavioral health rehabilitative services. ;finding violation of HCFA waiver because of failure to ensure some managed care subcontractors maintained adequate number of providers as required by contract)**

*Risinger v. Concannon*, 201 F.R.D. 16 (D.Me. 2001) (granting class certification), *same case*, 117 F. Supp. 2d 61 (D. Me. 2000)

This case is a follow-up to *French v. Concannon*, described below. The case seeks to address problems with **quality and continuity of home and community services** for

children with behavioral health needs. Among other legal claims, the case focuses on EPSDT provisions which require states to assure a broad range of qualified providers. The published decision denies the defendant's motion to dismiss the case.

*Prado-Steiman v. Bush*, 221 F.3d 1266 (11<sup>th</sup> Cir. 2001)

**In this decision, the court of appeals vacating class certification, finding that the plaintiffs did not show typicality of claims among the plaintiffs, all of whom experience developmental delays. The case was remanded for re-certification, suggesting the use of subclass.**

*Charlie and Nadine H v. Whitman*, 83 F. Supp. 2d 476 (D.N.J. 2000)

This case, which focuses on children in out of home placement, includes an EPSDT claim to improve developmental screening and services. Relying on *Blessing v. Freestone*, 520 U.S. 329 (1997), the court **dismissed the EPSDT claim as unenforceable** under 42 U.S.C. ' 1983.

*Tallahassee Mem. Regional Med. Center v. Cook*, 109 F.3d 693 (11<sup>th</sup> Cir. 1997)

This case required the state to reimburse hospitals for **inpatient Agrace days@ needed by adolescents** during periods when lower levels of mental health care were medically necessary but alternative care settings were unavailable.

*Texas v. United States Dep-t of Health and Human Services*, 61 F.3d 438 (5<sup>th</sup> Cir. 1995)

This decision upholds the U.S. Department of Health and Human Services=refusal to recognize **inpatient residential chemical dependency treatment** (to include room and board) as a EPSDT rehabilitation service.

*Sanders v. Lewis*, No. 2:92-0353, 1995 WL 228308, *reprinted in*, MEDICARE & MEDICAID GUIDE & 43,120 (S.D.W.Va., March 1, 1995 and Aug.16, 1993, March 1, 1995) (Consent order and compliance plan)

*Sanders* involved a certified class of **children in out of home placement** who were not receive needed EPSDT outreach and screening services. The state agreed to take a number of steps to provide better information about EPSDT, including revisions to its EPSDT brochure and training of health care providers.

*Scott v. Snider*, No. 91-CV-7080 (E.D. Pa. Dec. 2, 1994) (order and stipulation of settlement), *same case*, (E.D.Pa. Aug. 11, 1993), *reprinted in*, MEDICARE & MEDICAID GUIDE (CCH) & 42,056 (stipulated partial settlement)

*Scott* focuses on a range of issues confronted by children enrolled in managed care. Among issues addressed in the order and stipulation of settlement are requirements to implement **specific protections for children in out-of-home placement and children with intellectual disability**.

*J.K. v. Dillenberg*, 836 F. Supp. 694 (D. Ariz. 1993)

The *J.K.* decision requires **proper notice and due process** when residential mental health services are denied, reduced or terminated by managed care providers. The final settlement of this case (*sub nom. J.K. v. Eden*) is discussed below.

*Maher v. White*, No. 90-4674, 1992 WL 122912 (E.D. Pa., June 2, 1992)

This case requires improved EPSDT coverage of **children in foster care placement**.

*L.J. by Darr v. Massinga*, 778 F. Supp. (D. Md. 1991), *same case*, 699 F. Supp. 508 (D. Md. 1988) (consent decree)

This decree requires initial and periodic examinations for **children in out-of-home placement**.

*G.L. v. Stangler*, 873 F. Supp. 252 (W.D. Mo. 1994) (modified consent decree), *same case*, 731 F. Supp. 365 (W.D. Mo. 1990), 564 F. Supp. 1030 (W.D. Mo. 1983) (consent decree).

Among other things, this consent decree addresses initial and follow-up examinations for **children in out-of-home placement**.

### **Unreported federal decisions:**

*Emily Q v. Bonta*, No. CV-98-4181-WDK (C.D. Cal.) (May 11, 2001) (permanent injunction)

This injunction requires the state to take a number of steps to provide home and residential therapies to children who would otherwise be locked in state mental hospitals. Among other things, the state was ordered to: (1) include **therapeutic behavioral services** (TBS) in the Medi-Cal program; (2) assess institutionalized children to determine if they qualify for TBS; (3) develop and distribute a request and referral form for providers to request TBS services, (4) revise the EPSDT brochure to inform beneficiaries and applicants about TBS and other developmental services; and (5) provide **compensatory benefits** to class members wrongfully denied TBS services.

*Foster Children v. Bush*, No. 00-2116-CIV-MORENO/DUBE (S.D. Fla. Apr. 20, 2001) (on appeal)

This case is filed on behalf of children in the defendant's custody, alleging systemic abuse and neglect of children in the foster care system, including the failure to provide treatment services through EPSDT. This magistrate's decision looks at whether the EPSDT provisions are **enforceable through ' 1983**, and it holds that they are.

*J.K. v. Eden*, No. CIV-91-261-TUC-JMR (D. Ariz. Mar. 20, 2001) (settlement) (fairness hearing pending)

This settlement envisions **broad systemic change of the mental health system** over a six-year period, during which pilot projects, ongoing training of front line staff, and other activities will occur. The settlement is based on 11 principles that the defendant will follow to improve the mental healthcare system for children: (1) collaboration with the child and families; (2) focus on functional outcomes (e.g. improved school performance); (3) multi-system collaboration on behalf of the child; (4) accessible services, including case management; (5) development of best practices; (6) use of most appropriate care settings; (7) timely services; (8) services tailor to the child and family; (9) stability in health care providers; (10) respect for cultural heritage; (11) support of independence; (12) identification of and connection to the **natural** support system of the child.

*French v. Concannon*, No. 97-CV-24-B-C (D. Me. July 16, 1998) (Order of dismissal and agreement)

This case concerned that lack of EPSDT services, particularly **case management, in-home aides, medication monitoring, and mental health counseling**, for children with

behavioral health needs. Settlement of the case included: (1) designation of an employee position within the Department of Mental Health to identify children who need services and to make sure that treatment plans are developed and implemented.; (2) revision of the EPSDT brochure was revised to include easy-to-understand information about the range of behavioral services that are available to children; (3) development of a regional resource directory that includes information about available providers and resources; (4) creation of a new provider category C behavioral health specialist C targeted to home and community-based settings; (4) regional EPSDT training sessions for providers and case managers; (5) streamlining the prior authorization process, including a presumption that mental and behavioral health services described in treatment plans developed by authorized providers are medically necessary; (6) revision of the EPSDT provider screening forms to reflect age-specific information about mental health needs and anticipatory guidance; (7) promulgation of regulations that require prompt delivery of treatment services, equality of services between children with physical and mental health needs and between children with mental illness and intellectual disability, and collaborative efforts to focus on child- and family-oriented care.

*John B. v. Menke*, No. 3-98-0168 (M.D. Tenn. Feb. 25, 1998) (consent order) (motion for contempt filed)

In this case, children complained of the failure of the TennCare managed care system to provide screening and diagnostic services and to provide needed treatment, from wheelchairs to home-based mental health services. The case settled when the state agreed to implement a plan that includes requirements for, among other things: (1) updating and implementing statewide periodic screening requirements to identify both medical and mental health problems. **Developmental screening** is to include the use of culturally sensitive developmental assessments and avoidance of premature diagnosis labeling; (2) improving access to needed treatments, with particular attention to children who are medically fragile; and (3) better integration of health care and custodial services for children in foster care.

*Metts v. Houstoun*, No. 97-CV-4123 (E.D. Pa. Mar. 27, 1998) (settlement agreement)

This settlement concerns coverage and due process protections for a number of EPSDT **in-home services in managed care settings**, including nursing services, home health aid services, personal care services, and case management services.

*Bates-Booker v. Houstoun*, No. 97-CV-3734 (E.D.Pa., Oct. 1997) (agreement)

The defendant agreed that the state and its managed care contractors would assure EPSDT

coverage of necessary medical **services and equipment for children in special education or early intervention settings** and provide proper due process notices when services are denied.

*T.L. v. Belshe*, No. CV-S-93-1782 LKKPAN (E.D. Cal., 1995) (settlement)

The state agreed to promulgate regulations to guide process for covering EPSDT **treatment services not included in the state Medicaid plan for adults**. Many of these non-covered services for adults assist children with disabilities.

*Lawrence K. v. Snider*, No. 91-6180 (E.D. Pa., Jan 5, 1993)(settlement agreement)

This case concerns reimbursement for mental health services in **prepaid managed care**.

### **Reported state decisions:**

*Tomorrow's Hope v. Idaho Dep't of Health and Welf.*, 124 Idaho 843, 864 P.2d 1128 (Wyo. 1993)

This case finds **EPSDT as a reimbursable cost for ICF/IIDs**.

### **Unreported state decisions:**

*E.H. v. Matin*, No. 81-MISC-585 (Cir. Ct. Kanawha Co., W.Va.) (Temporary Restraining Order, June 4, 1992)

The TRO issued to block termination of off-site rehabilitative clinic services for the mentally ill. The dispute settled when the state agreed to provide off-site **rehabilitative services** to children through EPSDT.

### **Lead poisoning cases:**

The following cases concern testing for lead poisoning, which can cause mild and severe developmental delay: *Thompson v. Raiford*, No. 3:92-CV-1539-R, 1993 WL 497232, *reprinted in* MEDICARE & MEDICAID GUIDE (CCH) & 41,776 (N.D.Tex., Sept.24, 1993) (settlement of this nationwide class action lawsuit resulting in the Health Care Financing Administration publishing a *State Medicaid Manual* section regarding lead blood level assessments); *New York City Coalition to End Lead Poisoning v. Giuliani*, 187 Misc. 425, 720 N.Y.S.2d 298 (S.Ct. N.Y. 2000) (upholding cause of

**action to enforce EPSDT lead assessment requirements under ' 1983); *Ellis v. Wetherbee*, No. S92-0529 (S.D. Miss., May 1994) (consent decree) (state agreed to provide assessments); *Addison County Community Action Group v. Celani*, No. 5:92cv22 (D.Vt., Mar. 9, 1993) (stipulation and dismissal) (same); *Matthews v. Coye*, No. C-90-3620-EFL (N.D. Cal., Oct. 17, 1992) (stipulation and dismissal) (same); *New York Coalition to End Lead Poisoning v. Koch*, 524 N.Y.S.2d 314, 138 Misc.2d 188 (Supp. 1987) (ordering assessments).**