



California's protection and advocacy system

BAY AREA REGIONAL OFFICE
1330 Broadway, Suite 500
Oakland, CA 94612
Tel: (510) 267-1200
TTY: (800) 719-5798
Toll Free: (800) 776-5746
Fax: (510) 267-1201
www.disabilityrightscalifornia.org

FOR IMMEDIATE RELEASE

Disability Rights California: Elizabeth Zirker 510.267.1200
AARP Foundation Litigation: Christina Clem 916.556.3024
National Senior Citizens Law Center: Anna Rich 510.663.1055
National Health Law Program: Sarah Somers 919.968.6771 ext. 103
Howrey LLP: Christine Till 202.383.7127

Cuts to Adult Day Health Care stopped: victory for 15,000 Californians

OAKLAND, February 24, 2010 "I really need these services and am so happy that the court agreed they are critical—I don't know what I would do without them," stated a relieved Harry Cota, when he heard that he can continue to attend his Adult Day Health Care (ADHC) program. The February 24, 2010 order by Judge Sandra Brown Armstrong of the U.S. District Court for the Northern District of California granted a preliminary injunction stopping the ADHC funding cuts slated to take effect on March 1. "Californians with disabilities won a major victory today: court recognition that they could be irreparably harmed by losing these crucial services," said Attorney Elizabeth Zirker of Disability Rights California.

The judge agreed that terminating 8000-15,000 clients from ADHC, based on stricter eligibility criteria passed by the State, increases the chance of their hospitalization and institutionalization. Program clients have complex medical needs which are being met through the skilled services provided at ADHC. Anna Rich of the National Senior Citizens Law Center stated that "this critical program allows over 37,000 Californians to live at home and with their families while managing medical conditions such as Alzheimer's disease, unstable diabetes and post-stroke."

ADHC is a center-based program that brings people from their homes for therapies, medical monitoring and needed social services in a stimulating

environment. Many people with disabilities are able to stay in their homes only because of this array of support services.

The preliminary injunction motion was the second success in the case, filed last August on behalf of Californians who are elderly and/or have disabilities (*Cota et al. v. David Maxwell-Jolly, et al.*).¹ The first order halted an across-the board cut in Medi-Cal funding from a maximum of five days per week to no more than three, regardless of individual need. The case is being litigated by attorneys with Disability Rights California, AARP Foundation Litigation (AFL), the National Senior Citizens Law Center (NSCLC), the National Health Law Program (NHeLP), and the law firm of Howrey LLP as pro bono counsel.

The Court granted the injunction, finding that Plaintiffs were likely to prevail on their claims that the new, restrictive criteria violate the Americans with Disabilities Act, federal Medicaid law, and due process under the United States Constitution. The Court was persuaded that the balance of hardships weighed in Plaintiffs' favor because they face the loss of services that would be critical to avoid institutionalization. The Court rejected Defendant's argument that they are "entitled to cut services at will to accommodate the State's budgetary constraints."

Kelly Bagby, AFL attorney, remarked, "AARP surveys show older adults want to live in their own homes and communities for as long as possible. Today's decision means vulnerable citizens can still rely on ADHC to help them do so."

According to Henry Su, partner with Howrey LLP, "This is obviously an important victory but the relief is preliminary in nature and therefore much work lies ahead if we are to make sure Mr. Cota and other class members do not lose ADHC services altogether."

More details are posted at:

<http://www.disabilityrightsca.org/advocacy/Brantley-v-Maxwell/index.htm>
F:\DOCS\ADHC Litigation\MEDIA\DRAFT Press RElease 2-24 2010.doc

¹ The case was filed as *Brantley v. Maxwell-Jolly*, but upon the passing of Mrs. Brantley, the case name was changed.