

## Civil Lawsuit Seeks Medically Necessary Home Based Care for Children with Mental Illness

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Hale and Dorr LLP, the Center for Public Representation and the Mental Health Legal Advisors Committee, filed a class action lawsuit on October 31, 2001 in the United States District Court in Springfield. The suit, filed on behalf of nine Medicaid eligible children, charges that Massachusetts has violated federal Medicaid law by failing to provide medically necessary home-based care to children with mental illnesses. Hale and Dorr represents the plaintiff on a *pro bono* basis.

The suit seeks to obtain intensive home-based services for low-income children who are eligible to receive health services under the federally-funded Medicaid program. Under Medicaid, children who have been screened and diagnosed with behavioral, emotional or psychiatric disabilities must receive preventive and rehabilitative treatment.

One child-plaintiff, Tyriek, turned seven at the Berkshire County Crisis Stabilization Unit last year. He wasn't at home with his mother and brother when he turned eight on Monday. Diagnosed with psychosis, Tyriek hasn't lived at home for more than 13 months. And he can't go home until the state provides federally-mandated home-based services and support staff.

Tyriek, who has been living in a residential facility 50 miles from home, is not alone. He and the eight other named plaintiffs in the suit represent a class of thousands of Massachusetts children with behavioral, emotional and psychiatric disabilities who have been denied appropriate mental health services. Many have been hospitalized or are at risk of hospitalization.

"There has been an enormous amount of attention to children stuck in private psychiatric hospitals. But, there are more "stuck kids" than anyone is counting – these plaintiffs are stuck too and they need to be counted. That's what this case is about," said Steven Schwartz, the director of the Center for Public Representation.

"The plaintiffs and children like them are stuck in two directions," added James Burling, a partner at the Boston law firm of Hale and Dorr LLP. "In the first instance, children are being unnecessarily institutionalized, and prevented from living at home with the families that want them because there are no services available upon release from the hospital. In addition, other children are stuck on a perpetual merry-go-round of repeated short-term hospitalization. They live at home, but go from

crisis to crisis because they lack appropriate home-based services and supports," said Mr. Burling.

Five-year-old Shaun has a diagnosis of bipolar disorder, attention deficit and hyperactivity disorder, and post-traumatic stress disorder, yet he and his grandmother have been spurned in their attempts to seek services from the Department of Social Services and the Department of Mental Health. When Shaun's paranoia and hallucinations escalated into explosive behaviors, his grandmother called DSS for help. The agency responded by removing Shaun's sisters from the grandmother's home; she received no mental health referral, no assistance for Shaun.

"I only asked for some help," said Shaun's grandmother, Jacki, who asked that her last name not be used. "I never wanted to lose my grandchildren to the state, or break up my family." DMH has not responded to her application for assistance, which she filed last July. "I still don't have home support services for Shaun," she said. "I am participating in this lawsuit because I have tried everything else, and I have nowhere else to turn."

The suit names as defendants Acting Governor Jane Swift; Robert Gittens, Secretary of the Executive Office of Health and Human Services; Stephen Crosby, Secretary of the Executive Office of Administration and Finance; and Wendy E. Warring, Commissioner of the Division of Medical Assistance. The Division of Medical Assistance is the agency responsible for administering the Medicaid program in Massachusetts.

During the spring and summer, plaintiffs' attorneys met with state officials to discuss the design and implementation of a new program to provide intensive home-based services to children such as Tyriek and Shaun, services that would permit them to live in their homes and with their families. Those meetings ended without resolution because officials failed to offer a proposal that adequately addressed the needs of this vulnerable population.

In the class action lawsuit, the plaintiffs are pressing the state to establish and implement programs and practices to ensure that members of the plaintiff class receive medically-necessary, intensive home-based services, including special therapeutic aides, professionally-adequate assessments, crisis services, and case management services. Plaintiffs maintain that mentally ill children suffer and risk further hospitalization if these services are unavailable, available only in the short-term, or are subject to arbitrary funding restrictions or time limitations that bear no relationship to a child's individual medical needs.

### **About the Center for Public Representation**

The Center for Public Representation is a public interest law firm which has been assisting people with disabilities, both in the community and in institutional settings, for over twenty-nine years. Its staff of eight attorneys and two advocates work in its Northampton and Newton offices, although much of the Center's activities occur throughout Massachusetts and in other jurisdictions. Through its systemic advocacy over the past two and half decades, the Center has been a major force in promoting improvements in services for citizens with mental disabilities throughout the country.

### **About The Mental Health Legal Advisors Committee**

The Mental Health Legal Advisors committee was established in 1973 to secure and protect the legal rights of children and adults involved in mental health and retardation programs in the Commonwealth. The Mental Health Legal Advisors, appointed by the Justices of the Supreme Judicial Court, consists of fourteen judges and lawyers knowledgeable and experienced in mental health law. The work of the Legal Advisors Committee is carried out by a small staff of lawyers who seek to make full use of the law to ensure that the rights of persons who are or may be regarded as mentally disabled are recognized and protected. For more information visit [www.state.ma.us/MHLAC](http://www.state.ma.us/MHLAC).

#### **About Hale and Dorr LLP**

Hale and Dorr enjoys a national and international reputation as a leading technology law firm. The firm is widely recognized in its representation of technology clients and for its experience in the areas of venture capital, initial public offerings, intellectual property and securities and intellectual property litigation. Our more than 500 lawyers serve the legal needs of a wide variety of local, national and international clients from offices in Boston, New York, Princeton, Reston, Waltham and Washington and joint venture offices in London, Munich and Oxford. The firm's full-service practice also includes tax, commercial, labor and employment, real estate, environmental, government and regulatory affairs and private client services, and a strong commitment to public service dating from our founding more than eighty years ago. For more information, visit [www.haledorr.com](http://www.haledorr.com).