

Court Eases Path for Minors to Recoup Medical Costs

By LEO STRUPCZEWSKI
Of the Legal Staff
November 7, 2008

The Legal Intelligencer

While ruling that a child's Medicaid coverage should be repaid following a medical malpractice settlement, a Commonwealth Court panel also ruled that minors are able to recover medical expenses when their parents have failed to do so.

The 29-page opinion in *Shaffer-Doan v. Commonwealth, Department of Public Welfare*, handed down Monday, suggests that Pennsylvania's historical standard of permitting parents to pursue a claim for a minor's medical expenses only within two years of the injury should be abandoned.

Instead, Judge Renee Cohn Jubelirer wrote, minors should have until their 20th birthday to file a claim.

The opinion wipes away what plaintiff's lawyer Charles Becker of Kline & Specter called "an enormous disparity."

"That state of the law worked a tremendous hardship on many children," said Becker's colleague, Shanin Specter. "It had to be corrected."

In *Shaffer-Doan*, Jubelirer examined a case awaiting argument before the state Supreme Court, *Bowmaster v. Clair* — where the Superior Court in 2007 held that a child may not recover benefits for medical expenses incurred before his or her 18th birthday — and found it to be in conflict with a right established in a 1981 ruling of the Superior Court, *DeSantis v. Yaw*.

The *DeSantis* court, Jubelirer reasoned, said children have the right to recoup those benefits.

Moreover, she continued, the Fraud and Abuse Control Act identifies minors as the beneficiaries of Medicaid, Jubelirer wrote.

"Our case law has long acknowledged that a minor may contract for necessities when a guardian or parent is not supplying his needs," she wrote. "Consistent with this case law, under Section 1404 of FACA, acceptance of [Medical Assistance] benefits for which a minor has applied (through his parents) essentially creates, by operation of law, a contractual relationship arising from the parents' inability to fully provide for the child's medical needs."

Becker and Specter said they plan to file an amicus curiae brief in *Bowmaster*.

The Shaffer-Doan ruling allows a minor to seek recovery for medical and medically related expenses incurred before he or she turns 18, if the child's parent or guardian fails to file a claim within the two-year statute of limitations.

Specter said that situation occurs frequently.

Previously, only a parent or guardian could seek recovery for the expenses incurred before a minor turns 18. A minor was eligible to collect for expenses incurred after his or her 18th birthday.

The law left an "enormous disparity" and it is within that time-frame that these claims are often brought, Becker said.

But the opinion also allows for the Department of Public Welfare to collect the money it paid out to a minor for medical assistance. Previously, DPW would lose out on that money if the parents failed to file within two years, because the money was no longer recoverable.

"Statutes should be construed to favor the public interest over private interests," Jubelirer wrote, "and the public interest is certainly protected more by requiring tortfeasors, and not taxpayers, to pay for the negligent acts of those tortfeasors."

President Judge Bonnie Brigance Leadbetter and Senior Judge Joseph F. McCloskey joined in the opinion.

The case was brought before the Commonwealth Court because Becker and Specter's client, Ayden Shaffer-Doan, had received a \$14.8 million settlement in a medical malpractice suit.

The settlement was reached after Shaffer-Doan and his parents filed claims for compensatory damages incurred before and after Shaffer-Doan turned 18. But, since the parents' claim was filed after the two-year statute of limitations, it was stricken and a settlement was reached instead.

A little more than \$47,000 of Shaffer-Doan's medical expenses incurred while he was a minor were paid by Medicaid. The Department of Public Welfare, which administers the program, placed a lien against that which was received in the settlement.

Becker and Specter sought a ruling that would protect them from paying the lien and also asked the court to rule that "Pennsylvania's common law should change so that a plaintiff such as A.S.D. possesses an independent right to recover medical expenses incurred during the period of his minority." DPW simply asked for the lien to be paid.

Jubelirer said the issue regarding the lien needed "further factual development" and refused to grant summary judgment. But she did make her opinions on Becker and Specter's second request clear.

"Given our holding in this case, subsequent cases should avoid this ambiguity because of FACA clearly providing that DPW's interest must be addressed and protected by all involved in the litigation," Jubelirer wrote.