

Western Center on Law and Poverty Leads Legal Action to Enjoin Delayed Determinations on Disability-Based Medi-Cal Applications

By TINA BAY, Staff Writer

The Western Center on Law and Poverty, Protection and Advocacy, Inc. and Bay Area Legal Aid filed suit yesterday against officials of the state's Department of Health Services and Department of Social Services over the delayed processing of disability-based Medi-Cal applications.

The legal advocacy organizations are seeking a writ of mandate on behalf of three Medi-Cal beneficiaries who had to wait 10 months for their eligibility determinations, even though 22 California Code of Regulations Sec. 50177 requires determinations to be issued within 90 days. The writ asks for an injunction that would force the state agencies to comply with the 90-day deadline, and to implement a procedure ensuring that all applications that have been pending for over 90-days are processed as soon as possible.

Kim Lewis, staff attorney with Western Center's Los Angeles headquarters and counsel for the plaintiffs, told the MetNews the action filed in San Francisco Superior Court would affect tens of thousands of individuals.

"We know there's a backlog already of about 12,000 applications-the state admitted to that-and thousands more apply each month," she said. "The greatest number of applicants are likely to come from Los Angeles."

The petition asserts that the state agencies are "illegally denying access to health care services to severely disabled individuals who have no other means of paying for critical services and medicines."

While some applicants are able to endure the delay, others may suffer fatal consequences, the petition states, citing the example of one Medi-Cal applicant who allegedly died because she could not afford chemotherapy treatment for her liver cancer while she waiting six months for her eligibility

determination. She passed away shortly after her application was approved, Lewis said.

The suit alleges that petitioner Ivana Zelaya, a Santa Clara resident who applied for disability-based benefits last August and was approved only this past June, suffered immobilizing pain in the interim while unable to undergo critical neurological testing and treatment for serious injuries incurred in an automobile accident.

Similarly, 44-year-old petitioner Ana Penate of San Francisco allegedly did not receive a determination on her April 2005 claim until this past February, meanwhile forgoing needed treatment for cancerous nodules in her lungs, and filing for bankruptcy because she could not pay her medical bills. After an initial denial, Penate was finally approved this July, the petition alleges.

Petitioner Zhong Wu, a 25-year-old Oakland resident was allegedly unable to pay the costs for surgeries he underwent and was harassed by bill collectors as a result. Additionally, the petition alleges, he could not afford a follow-up surgery, and was forced to borrow money to pay for psychiatric medicines required by a separate disability.

Lewis said that Medi-Cal's processing delays are particularly indefensible in view of the state agency's knowledge of applicants' serious medical needs. Under 42 U.S.C. Sec. 1382c (a)(3), she explained—a provision of the federal Medicaid Act with which Medi-Cal must comply—individuals are eligible for disability-based benefits if they have a "medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period not less than twelve months."

"They're aware of the types of cases and how imminent the need is medically for these people who are applying," she said.

Michelle Uzeta, a staff attorney with PAI, said the extent of the state's non-compliance with the 90-day timeframe was "staggering."

"In a sample of 2,188 Medi-Cal disability applications from 2005, *not one* had received an eligibility decision within 90 days," she pointed out in a statement.

That data, which showed the median amount of time for deciding those applications was 226 days, were provided by Health Advocate, Inc., Lewis said.

She added:

"It has been an issue for a couple of years. It's not a brand new situation.

They may tell you that they're trying to address it, but they're waiting too long."

Calls to Department of Health representatives were not returned.

The case, *Zelaya v. California Department of Health Services*, is number CPF-06-506687.

Copyright 2006, Metropolitan News Company