

Judge David L.

BAZELON CENTER
for Mental Health Law

NEWS

Court Asked to Order Effective Community Mental Health Services for California Foster Children

On January 11, 2008, the Bazelon Center and California advocates renewed their request that federal court Judge A. Howard Matz order the State of California to provide effective community mental health services to all children with mental health needs who are in or at risk of entering foster care. Specifically, the court was asked to order California to provide wraparound services and therapeutic foster care (TFC) to children for whom these services are medically necessary. Such children are entitled to these services under Medicaid and the Americans with Disabilities Act.

The renewed motion for preliminary injunction in the case known as *Katie A.* addresses issues raised by a decision of the U.S. Court of Appeals for the Ninth Circuit, which reversed and remanded on narrow grounds Judge Matz' March 2006 order granting the plaintiffs' first motion for preliminary injunction.

The Ninth Circuit affirmed the State's obligation to provide effective mental health services to members of the *Katie A.* class and acknowledged compelling evidence that wraparound services and TFC are medically necessary for many children and that, without them, these children would face grave harm from unnecessary institutionalization. However, the appellate court reversed Judge Matz' order, stating that he had incorrectly analyzed the plaintiffs' Medicaid claim, and set forth issues for him to analyze on remand. These are: (1) whether each component of wraparound services and TFC is coverable under a category of services listed in the Medicaid Act; (2) whether California is effectively providing the mandated components of wraparound services and TFC; and (3) "whether the State should be required to provide the required services in another manner which will render such services effective, or proceed directly to wraparound and TFC."

In support of their renewed motion, the plaintiffs submitted declarations from national and California experts on Medicaid and children's mental health services and from representatives of class members who need, but are not receiving, wraparound services and TFC. These declarations show that the components of wraparound services and therapeutic foster care are coverable by Medicaid and that other states' Medicaid programs cover them; that wraparound services and TFC are effective community mental health services that lead to positive outcomes and avoid unnecessary (and illegal) placement of class members in institutional settings, at cost-savings to the state; and that, to be effective, all of the components of wraparound services and TFC must be provided in a coordinated manner. Further, the declarations show that many class members who need wraparound services and TFC are not getting those services, with tragic consequences.

The state defendants opposed the renewed motion and the plaintiffs filed a reply brief addressing the state's arguments. The plaintiffs also filed proposed findings of fact and conclusions of law with the Court.

A consortium of state and national public interest groups represents the children, including Western Center on Law & Poverty, Protection & Advocacy, Bazelon Center for Mental Health Law, the National Center for Youth Law, and the American Civil Liberties Union of Southern California, along with the law firm of Heller Ehrman LLP.