
Arizona Court of Appeals Rules that Arizona Medicaid Program, AHCCCS, Must Cover Dentures to Enable Someone to Chew; Decision Appealed to Arizona Supreme Court and Decision Stayed Pending Further Court Ruling

On February 3, 2009 in the Center's case, *Sharpe v. Rodgers*, --- P.3d ----, 2009 WL 249706 (Ariz.App. 2009), the Arizona Court of Appeals ruled that, under the plain meaning of the state Medicaid statute, the Arizona Medicaid program, AHCCCS, is required to provide dentures to someone whose dentist has certified that the AHCCCS member does not have any teeth and the dentures are needed to chew. The decision effectively struck down AHCCCS policies and regulations that prohibited coverage of dentures for someone without teeth who is unable to chew.

In finding for the Center's client, Bridget Sharpe, a 33 year old mother with severely decayed teeth, all of which needed to be pulled, the Court of Appeals said that:

AHCCCS contests this "plain meaning" reading of the statute on the grounds that the statute "does not say a word about chewing or eating." As noted, however, any reasonable definition of "dentures" plainly implies chewing and eating. It is difficult to conceive of why else the legislature would make dentures available. The legislature did not require a medical condition other than, or in addition to, that for which dentures are typically (if not always) required: chewing food. This, however, is precisely how AHCCCS has construed this statutory provision, thwarting its primary purpose. It is akin to saying a prosthetic foot will only be provided if one can show a medical need other than the ability to walk properly.

The Court held that dentures for Ms. Sharpe were medically necessary to prevent the disability and/or adverse health condition—ie the inability to chew and eat normally—caused by not having any teeth. The Court implicitly rejected AHCCCS's argument that the inability to chew is not a disability because "babies can't chew and babies are not disabled."

The American Dental Association, the Arizona Dental Association, and AARP Litigation, all filed *amicus briefs* ("friend of the court" briefs) with the Arizona Court of Appeals.

_____ On February 9, 2009, AHCCCS filed a motion for reconsideration and motion to stay with the Court of Appeals. Both were denied on February 20, 2009.

On February 25, 2009, AHCCCS filed a Petition for Review with the Arizona Supreme Court and a Motion to Stay. Unfortunately, the Court granted the stay on March 16, 2009, which means that the *Sharpe* decision is not in effect until further ruling of the Court and that AHCCCS members with denture requests have to bring their cases under the old rules. The Center is awaiting a ruling on whether the Arizona Supreme Court will accept this case for review.

The Court of Appeals granted the Center's Motion for Attorneys' Fees on April 1, 2009.

Ms. Sharpe is represented by the Center's health care attorney, Jennifer L. Nye