



which they are entitled” under the federal Medicaid statute. Judge Carroll ordered Arizona to provide all critical home health care services and to fill all gaps in services within two hours.

Arizona appealed to the Ninth Circuit Court of Appeals arguing that it had not violated provisions of the Medicaid Act, the ADA, and § 504. In July 2007, the Ninth Circuit ruled that plaintiffs were not entitled to assert one of the two Medicaid claims but remanded the case to the District Court for further consideration of the remaining Medicaid, ADA, and § 504 claims.

In its Friday ruling, the Court found that AHCCCS is required to comply with Medicaid’s Free Choice provisions, which require states to give Medicaid beneficiaries a meaningful choice between institutional or community care. AHCCCS had argued that the free choice provisions only required it to approve home care services, but not to ensure that AHCCCS contracted health plans actually delivered the services to beneficiaries. The Court also found that AHCCCS’s failure to provide all the critical home care services authorized in Plaintiffs care plans, failure to provide back-up care workers, and failure to properly monitor the health plans denied plaintiffs this meaningful right to choose, and violated provisions of the Americans with Disabilities Act and §504 that require states to provide services in the most integrated setting appropriate to a person’s need (“the integration mandate”).

In regard to the ADA and the §504 violations, the Court held that:

AHCCCS's failure to prevent unnecessary gaps in service and properly monitor the HCBS program improperly discriminated against persons with disabilities by limiting their ability to maintain their social and economic independence and depriving them of a real choice between home and institutional care. AHCCCS's failure to provide adequate services to avoid unnecessary gaps in service and institutionalization was discriminatory, and AHCCCS' discrimination was by reason of the Plaintiffs' disabilities.

The Court set a status hearing for June 1, 2009 at 3pm to discuss Arizona’s compliance with the injunction and to determine whether it should be extended beyond June 30, 2009.

Ken Zeller, Senior Attorney for AARP Foundation Litigation agreed that the decision was a victory for older persons and people with disabilities in Arizona and said that, “This is about choice and dignity, the difference between people living full and engaged lives in their communities or being forced to accept the regimented lifestyle of nursing home life. Judge Carroll’s decision gives real life meaning to the promise of the Americans with Disabilities Act”

The Plaintiffs in this case are represented by: Jennifer L. Nye of the Arizona Center for Disability Law and Ken Zeller of AARP Foundation Litigation in Washington, D.C.

\* \* \* \* \*

The Arizona Center for Disability Law is a non-profit public interest law firm, which advocates for the rights of people with disabilities to be free from abuse, neglect and discrimination and to have access to education, health care, housing, jobs, and other services. The Center is authorized and mandated under various federal statutes to protect the rights of all individuals with disabilities living in Arizona. *Ball v. Rodgers* is a continuation of the Center’s work to ensure that people with disabilities have the health care services they need. The Center’s other successful class action litigation includes *Ekloff v. Rodgers*, which challenged the failure of the Arizona Medicaid program to provide incontinence briefs for children with disabilities, and *Price v. Rodgers*, which challenged the inadequate notice and appeals processes of the Arizona Medicaid program.

AARP has over 874,000 members in Arizona and 39 million nationwide. AARP is a nonprofit, nonpartisan membership organization that helps people 50+ have independence, choice and control in ways that are beneficial and affordable to them and society as a whole. AARP operates AARP The Magazine, a voice for 50+ Americans and the world's largest-circulation magazine with over 34.5 million readers; AARP Bulletin; AARP Segunda Juventud, the only bilingual U.S. publication dedicated exclusively to the 50+ Hispanic community; and a website, AARP.org. AARP Foundation is an affiliated charity that provides security, protection, and empowerment to older persons in need with support from thousands of volunteers, donors, and sponsors. AARP has offices in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.