

Waiting List Lawsuit Update: McCarthy v. Hawkins

The Arc of Texas continues to aggressively pursue the *McCarthy v. Hawkins* Waiting List lawsuit in the United States Federal District Court. The lawsuit, originally filed against the State of Texas in 2002, seeks Medicaid Waiver services for more than 37,000 Texans with mental retardation and developmental disabilities who are languishing on lengthy Waiting Lists for Home and Community-based Services (HCS) or Community Living Assistance and Support Services (CLASS). Many of these individuals have been waiting for services for seven or more years. The Arc believes that the denial of services for which these individuals are entitled violates federal Medicaid law and provisions of the Americans with Disabilities Act.

After having concluded a two-year battle through the Fifth Circuit Court of Appeals by which the State endeavored to seek dismissal of the case, we now are moving toward a 2006 trial date. Here are the latest developments in *McCarthy v. Hawkins*:

- The case is tentatively set for trial in Judge Sam Sparks Austin Federal District Court in June.
- Discovery activities are in full swing. Official depositions of The Arc's staff and volunteer leaders and other witnesses for both the defendants and plaintiffs will likely begin in February.
- Court-required efforts by plaintiffs and defendants to mediate major issues in the lawsuit held last December yielded no State proposals to end the Waiting List crisis that The Arc of Texas found acceptable. Additional mediation efforts may be forthcoming, but none have been scheduled.
- The Arc has ceased to pursue court permission to designate the lawsuit as **class-action** litigation. A class-action designation would allow The Arc of Texas and Advocacy, Inc. (the original filers of the lawsuit) to change the action from litigation filed on the behalf of a limited number of individual named-plaintiffs into litigation that would represent all those "similarly situated"...in this case: all 37,000 individuals on the HCS and CLASS Waiting Lists. The Arc has dropped efforts to certify the case as a "class-action" due to recent changes in federal trial procedure that would allow the State to appeal such a certification decision by Judge Sparks through the entire federal appellate system. The appeal process could take years. However, since the lawsuit speaks to services for which eligible individuals have a **federal entitlement** right, a decision in The Arc's favor would require the State to provide services not only to the individual plaintiffs, but also to all others seeking the same kinds of Medicaid Waiver entitlement services. This strategy still enables The Arc to pursue service expansion benefiting all eligible persons on Waiting Lists while avoiding interminable state appeals which could delay final judgment for years.
- It should be noted that in May 2005 the Texas Legislature approved funding to extend HCS and CLASS services to some 4,500 persons who have been on those Waiting Lists the longest. Those waiver "slots" are now being rolled-out across

the state. As of the end of 2005 about one-third of the individuals that are to receive services in the 2006-2007 had been notified and were beginning the enrollment process to initiate services. Several hundred had already begun receiving services by the end of the year. The Arc of Texas believes that the Waiting List lawsuit was a principle factor in the Legislature's decision to include service expansion funds in the state budget. Unfortunately, tens of thousands of Texans will still remain on Waiting Lists for HCS and CLASS services.

Your help is needed:

The Arc of Texas has already spent some \$100,000 dollars to pursue this litigation. We expect that the cost could exceed \$250,000 before a final judgment is made on *McCarthy v. Hawkins*.

Your tax-deductible contribution to The Arc of Texas Legal Fund is needed. All receipts will be used only to pay our attorney fees and other lawsuit related costs. **Please make a contribution of any size to The Arc of Texas Legal Fund by visiting our website:**
<http://www.thearcoftexas.org>

For more information about the Waiting List lawsuit, contact Mike Bright – Executive Director, The Arc of Texas at 8001 Centre Park Drive, Austin, Texas 78754, 1-800-252-9729, or by e-mail at mbright@thearcoftexas.org