# Clearinghouse REVIEW

March–April 2009
Volume 42, Numbers 11–12

## Journal of Poverty Law and Policy

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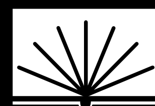

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# Case Notes

## *Caro v. Blagojevich*: What Happens When Working Families' Health Care Becomes a Political Football

One of the issues identified in the Illinois General Assembly's decision to impeach Gov. Rod Blagojevich in December 2008 and convict him of impeachment charges in January 2009 involved his attempt to expand the FamilyCare health care insurance program.[1] FamilyCare is the Illinois program that covers the parents of children who are covered under either Medicaid or the State Children's Health Insurance Program (SCHIP); in Illinois SCHIP is known as All Kids. The attempted expansion of FamilyCare is also the subject of *Caro v. Blagojevich*, the case that we discuss here.[2] The lower courts in the case misconstrue state Medicaid law in a way that causes the state Medicaid law to violate the governing federal law that the state Medicaid law is supposed to implement, and the result has been court orders that not only prevent the expansion of the FamilyCare program but in fact roll back eligibility for FamilyCare coverage. The outcome of the *Caro* case is not final either politically or legally, but even at this interim stage it offers interesting lessons in the politics of health care coverage expansion, the proper understanding of the federal Medicaid laws affecting coverage for families, and the drafting of state laws that implement Medicaid to avoid similar confusion.[3]

### The FamilyCare Program and Attempted Expansion

In Illinois, as in many states, the welfare reform movement of the late 1990s produced a perverse outcome: the people who worked their way off cash welfare were "rewarded" by losing their health care coverage because Medicaid eligibility was linked to eligibility for cash assistance. For the same reason, low-income workers who never even applied for the new cash assistance program (Temporary Assistance for Needy Families, or TANF) could not access health care coverage. To support working families, Illinois developed the FamilyCare program for families not seeking or receiving cash assistance.[4]

In state Medicaid law, Illinois already had granted the Medicaid agency the power to expand medical assistance to children's caretaker relatives who would be eligible for TANF but for TANF's financial eligibility factors.[5] That is, the agency had authority under state law to cover caretaker relatives in families with income higher than allowed for the cash assistance program.

When FamilyCare was being created in 2001–2002, Illinois was in the early years of implementing the state's SCHIP program, then known as KidCare. SCHIP, like Medicaid, is a federal-state matching grant program. Unlike Medicaid, however, SCHIP's federal spending is capped, with each state receiving a limited allocation. Under the SCHIP federal funding allocation, Illinois was entitled to draw down more federal funding than it needed just to cover children. Illinois could seek permission (a "waiver") to use additional funds in its allotment to cover parents. Because the federal matching rate for Illinois under SCHIP is 65 percent while the federal matching rate for Medicaid is 50 percent, Illinois sought authority under a waiver to cover parents under SCHIP. In 2002 Illinois amended the state's SCHIP implementing law, the Children's Health Insurance Program Act, to authorize the state agency to seek the waiver and to cover parents up to 65 percent of the federal poverty level under SCHIP if the waiver were granted.[6]

[1]See Special Investigative Committee, House of Representatives, 95th General Assembly, State of Illinois, Final Report of the Special Investigative Committee 29–36 (Jan. 8, 2009), www.ilga.gov/house/committees/95Documents/Final%20Report%20of%20the%20Special%20Investigative%20Committee.pdf (FamilyCare expansion portion of committee's report recommending impeachment based on pattern of abuse of power); see also H. Res. 1671, 95th Gen. Assem., Spec. Sess. (Ill. [Jan. 9, 2009]), www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=51&GA=95&DocTypeId=HR&DocNum=1671&GAID=9&LegID=40049&SpecSess=&Session\ (article of impeachment based on committee's report and recommendation; article passed 114 to 1).

[2]*Caro v. Blagojevich,* No. 07CH34353 (Ill. Cir. Ct. Cook County filed Nov. 26, 2007) (Clearinghouse No. 56,140). For some trial and appellate court pleadings, motions, briefs, and orders for this case, see www.povertylaw.org/poverty-law-library/case/56100/56140.

[3]The *Caro* case also raises important issues regarding separation of powers under state constitutions, not to mention the red-hot context for those issues in Illinois featuring an escalating feud between the governor and the General Assembly that culminated in impeachment. These issues have not been reached yet by the Illinois courts. The *Caro* case documents referenced here include the competing arguments on those issues.

[4]See 215 Ill. Comp. Stat. 106/40(c) (2002); see generally John Bouman, *The Power of Working with Community Organizations: The Illinois FamilyCare Campaign—Effective Results Through Collaboration*, 38 Clearinghouse Review 583 (Jan.–Feb. 2005).

[5]See 305 Ill. Comp. Stat. 5/5-2 (2009).

[6]See Children's Health Insurance Program Act, Ill. Pub. Act 92-597 (2002) (codified at 215 Ill. Comp. Stat. 106/40(c)).

Illinois sought and was awarded the FamilyCare waiver by the federal government. Thus Illinois had two sources of state law authority for FamilyCare; having these dual sources allowed the state to access favorable SCHIP federal matching funds to the extent that those funds were available but otherwise to access Medicaid matching funds.[7] FamilyCare was begun in 2002 under Republican Gov. George Ryan, with an initial enlargement to cover families with income up to 49 percent of the federal poverty level (an increase from 39 percent of the federal poverty level, the previous level applicable to TANF-related families).

In 2003 Illinois revised the Children's Health Insurance Program Act to set the minimum for coverage at 90 percent of the federal poverty level.[8] Throughout his first term, which began in 2003, Governor Blagojevich incrementally increased eligibility for the FamilyCare program to families with income at 90 percent, then 133 percent, and finally 185 percent of the federal poverty level, the top level authorized by the federal waiver. Toward the end of his first term, he also launched the All Kids program, making Illinois the first state to cover all children.[9] This capped a remarkable first term for health care coverage issues. All of these expansions were approved by the General Assembly, and all were explicitly debated and funded in the state budget process.

In 2007 Governor Blagojevich launched his second term by proposing a comprehensive multifaceted health care insurance reform program that would have offered coverage to everyone in Illinois.[10] Known as Illinois Covered, the program would have been funded in part by a large new gross receipts tax. The General Assembly, in synch with intense public opinion, firmly rejected the gross receipts tax.[11] Because the governor had linked the gross receipts tax to Illinois Covered, the health care plan never received a separate debate or a vote. An overtime fight over the entire budget ended with a passed budget that the governor significantly altered with line-item vetoes, some of which in turn the General Assembly overrode. The budget in some ways was never settled, but the General Assembly fairly clearly rejected funds for any additional health care coverage expansion that had been included in Illinois Covered. The debate was never about health care but about tax policy, about executive versus legislative power, and mostly about personal and political style and rivalry.

At about this time the federal government had its own battle over the reauthorization of SCHIP. When the dust settled on that battle, SCHIP had been continued into 2009 by resolution, but the Illinois FamilyCare waiver had expired, and the Bush administration would not renew it. This meant that Illinois would have to rearrange its infrastructure to claim federal matching funds for FamilyCare entirely under the lower Medicaid matching rate rather than SCHIP.[12]

Because Illinois law already provided substantive authority for the Medicaid agency to increase the income limit for parental coverage under Medicaid, Illinois only had to promulgate a regulation using that authority to bring the FamilyCare program fully into the state's Medicaid scheme. Illinois had already promulgated a regulation that brought families with income at or below 133 percent of the federal poverty level under Medicaid. So the new regulation only had to bring the population with income between 133 percent and 185 percent of the federal poverty level under Medicaid to preserve federal matching funds for the whole preexisting FamilyCare population (as to which it had previously been claiming SCHIP matching funds). Transferring the FamilyCare program into the Medicaid program through the new regulation was a housekeeping matter, with the funds for the coverage already in the budget and not implicated in the budget battles over potential health care coverage expansion.

However, in promulgating the regulation to accomplish this noncontroversial task, the governor decided also to expand FamilyCare to families with income up to 400 percent of the federal poverty level, an expansion that had been a small component of the rejected Illinois Covered plan. Moreover, he promulgated that regulation not just as a regular proposed rule but as an emergency rule, which under Illinois law allows immediate implementation before the regular notice-and-comment period applicable to a proposed rule before it can become effective.[13] Given the still-hot emotions of the budget struggle with the General Assembly and the General Assembly's fairly clear refusal to authorize appropriations for more health care expansion during that fiscal year, the governor's attempt to expand FamilyCare instantly was provocative. The situation quickly escalated.

The battleground shifted to the Joint Committee on Administrative Rules, a bicameral, bipartisan legislative committee established by the Illinois Administrative Procedure Act to have oversight of the executive branch's rule-making activities that implement state laws.[14] The committee was tasked with reviewing the FamilyCare emergency rule that moved the pro-

[7]The Medicaid coverage in FamilyCare was under the waiver and not under the regular state Medicaid plan because a handful of mandatory Medicaid services were excluded from the coverage and the waiver was needed for that purpose.

[8]See Ill. Pub. Act 93-63 (2003) (codified at 215 Ill. Comp. Stat. 106/40(c)).

[9]See Covering ALL KIDS Health Insurance Act, 215 Ill. Comp. Stat. 170 (2009); see generally John Bouman, *The Path to Universal Health Coverage for Children in Illinois*, 39 Clearinghouse Review 676 (March–April 2006).

[10]Press Release, Illinois Government News Network, Office of the Governor, Gov. Blagojevich Announces Historic Plan to Give Every Illinoisan Access to Quality Affordable Health Insurance (March 4, 2007), www.illinois.gov/pressreleases/ShowPressRelease.cfm?SubjectID=3&RecNum=5755.

[11]Although the Senate never voted on the Illinois Health Care for All Act (S.B. 0005), the House expressed its opposition by defeating a resolution in support of the gross receipts tax 107 to 0 (H. Res. 402, 95th Gen. Assem., Reg. Sess. (Ill. 2007)).

[12]This rearranging included the filing of a Medicaid state plan amendment to replace the federal Medicaid coverage that had been provided through the FamilyCare waiver.

[13]See 31 Ill. Reg. 15854 (Nov. 26, 2007) (emergency rule); 31 Ill. Reg. 15424 (Nov. 26, 2007) (proposed rule).

[14]See 5 Ill. Comp. Stat. 100/5-5 *et seq.* (2009).

gram into Medicaid and expanded eligibility to 400 percent of the federal poverty level. Rejecting the rule, the committee held that, while the Medicaid agency had substantive authority to move FamilyCare into Medicaid, it did not have authority to expand the program without specific appropriations.[15] The committee issued an order suspending the emergency rule. This suspension was an exercise of a new power that recently had been added to the committee's statutory authority.

Despite having himself signed into law the provision creating the Joint Committee on Administrative Rules' new authority to suspend rules, Governor Blagojevich ignored the committee's ruling and had the Medicaid agency implement the program expansions anyway. Enrollment opened on December 1, 2007, and families began to apply, be found eligible, and receive covered health care services.

## The Lawsuit

Even before the confrontation between the governor and the Joint Committee on Administrative Rules, a conservative activist named Richard Caro filed in the Circuit Court of Cook County a *pro se* lawsuit challenging not only the expansion of FamilyCare but also the shift of the program into Medicaid.[16] Caro asserted standing under the Illinois taxpayer-standing law.[17] After the implementation of the FamilyCare expansion over the objection of the committee, two powerful Republican leaders intervened as additional plaintiffs.[18] The defendants in the case are Governor Blagojevich, the director of the Medicaid agency, the Medicaid agency itself, and the state's comptroller (for purposes of enjoining him from paying bills under the authority of the emergency rule).

The plaintiffs asserted a variety of legal claims to challenge the program expansion, but the primary claim was that the emergency rule could not be implemented over the objection and order of suspension by the Joint Committee on Administrative Rules.[19] The defendants countered by alleging that under the Illinois Constitution's separation-of-powers doctrine the committee may have only advisory authority, and its new authority to suspend a rule thus is unconstitutional.[20]

A group of beneficiaries of the FamilyCare program as expanded by the emergency rule attempted to intervene as defendants, both to defend the validity of their coverage and to protect their procedural rights if the program expansion were to be enjoined. The trial court judge initially denied intervention, stating that the case presented purely legal issues and that he expected to get adequate briefing from the assembled attorneys representing the parties.[21] Due to this flawed ruling, the court did not have available the point of view of beneficiaries and their counsel—specialists in the immensely complex state and federal public health care insurance laws—in the briefing on the motion for preliminary injunction.[22]

On April 15, 2008, the court entered a preliminary injunction blocking the ongoing implementation of the emergency rule. To avoid reaching the constitutional issues in the case, the court fashioned a statutory basis for its ruling that the plaintiffs had barely asserted. The court held that, in authorizing medical coverage for the "class" of people eligible for TANF cash assistance benefits but for the financial eligibility rules for that program, the state Medicaid law imposed literally all of the TANF program's eligibility requirements onto the state's Medicaid program. According to the court, because the emergency rule did not condition medical assistance eligibility on TANF work and other requirements, the emergency rule was not an authorized expansion of medical assistance; thus the emergency rule exceeded the agency's authority. The court enjoined implementation of the emergency rule and the expenditure of state funds under that rule. Because the court enjoined the emergency rule as a whole, the entire group of families with income from 133 percent to 400 percent of the federal poverty level was cut off, including the previously eligible group from 133 percent to 185 percent of the federal poverty level. This meant the termination of coverage for tens of thousands of enrolled families.

[15]See Minutes, Illinois Joint Committee on Administrative Rules 2–13 (Nov. 13, 2007) (Exhibit 2 of Joint Stipulated Documents).

[16]*Caro v. Blagojevich,* No. 07CH34353. One advantage of Richard Caro's passion for the case is that Caro has posted most documents on his law practice's website, where they are available to the public (see www.rpcjd.com/Blagojevich.html).

[17]735 Ill. Comp. Stat. 5/11-301 (2009).

[18]Ronald Gidwitz is a wealthy businessman who has been the state Republican party leader and a candidate for governor. Gregory Baise, the head of a leading business group (Illinois Manufacturers' Association), has been a top official in Republican administrations and has been mentioned as a gubernatorial candidate.

[19]Plaintiffs also alleged that the FamilyCare program was not authorized because there was no appropriation for it, there was no authority to charge premiums under Medicaid, there was no authority for the executive to raise revenue by charging premiums, and there was no authority under Medicaid to cover recipients with income between 200 percent and 400 percent of the federal poverty level.

[20]See Ill. Const. art. II, § 1. This issue has been litigated in a number of other states, and bodies similar to the Joint Committee on Administrative Rules have consistently been held unconstitutional (see, e.g., *Missouri Coalition for the Environment v. Joint Committee on Administrative Rules*, 948 S.W.2d 125 (Mo. 1997) (legislative rule-making review committee with power to veto administrative rules and regulations violates separation of powers); *State ex rel. Stephan v. Kansas House of Representatives*, 687 P.2d 622 (Kan. 1984) (statute permitting resolution by legislature to annul agency regulation violates constitution); *Legislative Research Commission by Prather v. Brown*, 664 S.W.2d 907 (Ky. 1984) (providing Legislative Research Commission with review authority over executive rule making is unconstitutional as violation of separation of powers); *General Assembly of New Jersey v. Byrne*, 448 A.2d 438 (N.J. 1982) (broad legislative veto provision in Legislative Oversight Act violates presentment clause and separation of powers); *State ex rel. Barker v. Manchin*, 279 S.E.2d 622 (W. Va. 1981) (legislative rule-making review committee with power to veto administrative rules and regulations violates separation of powers); *Alaska v. ALIVE Voluntary*, 606 P.2d 769 (Alaska 1980) (statute permitting resolution by legislature to annul agency regulation violates constitution)).

[21]The Illinois attorney general represents the comptroller, but, due to potential conflicts, the governor and the state agency and its director are represented by special assistant attorneys general from a private firm. Caro continues to represent himself, and a private firm represents the intervenor plaintiffs.

[22]The defendant-intervenor beneficiaries are represented by the Sargent Shriver National Center on Poverty Law. The court's denial of their motion to intervene contravened core principles of Illinois law governing intervention (see 735 Ill. Comp. Stat. 5/2-408(a)(2), (b)(2) (2009)).

Shortly after the court entered the injunction, the FamilyCare beneficiaries renewed their motion to intervene as defendants. This time the court granted the motion. While the court did not explain its change of position, the court—in the context of implementing the termination of coverage—clearly began to see a separate role and set of interests for the beneficiaries.

The defendants and defendant-intervenors (beneficiaries) appealed the injunction ruling.[23] The trial court's holding, the appellants argued in their first real chance to address the theories relied on by the court (theories that had not been thoroughly briefed in the preliminary injunction proceedings), violates federal Medicaid law, which expressly "de-links" medical assistance eligibility from TANF eligibility requirements, especially the time limit and work requirements.[24] The court's ruling, they argued, thus causes Illinois Medicaid law to violate the federal law that it is supposed to implement—a violation that threatens billions of dollars in matching funds. And, they argued, the violation threatens the coverage of all parents who are at any income level and are not TANF recipients (even families with income below 133 percent of the federal poverty level) because Illinois has granted them medical assistance without requiring that they meet TANF work requirements under the same provision of state law that the court was now construing to require imposition of TANF work requirements as a Medicaid eligibility requirement.[25]

Meanwhile, the state Medicaid agency's permanent rule (identical to the emergency rule) had become final after the normal notice-and-comment period. The Joint Committee on Administrative Rules rejected the permanent rule, too.[26] The plaintiffs filed an amended complaint attacking the permanent rule and moved for a second preliminary injunction.

On September 26, 2008, the Illinois Court of Appeals for the First District affirmed the trial court's ruling preliminarily enjoining the emergency rule.[27] The court completely ignored the arguments that appellants made regarding the inconsistency of the trial court's interpretation of state Medicaid law with federal Medicaid law. On October 15 the emboldened trial court granted the preliminary injunction as to the permanent rule, also completely ignoring the arguments relating to federal Medicaid law. The court ordered the parties to produce the details of an injunction order under which the FamilyCare program would be rolled back to an eligibility level of 133 percent of the federal poverty level and state government would cease expending funds as to anyone made eligible for coverage under either the emergency rule or the permanent rule.

The defendants and defendant-intervenors (beneficiaries) appealed the injunction of the permanent rule. However, they invoked the supervisory jurisdiction of the Illinois Supreme Court and sought a stay of the injunctions during the time necessary for them to seek Illinois Supreme Court review of the September 26 appellate ruling. On November 12 the supreme court granted the motion and issued a stay of the lower courts' injunctions during the time necessary for the appellants to file a petition for leave to appeal and for the supreme court to rule on it. Under the stay, the FamilyCare program avoided a shutdown, and the state comptroller resumed paying the bills of health care providers. On January 28, 2009, the supreme court granted the petition and ordered a continuation of the stay pending resolution of the entire appeal.[28]

## Interesting Lessons

The *Caro* case is teaching an interesting lesson about the politics of health care coverage expansion. The plaintiffs and the courts (and the impeachment committee) consistently have taken pains to clarify that they do not oppose health care coverage such as FamilyCare, although they evidently do not fully agree with an expansion to 400 percent of the federal poverty level. And former Governor Blagojevich consistently used the benefits of expanded health care coverage to justify his tactics. Plainly, health care coverage is regarded as a potent political issue by both sides, and reading the case as a repudiation of the public desire for health care coverage reform would be a mistake. The impressive health care coverage successes of the former governor's first term were marked by cooperation

[23]Although the Illinois court of appeals denied appellants' motion for a stay pending appeal, the state defendants promulgated a peremptory rule incorporating all Temporary Assistance for Needy Families (TANF) eligibility requirements into the FamilyCare program, and it continued covering the previously eligible families in reliance on that peremptory rule and subsequently in reliance on the permanent rule that had gone into effect after the notice period and that had not been enjoined by the court's order enjoining the emergency rule (see 32 Ill. Reg. 18889 (Dec. 5, 2008) (peremptory rule)). As a practical matter, this immensely confused situation resulted in a closure of intake for the FamilyCare program but in the provision of ongoing assistance to all families that had coverage before the court's order.

[24]See 42 U.S.C. § 1396u-1(b)(1)(A) (2008).

[25]Indeed, at least in part as a result of the confusion generated by the court's opinion, the Centers for Medicare and Medicaid Services have delayed approval of the plan amendment that replaces the Medicaid portion of the FamilyCare waiver as to this whole population.

[26]See Minutes, Illinois Joint Committee on Administrative Rules (Feb. 13, 2008) (committee passes motion to "object to and prohibit filing of the rulemaking to the extent that it expands medical assistance to persons other than those formerly receiving medical coverage under a federal State Children's Health Insurance Program (SCHIP) waiver for caretaker relatives of children covered by SCHIP," i.e., parents with income below 185 percent of the federal poverty level).

[27]*Caro v. Blagojevich*, 895 N.E.2d 1091 (Ill. App. Ct. 2008) (Clearinghouse No. 56,140).

[28]Meanwhile, seeing the direction of the court proceedings, the Shriver Center decided to seek a clarifying amendment to the state Medicaid statute. Senate Bill 1415 contains in explicit language the formulation of state law that was intended all along by the existing ambiguous language in the law that the courts have misconstrued. For the text of the bill, see www.ilga.gov/legislation/billstatus.asp?DocNum=1415&GAID=9&GA=95&DocTypeID=SB&LegID=29502&SessionID=51. Senate Bill 1415 was passed by the Illinois House on the last day of the spring session in May 2008 and by the Senate in early January 2009. On February 11, 2009, the bill was sent to Gov. Pat Quinn and, as we go to press, is awaiting his signature. When Senate Bill 1415 is signed into law, the cloud will be removed from the FamilyCare program to the extent that it covers families with income at or below 185 percent of the federal poverty level. Issues will remain in the case, however, such as the status of the expansion group (185 percent to 400 percent of the federal poverty level). As to that group, the courts may have to reach, among others, the separation-of-powers issues involved in the Joint Committee on Administrative Rules' power to suspend regulations. The continuation of the *Caro* case depends on whether Governor Quinn intends to pursue the expansion of the FamilyCare program without legislative approval, and that does not appear to be his intention.

with the legislative branch. The gridlock that characterized the second term, the failure of Illinois Covered, and the FamilyCare controversy can be seen in large part as products of the former governor's departure from that cooperation.

The case also teaches the level at which policymakers outside the Medicaid agency still do not understand the decade-old implications of the federal Medicaid de-linking reforms that unmoored the program from cash assistance (TANF) and authorized states to establish eligibility levels as high as they had the will and the budget to set them.[29] In large part this is because the actual provisions of federal law are extremely complex and opaque, and only the subregulatory explanatory materials make them comprehensible. Thus fine but nonspecialist attorneys and judges researching the statute and regulations can and do reach incorrect and potentially disastrous conclusions.

Because the federal laws are difficult to understand properly, the case also teaches the lesson that state implementing laws should be drafted carefully and explicitly if possible to avoid the mistakes made by the Illinois courts when construing ambiguous or loosely worded provisions on issues such as de-linking. While the Illinois statute is ambiguous, the most literal dictionary reading of the words is the one adopted by the courts—which is a fundamental and potentially hugely damaging error. The courts should not have made this error after proper briefing; the way in which Illinois law is written provided them with a chance to avoid extremely hot political and constitutional issues, and, in a state with an elected judiciary, that opening proved too tempting.

We wrote most of this case note before Mr. Blagojevich was impeached, convicted of impeachment charges, and replaced by the lieutenant governor, Pat Quinn. Governor Quinn has not yet signed Senate Bill 1415, but a comprehensive settlement appears to be agreed in principle and should be finalized in April or May 2009.

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[29]For more information on the de-linking of Medicaid from TANF eligibility, see Joel Ferber & Theresa Steed, *The Impact of Welfare Reform on Access to Medicaid: Curing Systemic Violations of Medicaid De-Linking Requirements*, 45 Saint Louis University Law Journal 145 (2001).

## Voucher Participant Allowed to Maintain Section 1983 Litigation Against Housing Authority for Improper Termination

For hundreds of thousands of families in the United States, a Section 8 housing choice voucher is the difference between shelter and homelessness. When Section 8 administrative agencies threaten to terminate participation in the voucher program, a family depends on the procedures established by federal law under the U.S. Housing Act of 1937 (42 U.S.C. § 1437a) to ensure that the family has a hearing that is fair and allows the opportunity to challenge the evidence against the family in front of a neutral decision maker. All too often, however, these administrative hearings are led by hearing officers who act as both judge and advocate for the housing authority, rely exclusively on unauthenticated hearsay, and issue decisions that contain no statement of the evidence relied on in making the decision.

This was the experience of Amy Stevenson, a single, disabled mother who has four daughters and who had been improperly terminated from the Section 8 voucher program. With the assistance of Legal Aid of Western Ohio and Advocates for Basic Legal Equality, Stevenson sought redress in federal court for the improper deprivation of her housing subsidy by challenging, through 42 U.S.C. § 1983, the public housing authority's procedures. Although the case is ongoing, Stevenson prevailed against the housing authority's motion to dismiss, with the court reaffirming the ability of tenants to use Section 1983 to enforce rights under the U.S. Housing Act of 1937.

### Case Background

Stevenson came to Legal Aid of Western Ohio and Advocates for Basic Legal Equality in July 2006 after receiving from the Lucas Metropolitan Housing Authority in Toledo, Ohio, a notice informing her that she was being terminated from the Section 8 program. Following an informal hearing that completely lacked due process protections, the housing authority issued a decision requiring Stevenson to enter into a repayment plan with her former landlord to reimburse him for damages to her unit, damages that she disputes and for which no nonhearsay evidence was offered. After several months of failed attempts to resolve the matter and after the housing authority's refusal to continue subsidy payments under the voucher program, Legal Aid of Western Ohio and Advocates for Basic Legal Equality filed suit in an Ohio district court; the suit alleged that Stevenson's housing subsidy was terminated under proceedings that denied her basic procedural due process protections and stripped her of her right to a fair hearing.

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