

14-1367-cv
Backer v. Shah

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2014

(Argued: October 23, 2014

Decided: June 3, 2015)

Docket No. 14-1367-cv

MINDY BACKER, by her guardian and next friend Gay Lee Freedman,

Plaintiff-Appellant,

FANNIE MAE WILLIAMS, by her guardian and next friend United
Guardianship Services, ANNIE L. KELLY, by her guardian and next
friend United Guardianship Services, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

NIRAV R. SHAH, M.D., M.P.H., in his capacity as the Commissioner
of the New York State Department of Health,

Defendant-Appellee.

B e f o r e: WINTER, WALKER, and CABRANES, Circuit Judges.

Appeal from a dismissal of a complaint by the United States
District Court for the Eastern District of New York (Roslynn R.
Mauskopf, Judge), on the alternative grounds that appellant
lacked standing to bring, and failed to state, a claim that the
Medicaid Act allows her to deduct guardianship fees from her
Medicaid-required contributions to nursing home costs.

1 We hold that appellant has standing but failed to state a
2 valid claim for relief. We therefore affirm.

3
4 JOSEPH P. GARLAND (Michael Korsinsky, on
5 the brief), Korsinsky & Klein, LLP,
6 Brooklyn, NY, for Plaintiff-Appellant.
7

8 BETHANY A. DAVIS NOLL, Assistant
9 Solicitor General (Barbara D. Underwood,
10 Solicitor General, Anisha S. Dasgupta,
11 Deputy Solicitor General, on the brief),
12 for Eric T. Schneiderman, Attorney
13 General of the State of New York, New
14 York, NY, for Defendant-Appellee.
15

16 WINTER, Circuit Judge:

17
18 Mindy Backer appeals from Judge Mauskopf's Fed. R. Civ. P.
19 12(b) (1) and 12(b) (6) dismissal of her complaint alleging a
20 Section 1983 violation. In that action, she claimed that the New
21 York State Department of Health ("DOH") violated the Medicaid
22 Act, 42 U.S.C. § 1396 et seq., when DOH determined that
23 guardianship fees approved by a state court could not be deducted
24 from Backer's Medicaid-required contributions to her nursing home
25 costs. We conclude that Backer has standing but has nevertheless
26 failed to state a valid Section 1983 claim. We therefore affirm.
27

27 **BACKGROUND**

28 Appellant is incapacitated and resides in a nursing home.
29 She receives Medicaid benefits. Medicaid covers part or all of
30 the costs of nursing home facility services for qualified
31 beneficiaries. 42 U.S.C. § 1396d(a) (4) (A). Such beneficiaries
32 are required to contribute their available income to the cost of

1 their institutional care. See 42 U.S.C. § 1396a(q) (1) (A); see
2 also *Wong v. Doar*, 571 F.3d 247, 261 (2d Cir. 2009). When
3 calculating a beneficiary's "available income" for such expenses,
4 state Medicaid plans are required to deduct a "monthly personal
5 needs allowance." 42 U.S.C. § 1396a(q) (1) (A). In New York, that
6 monthly allowance is \$50. 18 N.Y.C.R.R. § 360-4.9(a) (1). The
7 amount of the beneficiary's income that is left after the \$50
8 deduction is styled the "net available monthly income" ("NAMI")
9 and must be paid to the nursing home. See *Florence Nightingale*
10 *Nursing Home v. Perales*, 782 F.2d 26, 27-28 (2d Cir. 1986); see
11 also 42 U.S.C. § 1396a(q) (1) (A).

12 Under New York law, an incapacitated person is entitled to
13 have a guardian appointed to "act on [her] behalf . . . in
14 providing for personal needs and/or for property management."
15 N.Y. Mental Hygiene L. § 81.03(a). Pursuant to that law,
16 appellant's sister, Gay Lee Freedman, was appointed by the New
17 York Supreme Court to be appellant's guardian. The guardianship
18 order stated that the income appellant deposited in her
19 guardianship account would be considered unavailable income for
20 purposes of calculation of her NAMI. See *Matter of Freedman v.*
21 *Comm'r of State of New York Dep't of Health*, 988 N.Y.S.2d 522
22 (Sup. Ct. 2014). In a separate administrative proceeding,
23 however, DOH determined that appellant could not deduct the
24 guardianship fees and was required to contribute approximately

1 \$1,800 per month in NAMI toward her nursing home costs. See *id.*
2 That ruling left her without funds to pay the guardianship fees.

3 Relying on the terms of the guardianship order, Freedman
4 challenged DOH's decision in state court, but the court upheld
5 DOH's decision on the ground that it had a rational basis. *Id.*
6 The court also noted that New York's Medicaid regulations did not
7 authorize the deduction of guardianship fees and expenses from
8 the amount required to be contributed toward nursing home costs.
9 *Id.*

10 While her state court challenge was pending, Freedman filed
11 the present action, including a putative class action, in the
12 Eastern District. The complaint sought declaratory and
13 injunctive relief pursuant to 42 U.S.C. § 1983, alleging that DOH
14 violated the Medicaid Act, 42 U.S.C. §§ 1396a(a)(19),
15 1396a(q)(1), 1396d, by refusing to deduct guardianship expenses
16 from required Medicaid contributions. Backer alleged she was
17 "being damaged because of the failure of DOH to permit the
18 deduction of the guardianship fees from her available assets."

19 DOH successfully moved to dismiss the action. The district
20 court held that appellant lacked constitutional standing to bring
21 the claim, noting that the complaint "failed to allege any injury
22 'fairly traceable' to defendant's conduct or the provisions of
23 the Medicaid Act. Any financial liabilities plaintiff[] [has]
24 incur[red] as a result of not paying the NAMI [were] a result of

1 an independent economic choice to pay [the] guardian[] instead.”
2 Williams ex rel. United Guardianship Servs. v. Shah, No.
3 12-CV-3953 (RRM) (RML), 2014 WL 1311154, at *5 (E.D.N.Y. Mar. 30,
4 2014). The court held in the alternative that even if appellant
5 had standing, dismissal was still warranted because she failed to
6 state a claim upon which relief could be granted. Id. at *6.

7 **DISCUSSION**

8
9 We review de novo a district court’s grant of a motion to
10 dismiss (i) for lack of standing, and (ii) for failure to state a
11 claim upon which relief can be granted. Rothstein v. UBS AG, 708
12 F.3d 82, 90 (2d Cir. 2013).

13 a) Standing

14 Before reaching the merits, we must first determine whether
15 appellant had standing to bring her claim. See Shearson Lehman
16 Hutton, Inc. v. Wagoner, 944 F.2d 114, 117 (2d Cir. 1991). To
17 have standing, a complainant must show: (i) a concrete and
18 particularized invasion of a legally protected interest; (ii) a
19 causal connection between the invasion and the alleged injury;
20 and (iii) a likelihood that the injury will be redressed by a
21 favorable decision. See Lujan v. Defenders of Wildlife, 504 U.S.
22 555, 560-61 (1992).

23 The district court held that appellant lacked standing
24 because her alleged injury was “solely attributable” to her own
25 action in paying her guardian instead of her nursing home costs.

1 Williams, 2014 WL 1311154, at *3-4 (quoting Engwiller v. Pine
2 Plains Cent. Sch. Dist., 110 F. Supp. 2d 236, 246-47 (S.D.N.Y.
3 2000)). We disagree.

4 DOH determined that appellant was obligated to make NAMI
5 payments for the costs of her nursing home residency before
6 paying the guardianship fees. This determination caused
7 appellant to have insufficient funds to pay her guardianship
8 obligations. She was thus exposed to potential liability either
9 for the nursing facility charges or for guardianship services.

10 An injury is "self-inflicted" so as to defeat standing only
11 if "the injury is so completely due to the plaintiff's own fault
12 as to break the causal chain." St. Pierre v. Dyer, 208 F.3d 394,
13 402 (2d Cir. 2000) (quoting 13 Charles A. Wright, Arthur R.
14 Miller, & Edward H. Cooper, Federal Practice and Procedure §
15 3531.5, at 457 (2d ed. 1984)). To be sure, appellant might have
16 sought relief from the state courts from the guardianship
17 expenses, see N.Y. Mental Hyg. Law § 81.28, but the possibility,
18 or even probability, of obtaining such relief does not eliminate
19 the difficult position appellant was put in by DOH's ruling. "So
20 long as the defendants have engaged in conduct that may have
21 contributed to causing the injury, it would be better to
22 recognize standing." St. Pierre, 208 F.3d at 402 (internal
23 quotation marks omitted). Appellant's injury -- i.e., incurring
24 debts beyond her means to the nursing facility or to her guardian

1 -- was not "solely" attributable to her own actions, but rather
2 was caused in part by DOH's determination.

3 Therefore, we hold that appellant had standing to bring the
4 action.

5 b) Section 1983

6 We now turn to the merits of appellant's Section 1983 claim.
7 To obtain redress through Section 1983, "a plaintiff must assert
8 the violation of a federal *right*, not merely a violation of
9 federal *law*." Blessing v. Freestone, 520 U.S. 329, 340 (1997);
10 accord NextG Networks of NY, Inc. v. City of New York, 513 F.3d
11 49, 52 (2d Cir. 2008). Courts "traditionally look[] at three
12 factors when determining whether a particular statutory provision
13 gives rise to a federal right." Blessing, 520 U.S. at 340.
14 "First, Congress must have intended that the provision in
15 question benefit the plaintiff." Id. Second, the statute must
16 not be "so vague and amorphous that its enforcement would strain
17 judicial competence." Id. at 340-41 (internal quotation marks
18 omitted). Finally, "the statute must unambiguously impose a
19 binding obligation on the States." Id. at 341.

20 "Section 1983 is only a grant of a right of action; the
21 substantive right giving rise to the action must come from
22 another source." Singer v. Fulton Cnty. Sheriff, 63 F.3d 110,
23 119 (2d Cir. 1995). One alleged source of appellant's Section
24 1983 claim is 42 U.S.C. § 1396a(a)(19), which requires state

1 Medicaid plans to “provide such safeguards as may be necessary to
2 assure that eligibility for care and services under the plan will
3 be determined . . . in a manner consistent with simplicity of
4 administration and the best interests of the recipients.” We
5 have yet to address the issue, but various other circuits have
6 held that Section 1396a(a)(19) is too vague and amorphous to
7 create a Section 1983 private right of action. See, e.g.,
8 Bruggeman v. Blagojevich, 324 F.3d 906, 911 (7th Cir. 2003)
9 (“[T]he ‘best interests’ provision . . . is insufficiently
10 definite to be justiciable, and in addition cannot be interpreted
11 to create a private right of action[.]”); Harris v. James, 127
12 F.3d 993, 1010 (11th Cir. 1997) (collecting cases); Cook v.
13 Hairston, No. 90-3437, 1991 WL 253302, at *5 (6th Cir. Nov. 26,
14 1991). We agree with these courts.

15 Section 1396a(a)(19)’s direction to provide safeguards so
16 that the determination of Medicaid eligibility will be consistent
17 with both “simplicity of administration” and “the best interests
18 of . . . recipients” provides no workable standard for judicial
19 decision making. The terms used are amorphous and in some
20 circumstances inconsistent, requiring an experimental balancing
21 of perceived costs and benefits in a vast number of foreseen and
22 unforeseen situations. Recognition of a private right of action
23 to enforce such terms would truly strain judicial competence to a
24 breaking point.

