**FOR IMMEDIATE RELEASE:**

**Michigan Department of Health and Human Services’**

**Attempt to Ration Medicaid Services to**

**People with Disabilities Fails**

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**Michigan –** A year after filing their similar federal lawsuits,  two young men with developmental disabilities have settled their lengthy legal battle with the State of Michigan’s Department of Health and Human Services and Community Mental Health of Central Michigan <http://www.pekdadvocacy.com/wp-content/uploads/2017/06/Mitchell-Original-Complaint-Case-Number-16-11605-Hon.-David-M.-Lawson.pdf> and <http://www.pekdadvocacy.com/wp-content/uploads/2017/06/Hartshorne-Original-Complaint-Case-Number-16-11607-Hon.-David-M-Lawson.pdf> . The two agencies work together to provide Medicaid long term services and supports. They unilaterally eliminated medically necessary supervisory services, despite no change in **any** law or policy.

In March of 2015 Thomas Mitchell, 31, a person with severe intellectual disabilities and a seizure disorder, and Jacob Hartshorne, 28, who is deaf-blind and has intellectual disabilities, suddenly found themselves without nighttime supervisory support services. This service, often referred to as Community Living Supports, was paid for and provided to them by Community Mental Health of Central Michigan by and through the Michigan Department of Health and Human Services and had been deemed medically necessary.  The Mitchell and Hartshorne families were able to prove that these services continue to be medically necessary for Thomas’ and Jacob’s continued ability to live in their own homes, rather than be moved into a more restrictive setting, like a group home, nursing home, or institution.

           This change was later determined to have been brought about as a result of the agencies’ “reinterpretation” of the definition of Community Living Supports provision in the (1915(b)(c)) Medicaid Waiver. Actually no change in the manual, policy or law occurred.  Jacob Hartshorne utilized the sleep time supervisory services for five years before the “reinterpretation” by the Michigan Department of Health and Community Services and Community Mental Health of Central Michigan occurred. Thomas Mitchell utilized the services for about a year prior to the sudden change.

The reporting codes for the agencies indicate that supervisory services while a person is sleeping is permitted, yet access to these services was still unilaterally denied.  The Michigan Department of Health and Human Services and Community Mental Health of Central Michigan asserted that the reason for the change was that they had incorrectly misinterpreted the Medicaid Service Provider Manual, and were only correcting their policy. In reality this was a significant change and attempt at rationing of Community Living Support Services. They interpreted Community Living Services as only to be available for face-to-face encounters, not while the person with a disability sleeps or rests. This assertion made no sense as thousands of folks with disabilities require medically necessary supervision to be safe in their communities and this “reinterpretation” jeopardized the supported independent living arrangements of most persons receiving services by and through the community mental health long term support system. The families asserted a violation of the Americans with Disabilities Act and other federal laws which have an integration mandate, and the Supreme Court of the United States of America’s Decision in Olmstead v Georgia (Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 601 (1999))

On March 22, 2017 Judge David Lawson ordered that the motions filed by Community Mental Health of Central Michigan, as well as those filed by the Michigan Department of Health and Human Services Michigan to dismiss the case were denied, <http://www.pekdadvocacy.com/wp-content/uploads/2017/06/Mitchell-Hartshorne-Opinion-and-motions-3.22.17.pdf>, Judge Lawson also denied both the Mitchell’s and the Hartshorne’s motions for preliminary injunctions. As a result, the agencies and the families worked diligently to resolve the dispute.

The Mitchell and Hartshorne families sought reinstatement of their Medicaid benefits, as well as a declaration that the defendants violated their rights under section 504 of the Rehabilitation Act and Title II of the ADA, as well as reimbursement of their attorney’s fees along with compensatory damages, and punitive or exemplary damages. The actual settlement is here: <http://www.pekdadvocacy.com/wp-content/uploads/2017/06/Mitchell-Hartshorne-Stipulated-Order-to-Dismiss.pdf>. Thankfully, this attempt to ration Medicaid Waiver services has been defeated. However, as, you can see, from the exact terms of the settlement the issue is far from over. Given the changes currently proposed (at both the state and federal level) the battle to prevent service rationing will be an ongoing and fierce battle that advocates for individuals with disabilities will be fighting for the foreseeable future. If you have questions about this article or the cases described, feel free to email pdudek@pekdadvocacy.com the attorney that had the honor of representing Thomas and Jacob and their families.  ###