US Supreme Court Validates Medicaid State Agency's Right to Wipe Out Tort Recoveries from Medicaid Beneficiaries

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The Supreme Court delivered a huge blow to tort victims in a recent decision that will effectively eliminate the tort victim's settlement/award by expanding the ability of states to recoup health care costs from accident victims. In *Gallardo v. Marstiller*, Justice Clarence Thomas' majority 7-2 opinion places the competing interest of preserving the fiscal viability of state Medicaid programs over the interest of protecting the severely injured beneficiaries of such programs. Worth reading is Justice Sotomayor's well-written dissent (joined by Justice Breyer) aimed at preserving injured beneficiaries' tort recoveries by limiting such recoveries to only past medical expenses and not including future medical expenses.

What Happened?

Thirteen-year-old Gianinna Gallardo suffered catastrophic injuries resulting in permanent disability when a truck struck her as she stepped off a Florida school bus. Florida's Medicaid agency paid over $860,000 in medical expenses and continues to pay ongoing medical expenses. Gallardo sued the truck's owner and driver and the Lee County School Board. This lawsuit resulted in a settlement of $800,00, with only $35,000 expressly designated as compensation for past medical expenses and no amount allocated for future medical expenses.

What is the legal issue?

The federal Medicaid Act requires states to pay for certain needy individuals' medical costs and then to make reasonable efforts to recoup those costs from liable third parties.[1] However, under Florida's Medicaid Third Party Liability Act, the state argued it was entitled not only to reimbursement of past medical expenses (i.e., expenses already paid) but also future medical expenses (i.e., not yet incurred and not known if such expenses will even have to be paid). Pursuant to Florida's formula as set forth in its Third Party Liability Act, it was entitled to 37.5% of the $800,000 settlement – or $300,000, leaving far less for Gianinna to place into a supplemental needs trust for future care needs not otherwise covered by the Medicaid program.[2]

Gallardo challenged this statutory formula of allocating an award to both past and future medical expenses, seeking a declaration that Florida was violating the federal Medicaid Act by trying to recover from portions of the settlement, compensating for future medical expenses. The Eleventh Circuit concluded that the relevant Medicaid Act provisions do not prevent a state from seeking reimbursement from settlement monies allocated for future medical care.[3] The U.S. Supreme Court agreed in *Gallardo v. Marstiller*, decided on June 6, 2022,[4] and concluded that the relevant distinction is not between past and future medical expenses but between medical and nonmedical expenses.

Prior U.S. Supreme Court opinions in *Arkansas Department of Health and Human Services v. Ahlborn*,[5] and *Wos v. EMA*,[6] limited a state's Medicaid personal injury recovery to settlement/judgment damages specifically allocated to past medical expenses, thus freeing up the remainder of the settlement or judgment to be used to fund a supplemental needs trust.

What are the implications?

While tort victims rarely keep everything they are awarded in a personal injury settlement, the *Gallardo* decision deals a severe blow to the amount an injured tort victim may retain. Of course, in every personal injury lawsuit, there are legal fees that a tort victim must pay. Legal fees are

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considered an essential component of personal injury litigation. Without the lawsuit, many tort victims would remain uncompensated and could not otherwise afford the litigation. The contingency fee arrangement allows the lawsuit to proceed. Beyond that, most tort victims rely on being able to establish a supplemental needs trust to protect the remaining amount of a tort settlement to cover expenses for the remainder of their lives. It is well-known that Medicaid programs throughout the country do not cover all of a person's medical care and costs, so the funds placed into a supplemental needs trust are relied upon to make up that difference. In addition, the Medicaid program does not cover basic living expenses, such as food, housing, entertainment, and other expenses. The supplemental needs trust funds are used to cover those expenses as well. Allowing state Medicaid agencies to recoup not only past medical expenses but anticipated future expenses severely limits the amount that can be set aside by the tort victim to cover future ongoing expenses. In particular, younger victims will be disproportionately affected due to the high value of future medical expenses that will be required to be paid to Medicaid agencies from the tort settlement. Many individuals may be discouraged from proceeding with the litigation at all.

Of further import is the allocation to past medical expenses that could allow more funds to be placed into a supplemental needs trust after the litigation is concluded. During the personal injury award process, the total award is allocated among such things as lost wages/lost employment opportunities, pain and suffering/loss of enjoyment of life, and past medical expenses. Before *Gallardo* was decided, the medical expense component of the award consisted only of an amount that reflected past medical expenses. Now, post-*Gallardo*, this amount will include both past and future medical expenses, a much higher figure. Since this higher amount will now need to be paid to the Medicaid agency before a supplemental needs trust is funded, this will inevitably lead to far fewer funds being available to fund that trust to cover a disabled beneficiary's future living costs.

As the Supreme Court has spoken on this issue, it will be up to Congress to redraw these lines so as to provide a reasonable platform for disabled individuals to provide for their needs, both medical and non-medical, throughout their lives.

[1] 42 USC §1396k(a)(1)(A)

[2] Fla. Stat. §409.910(6)(b)

[3] 963 F. 3d 1167, 1178

[4] 596 US _______ (2022)

[5] 547 US 268 (2006)

[6] 568 US 627 (2013)