Courthouse News Service

High court urged to keep allowing disability bias cases against public programs

Eighteen attorneys general did not take sides in a case brought by HIV-positive individuals against CVS, but rather asked the Supreme Court to uphold a legal standard that allows for claims of unintentional disability discrimination against federally funded programs.

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September 13, 2021

A coalition of attorneys general from 18 states urged the U.S. Supreme Court on Monday to uphold a standard that lets people sue over public programs that have the effect of discriminating against people with disabilities, even if there was no intent to disadvantage them.

The top state attorneys stepped in to express their position in a case concerning whether a federally funded health plan is discriminating against HIV-positive individuals by limiting where they can obtain medication for in-network prices.

"We must continue knocking down the barriers to full participation in American life that too many individuals with disabilities still face," District of Columbia Attorney General Karl A. Racine said in a statement Monday announcing the amici brief.

The case stems from a federal court challenge brought by five individuals living with HIV. To obtain prescription drugs, each rely on employer-sponsored health plans.

CVS Caremark, which is their pharmacy benefits manager, now requires all health plan enrollees to obtain specialty drugs like HIV medications through designated specialty pharmacies in order for those benefits to be considered in-network.

Prior to this change, the plaintiffs were able to get the medications they needed from community pharmacies. The new requirement forces them to rely on specialty pharmacies, which only provide drugs through shipments, making it much more expensive to obtain the medicine through the pharmacies of their choice.

The plaintiffs claim the requirement is discriminatory against those with disabilities and that it violates the Affordable Care Act and Section 504 of the Rehabilitation Act.

A federal judge granted CVS's motion to dismiss the case, but the Ninth Circuit vacated that decision last year, finding that the plaintiffs stated a claim for disability discrimination under the federal heath care law.

CVS petitioned the U.S. Supreme Court for review, and the justices agreed in July to decide whether section 504 of the Rehabilitation Act, which prohibits disability discrimination by recipients of federal funding, provides a cause of action for discrimination through disparate impact.

In their friend-of-the-court brief filed Monday, the attorneys general for 17 states and the District of Columbia urged the high court to uphold the existing legal framework that allows for challenges to public programs that, through careless design or implementation, have the effect of discriminating against those with disabilities, even if there was not an intent to disadvantage those individuals.

“We’re urging the Supreme Court to ensure everyone – including individuals with disabilities – has access to critical programs, services, and resources,” said Racine, who led the coalition of attorneys general.

“We need to challenge policies that have unintentional harmful effects. And we need to intentionally support Americans with disabilities,” he added.

The District of Columbia was joined in the amici brief by California, Connecticut, Delaware, Illinois, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont and Virginia.

The states aren’t supporting either party in the CVS dispute, but are asking the Supreme Court to continue allowing lawsuits like this one to be filed. They say Congress intended for the Rehabilitation Act to end disability-based exclusions in health plans.

“Discrimination does not have to be intentional to be harmful,” California Attorney General Rob Bonta said in a statement. “People with disabilities should have meaningful access to all aspects of life in our communities, especially publicly funded programs."

Last week, the conservative Cato Institute and the Washington Legal Foundation filed an amici brief of their own, urging the Supreme court to overrule the Ninth Circuit’s decision in favor of the HIV-positive plaintiffs.

They contend that “high-risk individuals” account for most of an insurer’s costs.

“For prescription-drug plans, high-risk individuals use specialty drugs that can cost hundreds of thousands of dollars per year,” the brief states. “Prescription benefits managers have successfully reduced costs by negotiating lower prices for specialty drugs from some pharmacies. These deals help keep prices low for all Americans.”