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Court Finds State Health Department Violated Its Own Regulations by Failing to Pay Fair Rates for Early Intervention Services

(Albany, NY) — Yesterday, in a major win for early intervention providers, children and families, Albany Supreme Court Justice William T. Little ruled that the New York State Department of Health did not follow its own regulations relating to reimbursement in the Early Intervention Program. The court therefore nullified the most recent rates for the program and required NYSDOH to review and revise those rates. Agencies for Children's Therapy Services, Inc. and two of its member agencies filed the lawsuit through their attorneys, Bond, Schoeneck & King PLLC, against the New York State Department of Health alleging that it had violated its own regulations by failing to provide full reimbursement for Early Intervention (EI) services for infants and toddlers with disabilities and developmental delays.

Filed under Article 78 of the New York State Civil Practice Law and Rules, the suit sought to compel the NYSDOH to immediately set reimbursement rates that fully cover provider costs and to review the rates annually as required by law. Justice Little agreed, finding that the NYSDOH is "wholly devoid of any rationale in the computation of rates" for the Early Intervention Program, and has required the agency to review and revise those rates.

Thousands of Children Left Waiting

New York's Early Intervention Program (EIP) supports children from birth to age three with developmental delays or conditions like autism, cerebral palsy, and Down syndrome. The program serves approximately 70,000 children and families each year, making it one of the largest in the nation.

Yet, state disinvestment has left nearly 10,000 children waiting for critical therapy, according to state data. A 2023 report from the New York State Comptroller revealed that 51% of eligible children are not receiving services guaranteed under state and federal law.

Providers Paid Less Than in 1994

The Children's Agenda, a non-partisan organization in Rochester, NY that advocates for the health, education and success of children across New York State, recently issued Fact Sheets for Early Intervention in New York State, stating that, "[r]eimbursement rates for EI services have not only *not* kept up with inflation, but have also been cut several times by New York State, meaning most providers earn *less now* than providers did in 1994 when the program began."

"We trust that Governor Hochul, given her strong record of support for children and families, will direct NYSDOH to immediately rescind the rate reductions at issue, and issue new rates that reflect actual provider costs," said Jana Vitale, SLP, TSHH, BCBA, LBA, President of ACTS.

"ACTS member agencies serve our state's most vulnerable children and families. However, it is incredibly hard to find therapists who will provide services to meet children's service plans, as occupational and physical therapists and speech language pathologists often are forced to choose to work in other service systems where the rate of payment is significantly higher. Hopefully, this decision will help ensure our families can get the services they so desperately need," said Richard Rothwell, PT, CEO of *Access Therapy Group*, a co-petitioner in the lawsuit.

A Call for Accountability

The lawsuit asserted that NYSDOH has failed to comply with Section 69-4.30 of Title 10 of the New York Codes, Rules and Regulations, which mandates that the Commissioner:

- Annually determine reimbursement rates for approved early intervention services; and
- Set rates that provide full reimbursement for provider costs.

As a result of the Court's decision, the New York State Department of Health now must review and revise the reimbursement rates for the Early Intervention Program and ensure that they provide full reimbursement and otherwise comply with Public Health Law and its own regulations for the program.

Agencies for Children's Therapy Services (ACTS) is an association of 43 agencies providing early intervention services. Member agencies collectively serve over half of the 70,000 infants and toddlers in the EIP statewide.

Bond, Schoeneck & King PLLC is an AmLaw 200 law firm with more than 300 lawyers serving companies, nonprofits, public sector entities and individuals in a broad range of practice areas. Bond has 14 offices, including 10 in New York State, as well as in Florida, New Jersey, Massachusetts and Kansas**.**