

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT  
Case Type: Other Civil

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Denise Walker and Brian Walker, wife and  
husband, on behalf of themselves and other  
Minnesota taxpayers,

Court File No. 62-CV-12-9027  
Judge Kathleen R. Gearin

Plaintiffs,

v.

**ORDER**

Lucinda Jesson, in her official capacity as  
Commissioner, Minnesota Department of  
Human Services,

Defendant,

and

Pro-Choice Resources,

Applicant for  
Intervention.

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The above-entitled matter came on for hearing before the undersigned on February 28, 2013 pursuant to a motion to dismiss filed by the defendant. Appearances were as noted in the record.

Based upon the files, records, proceedings herein, the Court makes the following Order:

1. Defendant's motion to dismiss is granted and Plaintiff's complaint is dismissed in its entirety, with prejudice, and on the merits.
2. Let judgment be entered accordingly.

Dated: 5-2-13

BY THE COURT

  
\_\_\_\_\_  
Honorable Kathleen R. Gearin  
Judge of District Court

## MEMORANDUM

The Plaintiffs in this lawsuit are Minnesota residents who pay taxes to the State of Minnesota. They brought this action on behalf of themselves and other Minnesota taxpayers. Defendant Jesson is the present Commissioner of the Minnesota Department of Human Services and is being sued in her official capacity. As Commissioner, she is charged with the oversight of Department of Human Services disbursements of government funds. This includes funds that are disbursed for health care for indigent individuals, including women who are receiving public assistance for medical care. This lawsuit involves disbursements of funds for abortions. In order to understand the reasons for the lawsuit, it is necessary to briefly go into Minnesota's legislative and appellate court history regarding this type of public funding.

In 1978, the Minnesota Legislature enacted Section 256B.011 declaring that:

“Between normal childbirth and abortion it is the policy of the State of Minnesota that normal childbirth is to be given preference, encouragement, and support by law and by state action, it being in the best interests of the well-being and common good of Minnesota citizens.”

In that same year, the legislature also enacted provisions that limited the availability of public funds for abortion services. Under Minnesota Statute § 256B.0625, subd. 16, medical assistance funds can be used only if one of the following conditions is met:

1. The abortion is a medical necessity.
2. The pregnancy is the result of criminal sexual conduct.
3. The pregnancy is the result of incest.

These conditions also apply to funding under the General Assistance Medical Care program (GAMC) and the County Poor Relief programs.

Not surprisingly, this statute was challenged in a lawsuit filed by women physicians, financial aid organizations, and providers of abortion and counseling services. The Plaintiff sought declaratory

and injunctive relief against state and counties on the basis that the statutory provisions unconstitutionally restricted use of public medical assistance and general assistance funds for therapeutic abortion services. The Minnesota Supreme Court ruled in the case of *Women of State of Minnesota by Doe v. Gomez*, 542 N.W.2d 17 (1995), that medical assistance and general assistance statutes permitting the use of public funds for childbirth-related medical services, but prohibiting similar use of public funds for medical services related to therapeutic abortions, impermissibly infringed on a woman's fundamental right of privacy under the Minnesota Constitution.

The Supreme Court held that the relevant inquiry in that case was whether, having elected to participate in a medical assistance program, the state may selectively exclude from such benefits otherwise eligible persons, solely because they make constitutionally protected health care decisions with which the state disagrees. It held that the challenged legislation infringed on a woman's decision-making process by offering money to women for health care services necessary to carry the pregnancy to term, while banning health care funding for women who chose therapeutic abortions.

In this case, the plaintiffs correctly point out in their complaint that the Court's decision was not meant to permit any woman eligible for medical assistance to obtain an abortion "on demand". Plaintiffs correctly quote the Supreme Court opinion as holding that under the Minnesota Constitution's guaranteed right to privacy, "The difficult decision whether to obtain a therapeutic abortion will not be made by the government, but will be left to the woman and her doctor." *Gomez*, 542 N.W.2d 17 at 32.

While the Plaintiffs' lawsuit, if successful, would have a significant impact on an indigent woman's ability to obtain an abortion except in very narrow circumstances, they are requesting the Court to grant relief because of what they assert is an illegal expenditure of public funds in violation of Article XI, Section I, of the Minnesota Constitution. This Article states that, "No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law." Plaintiffs also cite Minnesota Statute § 245.03, subd. 2, which states that it is the duty of the Commissioner of the

Minnesota Department of Human Services to “prevent the waste or unnecessary spending of public money.”

In its Prayer for Relief, the Plaintiffs request that the Court declare that DHS expended public funds for non-therapeutic abortions without an authorizing appropriation. It further requests that the Court issue preliminary and permanent injunctive relief requiring DHS to eliminate such expenditures and directing DHS to cease all public expenditures for abortions until DHS can demonstrate that public funds will no longer be expended for non-therapeutic abortions. Next, it requests that the Court order an accounting to ascertain the amounts paid to providers for reimbursement of non-therapeutic abortions and ordering DHS to seek repayment of such unlawful payments from each provider. Finally, the Plaintiffs request that the Court dissolve the *Gomez* injunction because it is proven to be unworkable in practice. In addition, Plaintiffs seek attorney’s fees.

By granting the Plaintiffs’ motion, the Court finds that as a matter of law all of the allegations in the complaint, including those supported by the attachments to the complaint, do not justify the Court in granting the requested relief. There is nothing in the complaint which would justify the Court in making a finding that DHS is illegally expending public funds for non-therapeutic abortions. Under *Gomez*, DHS is constitutionally required to cover therapeutic abortions for women eligible for public assistance. Every abortion expenditure for women on public assistance made by the Department of Human Services was supported by a medical necessity statement. The Plaintiffs argue that when you compare the abortion statistics kept by DHS since 1999 and the abortion statistics for publicly-funded abortions kept by the Minnesota Department of Health since 1999, a fact-finder would conclude that thousands of non-therapeutic abortions are being paid for by the Department of Human Services public assistance programs.

What the Plaintiffs are really asking for is that the Department of Human Services do a better job of monitoring the medical necessity statement signed by a woman’s doctor. Rather than undertaking

medical reviews to determine whether the medical necessity forms are accurate, the Department of Human Services relies upon the decision of the doctor to sign the form in order to determine whether an induced abortion may be paid for with public funds. Put another way, the Plaintiffs assert that because in the Minnesota Department of Health forms the abortion providers have checked non-therapeutic reasons such as “economic”, the same providers are not being accurate or honest when filling out the medical necessity forms.

The Plaintiffs argue that this medical necessity statement has failed to provide “sufficient assurance” that no public funds have been expended without appropriation. Their argument seems to be that the payments are illegal because the Commissioners did not set up a system that required further investigation before payment of the abortion claim were approved. This constitutes a complaint about the system that the Department of Human Services set up in order to follow the *Gomez* ruling. They question the effectiveness of the present requirements in order to have a payment approved. They disagree with the Commissioner’s method of making sure that the *Gomez* decision is carried out in Minnesota.

Under the Minnesota Constitution’s guaranteed right to privacy, “the difficult decision whether to obtain a therapeutic abortion will not be made by the government, but will be left to the woman and her doctor.” *Id.* The decision to rely upon a physician’s decision that a patient is seeking an abortion for legitimate therapeutic reasons is neither illegal or unreasonable.

It would also illegal for a court to order the Department of Human Services to conduct an accounting to ascertain the amounts paid to providers and to order the Department of Human Services to seek repayment of unlawful payments from each such provider. Much of the relief sought by the Plaintiff would require the Court to become excessively involved in the operations and policies of the Department of Human Services. The remedies that they seek would force this judicial branch to interfere with the executive branch’s duty to implement both case law and legislatively enacted statutes.

The procedure set up by DHS in the exercise of its discretion may not be perfect, but it does ensure that the woman's right to privacy in consulting with her doctor about a difficult decision is protected.

**K.G.**

A handwritten signature in black ink, appearing to be the initials 'K.G.' written in a cursive style.