State of New York
Court of Appeals

To be argued Thursday, March 17, 2022 (arguments begin at noon)

No. 28 Matter of Mental Hygiene Legal Services v Delaney *(papers sealed)*

Oliviah C.C., a 16-year-old girl with severe developmental disabilities, was taken from her public school in Plattsburgh to the emergency room at Champlain Valley Physicians Hospital in April 2018 after she engaged in aggressive and self-injurious behavior that the school could not manage. The school district determined that she required placement in a residential school, but none was immediately able to accept her. The hospital found Oliviah was not in need of inpatient medical or psychiatric care and sought to discharge her to her family's home, where she had been living with support provided through the Home and Community Based Services (HCBS) Medicaid waiver program of the State Office for People with Developmental Disabilities (OPWDD). However, Oliviah's mother, citing concern for the safety of her other child, refused to accept the home discharge without additional HCBS assistance. OPWDD increased Oliviah's HCBS funding for home support, but no qualified private providers were available. When the mother asked the agency to assign its own employees to assist her, it responded that it did not provide direct services and instead worked through private providers.

Oliviah remained essentially stranded in the emergency room for 35 days while she waited for a residential placement. Fifteen days after she arrived at the hospital, Mental Hygiene Legal Services (MHLS) brought this suit on her behalf to require OPWDD and the Department of Health (DOH) to provide services for which she was eligible as an approved beneficiary of the Medicaid waiver program: enhanced home-support services or a residential placement that would permit her discharge from the hospital. MHLS argued that OPWDD's failure to do so violated the federal Medicaid Act's requirement that participating states provide necessary services "with reasonable promptness" and that it constituted discrimination under the Americans with Disabilities Act (ADA).

After Oliviah received a temporary placement at a residential school in May, Supreme Court dismissed the suit as moot.

The Appellate Division, Third Department invoked the exception to the mootness doctrine and affirmed the dismissal on the merits, saying it lacked "the power to intervene in OPWDD's discretionary determinations." The court said, "In addition to searching for a more appropriate placement, OPWDD increased funding for the child's HCBS services to a level that apparently would have permitted the child to return home if a qualified provider could have been found. The discretion and flexibility embodied in the governing provisions of the Mental Hygiene Law preclude a finding that the child had a 'clear legal right' ... to a more appropriate placement or to any other specific service. OPWDD's actions and policy choices 'involve the exercise of reasoned judgment which could typically produce different acceptable results' and, as such, are beyond the reach of judicial intervention...." It ruled the Medicaid Act's "reasonable promptness" provision did not create a private right of action for individuals to seek relief. Rejecting the discrimination claim, it said "the absence of services resulted from OPWDD's discretionary policy decisions and from a lack of local private providers, which [MHLS] does not allege was caused by discrimination."

For appellant MHLS: Shannon Stockwell, Albany (518) 451-8710
For respondent OPWDD and DOH: Assistant Solicitor General Laura Etlinger (518) 776-2028

State of New York
Court of Appeals

To be argued Thursday, March 17, 2022 (arguments begin at noon)

No. 29 Matter of Johnson v City of New York
No. 30 Matter of Liuni v Gander Mountain

The question raised by these workers' compensation cases is whether a schedule loss of use (SLU) award based on an injury to one part of a qualifying limb or "member" must be offset by the amount of any prior SLU award for injury to a different part of the same limb, or whether a claimant is entitled to the full amount of separate awards for each injury under Workers' Compensation Law § 15(3). The statute provides a compensation schedule for the permanent partial disability of a specified "member" including an arm, leg, hand, foot, eye, thumb, various fingers and toes, and hearing, among others.

New York City employee Thomas Johnson injured both of his knees in a workplace accident in 2006, injured both hips in another accident in 2009, and filed separate claims for workers' compensation benefits. He received a 50% SLU award for his left leg and 52.5% for his right leg based on his hip injuries, and was later found to have an 80% SLU of his left leg and 40% of his right leg based on his knee injuries. He contended the awards should be combined, which would give him a 130% SLU for his left leg and 92.5% for his right leg.

Joseph Liuni, an employee of Gander Mountain, injured his left elbow while lifting a table at work in 2007 and received a 22.5% SLU award for his left arm. After another workplace accident in 2014, he developed a consequential injury to his left shoulder and was found to have a 27.5% SLU of his left arm as a result. A workers' compensation law judge (WCLJ) concluded the 22.5% SLU for his elbow should be combined with the 27.5% SLU for his shoulder because they were "both cumulative" and awarded him a 50% SLU for his left arm.

The Workers' Compensation Board (WCB) ruled in both cases that the latest SLU award for each limb must be reduced by the amount of the prior award, explaining in Liuni that "neither the statute nor the Board's guidelines lists the elbow or the shoulder as body parts lending themselves to separate SLU awards. Rather, impairments to these extremities are encompassed by awards for the loss of use of the arm." The decision reduced Liuni's second SLU award to 5%, giving him a total award of 27.5% SLU for his arm. The Board reduced Johnson's second SLU awards to 30% for his left leg and 0% for his right, giving him total SLU awards of 80% for his left leg and 52.5% for the right leg.

The Appellate Division, Third Department affirmed, saying that allowing "separate SLU awards for a body member's subparts is not authorized by the statute or the guidelines and would amount to a monetary windfall for a claimant that would compensate him or her beyond the degree of impairment actually sustained to the statutorily-enumerated body member...."

Both claimants argue the decisions here conflict with M/O Zimmerman v Akron Falls Park–Erie County (29 NY2d 815 [1971]), which they say permits separate SLU awards for distinct injuries to different parts of the same bodily extremity.

For appellant Johnson: Robert E. Grey, Farmingdale (516)249-1342
For appellant Liuni: Justin S. Teff, Kingston (845) 338-4477
For respondent WCB: Assistant Solicitor General Brian D. Ginsberg (518) 776-2040
For respondent City: Assistant Corporation Counsel Daniel Matza-Brown (212) 356-5042
For respondent Gander Mountain: Glenn D. Chase, Albany (518) 463-1269