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Victory! AIDS patients win Ohio lawsuit on drug access

Judge grants preliminary injunction preventing the Ohio Department of Health from enforcing the new ADAP regulations

Lawsuit alleged Ohio Department of Health, "...failed to follow Ohio's statutory rule-making process..." in rule changes that will, "...arbitrarily deny funding for potentially life-saving medications to Ohioans infected with HIV or suffering from AIDS-related symptoms."

COLUMBUS, OH (November 29, 2011)—Today, a judge has granted three Ohio AIDS patients a preliminary injunction preventing the [Ohio Department of Health \(ODH\)](#) from enforcing proposed changes to the state's AIDS Drug Assistance Program (ADAP) regulations. Earlier this month, the longtime HIV/AIDS advocates filed a lawsuit against **Theodore E. Wymyslo, M.D.**, Director of the ODH seeking an injunction to, "...to enjoin the Ohio Department of Health and its Director from enforcing a rule which was not properly adopted...and which will arbitrarily deny funding for potentially life-saving medications to Ohioans infected with HIV or suffering from AIDS-related symptoms." The complaint was filed Wednesday November 2nd, in the Court of Common Pleas, Franklin County, Ohio (Case number 11CVH-11-13646) on behalf of Ohioans **Eddie Hamilton, William Booth** and **David Baker** by attorneys at [Dinsmore & Shohl LLP](#). The complaint also stated, "Because the Ohio Department of Health and its Director failed to follow Ohio's statutory rule-making process, this Court must find that the proposed rule is unenforceable."

In conjunction with the filing of the lawsuit and the application for (or granting of) a temporary injunction, the plaintiffs, together with advocates from [AIDS Healthcare Foundation](#) (AHF) and attorneys from Dinsmore & Shohl LLP, hosted [a press conference](#) in Columbus November 4th to announce the suit.

According to today's [11-page ruling](#): "The Court is in agreement with Plaintiffs."

"On behalf of the three AIDS patients who filed the suit and all those living Ohioans living with HIV/AIDS, we are pleased that the judge granted a preliminary injunction invalidating the Ohio Department of Health's rules as they exceed that rulemaking agency's authority," said **Michael Weinstein**, President of AIDS Healthcare Foundation and a supporter of the lawsuit. "Today's ruling is a victory for AIDS patients everywhere at a time when states all over the country are looking to balance budgets on the backs of some of the nation's poorest and most vulnerable citizens by restricting access to lifesaving HIV/AIDS medications."

The catalyst for the legal action arose in late September 2011, when Ohio health officials took final steps to institute what are likely some of the most severe medical and financial-eligibility changes to a government medical assistance program nationwide— provisions that would have rationed health care in Ohio, and would have given the Director of the Ohio Health Department unilateral, arbitrary control over who does and who does not get ADAP. The rule changes, which were scheduled to go into effect November 4th, drastically reduced individuals' eligibility for Ohio's beleaguered **AIDS Drug Assistance Program (ADAP)**, one in the national network of federal and state funded programs that provide life-saving HIV treatments to low income, uninsured, and underinsured individuals living with HIV/AIDS.

The Judge wrote that the “the public interest will be served” by issuing the preliminary injunction and concluded his ruling with the following three paragraphs:

“In considering whether the public interest will be served by issuing the preliminary injunction, this Court finds in the affirmative. Plaintiffs, as well as numerous individuals with AIDS and HIV-related diseases, rely on medical treatments to survive. Changes to the Ryan White Program will undoubtedly affect access to treatment. Failure to grant an injunction without a hearing make Plaintiffs and other similarly situated individuals of being subject to the discretion of the ODH Director without any say on their behalf.

Additionally, this Court finds that the public interest is served by protecting the right of a public hearing. If rule-makers are able to create rules without adhering to the legislative process then there is little incentive to follow the statutory process properly. Failure to grant a permanent injunction in this case would invite statewide agencies to conduct meaningless public hearings only to substantially alter the rule at a later date.

Finally, the public has a vested interest in the Plaintiffs and other individuals with AIDS and HIV-related diseases because access to the medical treatment helps to ensure statewide health, wellness and a safer community. There, this Court finds that Plaintiffs have met their burden in establishing that the public interest is served by the granting of this injunction.”

ADAP Waiting Lists Nationwide

According to [ADAP Watch](#)—published by the National Alliance of State & Territorial AIDS Directors (NASTAD)— as of November 18th, there were 6,595 individuals in 12 states on waiting lists to access lifesaving HIV/AIDS medications through ADAP. At present, Ohio has no patients on an ADAP waiting list, although over the past year, the state has had hundreds waiting for help from ADAP at times—with a high of 485 Ohioans on its ADAP waiting list as of June 30, 2011.

While Ohio's proposed rule changes might appear to initially save the state some money in the short term, it ultimately would lead to far higher medical costs to the state as those disenfranchised AIDS patients became ill and seek emergency care at hospitals around the state—something far more costly and far less clinically appropriate.

Nationwide, ADAPs serve over 165,000 people, accounting for one third of people on AIDS treatment in the U.S. Unfortunately, the need for these programs expands every year, as more and more people become infected and diagnosed with HIV/AIDS; each year thousands of newly diagnosed HIV patients turn to ADAPs because they cannot afford their medicines.

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AIDS Healthcare Foundation (AHF), the largest global AIDS organization, currently provides medical care and/or services to more than 123,000 individuals in 26 countries worldwide in the US, Africa, Latin America/Caribbean, the Asia Pacific Region and Eastern Europe. www.aidshealth.org