

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 04-01-2010  
PHILIP G. URRY, CLERK  
BY: GH

ARIZONA ASSOCIATION OF PROVIDERS ) 1 CA-SA 10-0031  
FOR PERSONS WITH DISABILITIES, )  
an Arizona nonprofit ) DEPARTMENT B  
corporation; BEVERLY HERMON, )  
individually and as legal ) Maricopa County  
guardian for Eric Herman; TONI ) Superior Court  
McCLEOD, as legal guardian for ) No. CV 2009-006509  
E.K. and R.K.; REEVES )  
FOUNDATION, LLC, an Arizona )  
limited liability company; ABRIO )  
FAMILY SERVICES AND SUPPORTS, )  
INC., an Arizona limited )  
liability company; METRO CARE )  
SERVICES, INC., an Arizona )  
corporation, )  
Petitioners, )  
)  
v. )  
)  
THE HONORABLE J. KENNETH MANGUM, )  
Judge of the SUPERIOR COURT OF )  
THE STATE OF ARIZONA, in and for )  
the County of MARICOPA, )  
)  
Respondent Judge, )  
)  
STATE OF ARIZONA; NEAL YOUNG, in )  
his official capacity as )  
Director of the Arizona )  
Department of Economic Security; )  
and THOMAS BETLACH, in his )  
official capacity as Director of )  
the Arizona Health Care Cost )  
Containment System )  
Administration, )  
)  
Real Parties in Interest. )  
)

---

**DECISION ORDER**

**JURISDICTION ACCEPTED; RELIEF DENIED**

In this special action, petitioners ask us to reverse the superior court's dismissal of their "equal access" claim, see 42 U.S.C. § 1396a(a)(30)(A) ("§ 30"), against real parties in interest, State of Arizona and the Directors, named in their official capacities, of the Arizona Department of Economic Security ("DES") and the Arizona Health Care Cost Containment System ("AHCCCS"). Petitioners' equal access claim arises out of, first, a 10% reduction in rates paid by DES's Division of Developmental Disabilities ("Division"), to providers for home-and-community-based services for the developmentally disabled, and second, delays in payments made by the Division to its service providers.

Because proceedings in this case are ongoing, and an appeal would not present an equally plain and speedy resolution of petitioners' challenge to the superior court's dismissal of their § 30 claim,

IT IS ORDERED, the court, Presiding Judge Patricia K. Norris and Judges Daniel A. Barker and Peter B. Swann, participating, in the exercise of its discretion, accepts special action jurisdiction of this matter, but denies relief.

Petitioners, who are service providers and Medicaid beneficiaries (through their legal guardians), do not have an equal access claim under § 30 against a managed care organization ("MCO"). See generally *G. v. Hawaii*, \_\_ F. Supp. 2d \_\_, 2009 WL 5061578 (D. Haw. Dec. 23, 2009); Medicaid Program; Medicaid Managed Care: New Provisions, 67 Fed. Reg.

40,989, 41,036 (June 14, 2002); see *Ariz. Ass'n of Providers for Persons with Disabilities v. State*, 223 Ariz. 6, \_\_\_, ¶ 42, 219 P.3d 216, 227 (App. 2009) (per curiam).

On the record presented, the superior court did not improperly dismiss petitioners' equal access claim against the state's MCO. We therefore deny the relief requested by petitioners. In so doing, however, we express no opinion on the effect of § 30, if any, on the establishment or computation of capitation rates paid to MCOs.

/s/

---

PATRICIA K. NORRIS, Presiding Judge