

## ***Ball v. Kasich: Frequently Asked Questions***

### **Topic: The State of Ohio's Motions to Dismiss**

Summary: On June 27, 2016, the Ohio Department of Developmental Disabilities (DODD) and the Ohio Department of Medicaid (ODM) jointly filed a motion to dismiss in the *Ball v. Kasich* lawsuit. Governor Kasich filed a separate motion to dismiss later the same day. The remaining defendant, Opportunities for Ohioans with Disabilities, filed its motion to dismiss on May 9. The following document has been produced for educational purposes only, and the information contained herein will be updated as additional details become known.

#### ***What is a motion to dismiss? Why are motions to dismiss filed?***

- A motion to dismiss is a legal tool which allows a court to dismiss all or part of the claims made in a lawsuit.
- A motion to dismiss is often filed early in a lawsuit so the court can decide whether to limit the arguments that plaintiffs can make as the lawsuit progresses.
- If the motion to dismiss is granted in its entirety, the lawsuit will end at this level, subject to an appeal.

#### ***Who filed the most recent motions to dismiss? When were they filed?***

- The most recent motions to dismiss were filed by the defendants in *Ball v. Kasich* – specifically, the state employees, departments, and elected officials named by the plaintiff (Disability Rights Ohio et al.).
- On May 9, Opportunities for Ohioans with Disabilities (OOD) filed the state's first motion to dismiss.
- On June 27, a motion to dismiss was jointly filed by DODD and ODM. The same day, Governor Kasich filed a separate motion to dismiss which incorporated the motion filed by DODD/ODM and made additional arguments.

#### ***What are the state's primary arguments for why this case should be dismissed?***

The state's motions argue the following reasons why the *Ball v. Kasich* lawsuit should be dismissed:

##### **1. The state argues the *Martin v. Taft* settlement prevents this lawsuit from moving forward**

- DODD and ODM argue that the claims in *Ball v. Kasich* should be dismissed because a previous settlement in the case of *Martin v. Taft* covers the same issues raised in *Ball v. Kasich*.
- In 1989, Ohio Legal Rights Service (the predecessor organization to Disability Rights Ohio) filed a lawsuit on behalf of the class of "all mentally retarded or developmentally disabled Ohioans who are, or will be, in need of community housing and services which are normalized, home-like and integrated." (Underline added for emphasis.)
- In 2007, following 18 years of litigation, Ohio Legal Rights Service signed a settlement ending the *Martin* lawsuit. The settlement included a number of provisions, such as an increase in the number of IO Waiver slots by 1,500, with priority given to people in ICFs and nursing homes, and a process to survey residents who may want to choose a community waiver.
- The settlement included a release of claims which read: "Defendants, Defendants' successors and any other successor agencies are released from current and future claims or actions regarding any and all matters that are or could have been brought as part of this litigation." (Underline added for emphasis.)
- In their motion to dismiss, DODD and ODM argue that the release in *Martin* covers the same plaintiffs as were included in the *Martin* lawsuit. The state believes the plaintiffs in the *Ball* suit cannot now try to raise claims that were or should have been raised in *Martin*.

**2. The state argues the claims in *Ball v. Kasich* are prohibited by “Res Judicata”**

- “Res Judicata” is a legal term that means that once a matter has been decided in a lawsuit with the same plaintiffs and defendants, plaintiffs cannot file a later lawsuit with issues which were or should have been included.
- DODD and ODM argue in their motion to dismiss that the *Martin* case covered the same issues and the same parties. Plaintiffs cannot raise claims that were or should have been raised in *Martin*.
- In 2008, claims by Ohio Legal Rights Service were dismissed for this exact reason in a lawsuit against the Butler County Board of DD which challenged the use of Fairfield Center, a large intermediate care facility.

**3. The state argues claims brought by the plaintiffs living in the community are premature and speculative**

- Two of the named plaintiffs in the *Ball v. Kasich* suit claim that they are at immediate risk of being placed in a large ICF.
- DODD and ODM argue that there is no evidence that these plaintiffs are at any immediate risk of being placed outside of their home and, if a change of placement were needed at some point in the future, there is no evidence that either plaintiff would be placed in a large ICF.
- The defendants conclude that any prediction about what may happen to these two plaintiffs is pure speculation and cannot be a basis for a claim in federal court.

**4. The state argues the Ability Center is not a proper party**

- The Ability Center seeks to be a party to the *Ball v. Kasich* lawsuit based on its claim that because of the restrictive policies of the defendants (DODD, ODM, etc.), it cannot effectively assist people it serves in accessing integrated residential and vocational opportunities.
- DODD and ODM argue that the Ability Center cannot participate as a party because the issues of access and choice vary by individual and do not directly affect the Ability Center.

**5. The state argues plaintiffs do not have authority under Medicaid law to enforce Medicaid requirements**

- There are complex rules which define what sections of the Medicaid laws can be enforced through lawsuits by private individuals as opposed to enforcement by the U.S. Department of Health and Human Services.
- DODD and ODM argue that the plaintiffs have no right to enforce those sections of Medicaid law which are included in their complaint.

**Governor Kasich’s Motion to Dismiss**

In a separate motion, Governor Kasich incorporates the five arguments listed above and further argues that he is protected by immunity under the 11th Amendment to the U.S. Constitution. He argues that he cannot be properly named as a defendant – even in his official capacity – unless he had direct participation in the alleged improper acts. The governor also asserts that the claims under section 504 of the Rehabilitation Act must fail because the Office of the Governor does not receive any direct federal funding – a requirement for an action under section 504.



### **Motion to Dismiss from Opportunities for Ohioans with Disabilities (OOD)**

OOD's motion does not incorporate the arguments summarized on the previous page, but states that DRO is barred from bringing a class action because it receives federal vocational rehabilitation funds for its Client Assistance Program (CAP). CAP funding includes a specific prohibition from bringing any class action lawsuit in carrying out its responsibilities to the clients of federally funded vocational services.

### ***How much time does Disability Rights Ohio have to respond to the state's motions?***

The plaintiffs (Disability Rights Ohio, et al.) have until July 21 to respond to the June 27 motions to dismiss. The court previously agreed to extend the time for plaintiffs to respond to OOD's May 9 motion until July 27. The deadline for responses for any and all motions may be further extended by agreement between the parties or by court order.

### ***What are the potential rulings the court can make in response to the state's motions?***

The court can decide whether to:

1. Let the entire lawsuit continue without limitation;
2. Allow only some claims to continue;
3. Dismiss all claims against DODD, ODM, OOD, and Governor Kasich.

### ***How much time does the court have to make its ruling on the state's motions?***

There are no time limits on how long the court can take to make its decision.

### ***Can the court's ruling on the state's motions be appealed? If so, how?***

- Yes. If the court decides to dismiss some or all claims, the plaintiffs (Disability Rights Ohio et al.) may appeal to the U.S. Sixth Circuit Court of Appeals.
- If the court decides to allow some of all of the claims to continue, the lawsuit will continue within the parameters defined by the court.
- There is no reasonable basis to predict how the court will rule, except that it is rare to have an entire case dismissed at this level.

*Members with additional questions about the State of Ohio's motions to dismiss should e-mail [drolegal@oacbdds.org](mailto:drolegal@oacbdds.org) for more information. Full copies of all three court filings are available for member download 24 hours a day, 7 days a week within the Document Center of OACB MemberConnect – accessible at [www.members.oacbdds.org](http://www.members.oacbdds.org).*

*During the interim, OACB will continue monitoring this lawsuit very closely and will notify members of developments as they occur.*