

Beal v. Doe (1977)

In the case of *Beal v. Doe*, decided in 1977, the US Supreme Court ruled that states could constitutionally restrict money from Medicaid from funding elective abortions. After the 1973 case *Roe v. Wade*, in which the US Supreme Court had ruled that women have rights to terminate pregnancies within the first trimester, the state of Pennsylvania passed legislation that restricted the use of Medicaid funds for abortion procedures. In 1977, several Medicaid eligible women who were unable to receive coverage for a non-therapeutic abortion brought a case against Frank S. Beal, secretary of the Department of Public Welfare of Pennsylvania. The US Supreme Court decision in *Beal v. Doe* gave states the authority to place Medicaid restrictions on funding for non-therapeutic or elective abortions.

In 1965, US Congress in Washington, D.C., passed Title XIX of the Social Security Act, which established the Medical Assistance Program (Medicaid). Congress established Medicaid to provide federal funds to assist people who were unable to pay for necessary medical services. Through Medicaid, federal funds were appropriated to states that elected to participate in the program. Participating states then used the funds to reimburse medical providers that provided services to patients who qualified for Medicaid. While states volunteered to participate in Medicaid, once states agreed to participate, they were obligated to follow federal requirements. For example, participating states were required to provide a set minimum aid to select groups including the blind, disabled, and elderly. However, states could set their own regulations regarding Medicaid access, disbursement, and assistance. Many states did so after the legalization of abortion in 1973.

Throughout the early twentieth century, abortions were illegal throughout the US. By the 1970s, reproductive rights activists began working for the legalization of abortion. The 1973 US Supreme Court case *Roe v. Wade* legalized abortion and held that women's rights to choose whether or not to have abortions are constitutionally protected by their rights to privacy. However, the Court ruled that the right to terminate pregnancies was not absolute, and that states could regulate women's access to abortion services given a compelling state interest. The Court ruled that during the first trimester of pregnancy, women could terminate pregnancy without state interference or regulation. However, after the first trimester, states could regulate abortion to protect the health of pregnant women and viable fetuses, insofar as fetuses could survive on their own outside of the women's wombs.

The state of Pennsylvania participated in the federal Medicaid program through its own Pennsylvania Medical Assistance Program (PMAP). Pennsylvania restricted the use of Medicaid funds for abortions. The state's Medicaid regulations allowed Medicaid funds to pay for abortions only if they were medically necessary. Pennsylvania considered abortions medically necessary when pregnancies threatened the lives or health of pregnant women, when infants would be born with severe physical or mental deformities, or when pregnancies resulted from rape or incest. Medicaid eligible women seeking abortions were required to show physicians certification explaining the medical needs for abortions to receive Medicaid assistance for the procedure.

In October 1973, the Pennsylvania Department of Public Welfare, headquartered in Harrisburg, Pennsylvania, denied funding for abortions to eleven women who qualified for Pennsylvania's PMAP program at Magee-Womens Hospital in Pittsburgh, Pennsylvania. The eleven women, who were between six and seventeen weeks pregnant, each sought an elective abortion at Magee-Women's Hospital after 1 October 1973. The women could not provide funds or documentation of medical need, and were denied abortions by the hospital.

By 1 October 1973, Magee-Women's Hospital required women to pay in advance or provide med-

ical documentation prior to receiving an abortion. Previously, the hospital had performed non-therapeutic abortions to all Medicaid eligible women, and then it had submitted claims for Medicaid reimbursement to the Pennsylvania Department of Public Welfare. The hospital stopped doing that process after the Department of Public Welfare had not reimbursed the hospital for abortions performed earlier in the year. The hospital stated that it would have performed the women's abortions had they been reimbursable by Medicaid.

Later that month, lawyer R. Stanton Wettick filed a lawsuit in US District Court for the Western District of Pennsylvania in Pittsburgh against the Pennsylvania Department of Public Welfare on behalf of the eleven women and all others in similar situations. He argued that the Department of Public Welfare should reimburse Magee-Women's Hospital for the abortions the women had attempted to obtain. Wettick filed the suit on behalf of a woman alias as Ann Doe to protect the anonymity of the women. Wettick filed the suit seeking both a declaratory judgment and an injunction on the restriction. A declaratory judgment is a court judgment about the issues of the case before the case has gone to trial. An injunction is a court order that restrains a party from continuing in an action. In Wettick's case, an injunction would have required the state of Pennsylvania to remove the Medicaid abortion regulations until the court could rule on their constitutionality.

Wettick alleged that the Pennsylvania Medicaid restrictions were inconsistent with Title XIX, stating that Title XIX required the reimbursement of services for elective abortions, which were a medical service. In addition, Wettick claimed that the Medicaid regulations violated the equal protection clause of the Fourteenth Amendment to the US Constitution, which prohibits states from denying citizens equal protection under the law. Wettick argued that as all pregnant women need medical services relating to pregnancy, the Pennsylvania Medicaid regulations created an unconstitutional distinction in kinds of women, as the laws allowed Medicaid money for pregnancy services for women who chose to carry their pregnancies to birth, but not for those women who chose to terminate their pregnancies through abortions.

Wettick brought the case against Helene Wohlgemuth, the secretary for the Department of Public Welfare of Pennsylvania. Lawyer Louis Kwall represented the Wohlgemuth. On 9 October 1973, the lawsuit *Doe v. Wohlgemuth* (1974) was heard in the US District Court for the Western District of Pennsylvania in Pittsburgh. After hearing the case, the court granted Wettick and the women a preliminary injunction, requiring the state of Pennsylvania to pay the costs of any abortion performed prior to the final decision in the case. In addition, the District Court also requested a three judge court to determine whether or not the Medicaid abortion regulations violated the US Constitution. On 12 October 1973, Collins Seitz, chief judge of the Third Circuit, ordered the formation of the three judge court.

After hearing oral argument, the three judge court, which included circuit judge Joseph F. Wies and district judges Herbert Peter Sorg and Daniel John Snyder Jr. gave their decision in the case *Doe v. Wohlgemuth* on 3 May 1974. The court ruled that the Pennsylvania Medicaid regulations limiting funding for non-therapeutic abortions were consistent with Title XIX, but that they were unconstitutional in their application to first trimester abortions. The court argued that restricting funding for first trimester elective abortions violated the equal protection clause of the Fourteenth Amendment to the US Constitution because it encouraged an unlawful distinction between women who chose to carry a pregnancy and those who chose to terminate a pregnancy. According to the court, under the equal protection clause, once a state pays for care related to pregnancies, it must pay for care related to abortions conducted in the first trimester. The court claimed that their opinion was consistent with the US Supreme Court decision in *Roe v. Wade*, and it granted a declaratory judgment stating that the Pennsylvania Medicaid regulations were unconstitutional.

On 28 May 1974, following the District Court's ruling, both parties appealed the case to the US Court of Appeals for the Third Circuit in Philadelphia, Pennsylvania. The case name was changed to *Doe v. Beal* (1975) to represent Frank Beal replacing Wohlgemuth as the new Secretary of the Pennsylvania Department of Public Welfare. The case was argued on 24 October 1974 and later reargued on 8 May 1975 before judges Leonard Garth, Joseph Weis, James Hunter, Max Rosenn, John Gibbons, Arlin Adams, Ruggero Aldisert, Francis Van Dusen, and Collins Seitz, who served as chief judge.

The Appeals Court found that the Pennsylvania Medicaid regulations were not consistent with the restrictions allowed in the federal Title XIX. According to the Appeals Court, Title XIX of the Social Security Act prohibited states from requiring a physician's certificate to prove an abortion was medically necessary during both the first and second trimesters. However, unlike the District Court, the Appeals Court found no constitutional issue with the regulations. The Court ruled that the Medicaid regulations set out by the Pennsylvania Department of Public Welfare were invalid as they applied to first and second trimesters of pregnancy because they were inconsistent with Title XIX.

Beal appealed the decision to the US Supreme Court in Washington, D.C. Because Beal appealed the case, the case name was changed to *Beal v. Doe* (1977). Nine justices heard the case: Chief Justice Warren Burger, Lewis Powell, William Rehnquist, John Stevens, Potter Stewart, Bryon White, Harry Blackmun, William Brennan, and Thurgood Marshall.

On 11 January 1977 the opening arguments for *Beal v. Doe* began with Norman Watkins, deputy attorney general of Pennsylvania, Robert Kane, attorney general of Pennsylvania, and Justin Blewitt representing Beal. Lawyer Judd Crosby of Pittsburgh represented the eleven women under the alias Doe.

Watkins argued that the Pennsylvania Medicaid regulations were consistent with Title XIX of the Social Security Act. Watkins declared that the regulations placed confidence in physicians to judge what was medically necessary, and that federal funds covered the medical services physicians determined necessary. Watkins then discussed pregnancy, stating that Pennsylvania's Medicaid regulations covered pregnancy-related medical services and treatments including abortions. However, just like all other medical conditions, he argued that the treatments for pregnancy must be medically necessary at the time of the procedure. Watkins argued that the regulations relied on physicians to take into account the psychological, physical, emotional, and familial factors affecting patients and determine if those factors would affect the health of patients to an extent that would require abortion.

Crosby argued on behalf of the eleven women and argued that the Pennsylvania regulations hindered physicians' judgments about best treatment options. Crosby said that the doctors at the Magee Women's Hospital all stated that they would have performed the abortions on the women if they had received reimbursement from Medicaid funds for providing the services. Crosby argued that those sentiments suggested that the regulations hindered the ability of physicians to objectively judge the best course of treatment for pregnant women. Crosby argued that the Pennsylvania regulations distinguished the two treatments of pregnancy: childbirth or abortion. He claimed that when women are pregnant they have two treatment options and that neither of those services can be considered more valid or necessary than the other.

On 20 June 1977, the US Supreme Court, in a six to three majority vote, declared the Pennsylvania Medicaid restrictions on abortion funding were constitutional and in line with Title XIX of the Social Security Act. Powell wrote the majority opinion. Burger, Stewart, White, Rehnquist, and Stevens joined the majority opinion.

Powell stated in his majority opinion that nothing in Title XIX suggested that states were obligated to fund every medical procedure. He claimed that while ethical questions would be raised if states chose not to fund medically necessary procedures, states were given broad discretion to determine which medical procedures were payable by Medicaid funds. Powell stated that it was not inconsistent with Title XIX to refuse to fund unnecessary medical services. Specifically, he declared that neither past legislation nor court decisions had determined what features constitute a medically necessary procedure, and therefore it was reasonable for states to determine that a non-therapeutic or elective abortion was not medically necessary. As the regulations provided Medicaid funding for medically necessary abortions, the Court found the state regulations to be consistent with Title XIX.

Powell, in his opinion, then argued that the Pennsylvania regulations were a reasonable expression of state authority because the state has a valid interest in fostering childbirth. Powell said that states have a strong interest to encourage childbirth, and that nothing in Title XIX suggested that it was unreasonable for a state to foster that interest by limiting services that would hinder that interest.

Powell said that when Title XIX was passed in 1965, non-therapeutic abortions were illegal in most states because Congress had passed it prior to *Roe v. Wade* (1973). He argued that it should not be presumed that Congress intended the funding of nontherapeutic abortions to be a condition for states to participate in the Medicaid program. He further noted that the US Department of Health, Education, and Welfare, headquartered in Washington, D.C., and the agency that administered Title XIX funds, said that states may choose to fund elective abortion services, but did not require it.

Powell also claimed that the Pennsylvania Medicaid regulations did not restrict physicians from expressing their professional judgment. Rather, physicians were still free to determine the best treatment for their patient, but the regulations simply determined the state financial coverage for certain treatment options.

Justices Brennan, Marshall, and Blackmun each filed separate dissenting opinions. Marshall and Blackmun joined in Brennan's dissenting opinion and Brennan and Marshall joined in Blackmun's dissenting opinion. No one joined Marshall's dissenting opinion.

Brennan's dissenting opinion disagreed with the Court's view that non-therapeutic abortions were not a medically necessary service. Brennan stated that pregnancy was a condition requiring medical treatment and that treatment options for pregnancy included termination or birth. Brennan argued that the legislative history of Title XIX and previous US Supreme Court cases on abortion implied that both childbirth and abortions, non-therapeutic and therapeutic, are all medically necessary treatments to pregnancy. As such, Brennan stated that the language of Title XIX required Pennsylvania to pay the costs of non-therapeutic abortions. He argued that physicians and patients should have the freedom to decide which treatment options and medical services are best for them. Brennan concluded by stating that he would have affirmed the decision of the Court of Appeals.

Marshall also filed a dissenting opinion. Marshall said that the legislative actions meant to foster childbirth were created to impose an unconstitutional moral viewpoint onto its citizens. He argued that ultimately, those regulations just prevent poor women from accessing safe and legal abortions. Marshall explained the barriers that women face in accessing abortions, including socioeconomic status, race and ethnicity, and geographic location. Marshall concluded by stating that those barriers lend themselves to legislation that violates the equal protection clause of the Fourteenth Amendment by limiting some women from accessing abortion services.

The third justice to file a dissenting opinion was Blackmun, who had authored the Court's decision in *Roe v. Wade*. Blackmun held that in the majority decision the Court allowed states to choose very broadly what regulations could be placed on Medicaid funds. Through the Court's judgment, Blackmun said that the court acknowledged the constitutional rights of women to obtain abortions, but denied women from exercising those rights by ruling that the existence of a right and the utilization of a right are distinct. Blackmun argued that the Court presumed that women can go elsewhere to obtain abortions, but he argued that many poor women cannot. Blackmun also addressed the financial question of how to distribute limited Medicaid funds. He explained that the cost of a non-therapeutic abortion is much less than the cost of maternity care and delivery over nine months, in addition to the general welfare costs of supporting children whose parents cannot afford to support it themselves. Blackmun stated that the majority decision either ignores or fears to acknowledge the poverty that is growing throughout the country. Blackmun concluded by saying that the US Constitution should be used as a tool for justice equally among all, to improve the condition of the poorest.

The US Supreme Court decision in *Beal v. Doe* determined that states were not required to provide coverage for abortions under Medicaid, however, it did not prevent them from doing so. On the same day, the US Supreme Court released its decisions in two other similar cases, *Maher v. Roe* (1977) and *Poelker v. Doe* (1977), which collectively furthered the decision on funding for non-therapeutic abortions. In *Maher v. Roe* the US Supreme Court found constitutional a Connecticut Medicaid regulation, which denied the funding for non-therapeutic abortions. In *Poelker v. Doe* the US Supreme Court found that the Medicaid regulation in St. Louis, Missouri, which banned non-therapeutic abortion services in public hospitals, was constitutional. In all cases, the US Supreme Court argued that states have a valid interest in promoting childbirth. The case *Beal v. Doe* set a precedent for future cases such as *Harris v. McRae* (1980) and *Webster v. Reproductive Health*

Services (1989).

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