



COURT PUTS NURSING HOME “FEEDING ASSISTANT” CASE BACK ON DECISION TRACK

Contacts: Eric Carlson
(213) 639-0930
ecarlson@nsclc.org

Toby Edelman
(202) 216-0028
tedelman@medicareadvocacy.org

On May 2, 2005, a federal judge in Seattle denied the government’s motion to dismiss in *Resident Councils of Washington v. Thompson*, which charges that the feeding assistant regulations for nursing home residents violate federal law. Although the court did dismiss the five facility residents from the case, it held that two organizational plaintiffs, Resident Councils of Washington and the Washington Long-Term Care Ombudsman Program, had met the requirements for legal standing to pursue the lawsuit. With the motion to dismiss denied, the court reinstated the plaintiffs’ previously filed motion for summary judgment, rescheduling it for May 27.

Reacting to the order, Eric Carlson, an attorney with the National Senior Citizens Law Center and lead counsel for the plaintiffs, said: “Now that plaintiffs have cleared this latest hurdle, we will finally get to the merits of the case. And we are confident that the court will agree with us that the regulations run afoul of federal law.” The court had previously denied a motion by the American Health Care Association to intervene on the side of the government, an order that is on appeal.

The feeding assistant regulations, which give states the option to allow Medicare-and Medicaid-certified nursing homes to employ individuals solely to assist in the feeding of residents, require only eight hours of training and no competency testing. The Nursing Home Reform Law, by contrast, demands at least 75 hours of training and testing for certified nurse aides, who normally would be required to assist in feeding. “Since at least twenty states have already approved the use of feeding assistants, tragedy is looming for some residents, and an overall decline in care for all of them is inevitable,” stated Toby Edelman, an attorney in Washington with the Center for Medicare Advocacy and another of plaintiffs’ counsel.