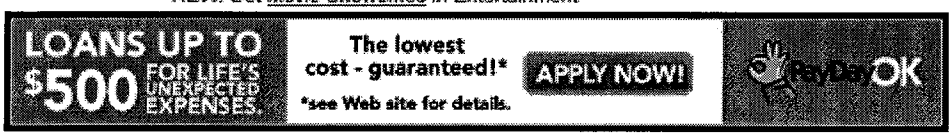

State loses in birth-injury case

Court rules that Va. shortchanged lawyers working for families

BY BILL MCKELWAY
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The state shortchanged lawyers for families challenging the birth-injury program by denying legal fees, then refusing to include interest when ordered to pay, the state appeals court said yesterday.

The ruling against the state's birth-injury program and Workers' Compensation Commission could significantly raise the legal costs of state attempts to oppose cases in the program, which is already in financial trouble.

A key lawyer who raised the fee issues said the decision by the Virginia Court of Appeals could help return the program to its intended nonadversarial posture.

"We are hopeful that this ruling will decrease the amount of litigation in Birth Act cases, reduce expenses to the families, and most importantly, make lawyers once again willing to take on these worthy clients and challenging cases," said Northern Virginia attorney Ann Jones.

Jones and her law partner, Donna Miller Rostant, have placed more than two dozen children in the program, often in the face of prolonged opposition from the program and the state attorney general's office.

The state's birth-injury program blocks medical-malpractice suits involving children injured at birth who received spinal-cord damage or brain damage from oxygen loss. If accepted into the program, the children receive lifetime medical care.

About 100 children are enrolled in the program, which began 18 years ago.

George Deebo, the birth-injury program's executive director, said yesterday that he had not seen the decision and had no comment.

The court's decision yesterday, a rare reversal of compensation-commission decisions in birth-injury cases, came in a case brought by Jones and Rostant when the program challenged their legal fees and then the fees they charged to defend the fees. The compensation commission sided with the program.

The court sent the case back to the commission to determine reasonable fees, at one point referring to "boilerplate" objections by the program that carried little weight.

"The program was designed to provide medical and rehabilitative benefits to profoundly injured children after a speedy, nonadversarial administrative hearing," Jones said yesterday. "Recently the program has gotten off track, objecting to numerous claims and filing endless appeals to keep benefits from worthy children."

Jones said the decision will force the program to use appeals more cautiously given the legal bills they could generate.

The decision comes as Jones and Rostant this month were awarded $160,000 in a case that took more than two years to conclude in the face of program appeals; in another case, Roanoke lawyer T. Daniel Frith III, after four years of legal work and repeated appeals by the program, learned this week that the program will appeal his fee of $38,000.

"It's ridiculous," said Frith, who successfully fought to the Virginia Supreme Court the program's appeals of a paraplegic Franklin County boy's acceptance into the program. "They offered a settlement that reduced my fee by $10,000 with no explanation."

Program appeals in the past six years, almost all of which were turned back by the courts, have cost the program close to $1 million in legal bills. Under the decision yesterday, such legal fees can accrue interest, and lawyers can be paid for their work they do in appealing fee reductions.

Fewer than a half-dozen lawyers in the state have been willing to take on the cases because of costs and the near-certainty of appeals.

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