

Summary of SC89416, *Andrea Bechtel, by her next friend, Barbra Bechtel v. State of Missouri Department of Social Services, Family Support Division*
Appeal from St. Louis County, Judge Robert S. Cohen

Attorneys: Bechtel was represented by Nancy E. Emmel of Sindel & Emmel in Clayton and Anthony E. Rothert of the American Civil Liberties Union of Eastern Missouri in St. Louis, and the division was represented by State Solicitor James Layton and LaSandra F. Morrison of the attorney general's office in Jefferson City.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A woman with both physical disabilities as well as mental disabilities requiring the appointment of a legal guardian appeals the state's exclusion of her from a personal care assistance program from which she used to receive benefits. In a 7-0 decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri reverses the circuit court's judgment denying her benefits and remands (sends back) the case for further proceedings, holding that the statute currently governing the program violates federal anti-discrimination laws.

Facts: Andrea Bechtel is a 39-year-old woman who has physical and mental disabilities, uses a wheelchair, and requires assistance with her daily activities. She lives with her mother, Barbra Bechtel, who has provided for Andrea's physical care her entire life and who has been her court-appointed guardian since 1993. In 2000, Barbra began to receive benefits on Andrea's behalf under the state's personal care assistance program, which based eligibility on the existence of a physical disability. Since August 2005, when the statutes governing this program were changed, individuals with guardians are not eligible for its benefits. Because Andrea's mental disabilities required the appointment of a legal guardian, the Missouri Department of Health and Senior Services notified Andrea that she no longer was eligible for services under the personal care assistance program. Instead of offering financial assistance to Barbra, the department continued to provide Andrea with benefits, including some personal care services, under the MO HealthNet program. Andrea appealed the denial of benefits under the personal care assistance program. The hearing officer found the department properly denied the benefits, and on review, the circuit court found, without explanation, that Andrea's termination from the personal care assistance program was lawful and did not violate any federal statutes. Andrea appeals.

REVERSED AND REMANDED.

Court en banc holds: Andrea Bechtel pleaded and proved that section 208.900.1, RSMo Supp. 2005, violates the Americans with Disabilities Act and the federal rehabilitation act

by excluding her from participation in the personal care assistance program on the basis of her mental disability, and the department failed to prove that to provide her a reasonable accommodation would require a fundamental modification of the program or impose an undue burden. Andrea has shown that she is a qualified individual with a disability and is entitled to department services; she otherwise is qualified for benefits from the personal care assistance program because of her physical disabilities; and she was excluded from the program only because section 208.900.1 discriminates against persons with a mental disability requiring the appointment of a guardian. Once unlawful discrimination is shown, the department must provide reasonable accommodation for the disability at issue. Here, because the department did not raise any defense or present any evidence relating to the feasibility of accommodation, it waived this defense.