

FILED

December 10, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

December 11, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, Justice, concurring, in part, and dissenting, in part:

The basic issue in this case, as posed by the DHHR, is whether as a matter of law Dr. Hewitt should be compensated more than other psychologists throughout West Virginia for the court-ordered services that he renders. An ancillary issue is whether the Department of Health and Human Services may budget for such services based upon its medicaid reimbursement rate, or based on figures in whatever amount that may be established by a circuit court, without reference to any statewide controlling guidelines.

I am sympathetic to the DHHR's position on these issues. That is why I am pleased that this Court's opinion recognizes the DHHR's looming financial shortages, and establishes an important limitation on the DHHR's duty to pay expert witness fees in juvenile delinquency cases. And I am also pleased that the pre-approval requirement is strongly recognized in the Court's opinion; this process should prevent many future problems.

The decentralized nature of our circuit court system is excellent for certain purposes, but it can come into strong tension with the cost of managing what are in most respects social work and public health matters.

Thus, we have recently gotten away from allowing circuit judges *carte blanche* to require costly, often out-of-state placements for children in crisis. Moreover, courts simply cannot be a rubber-stamp for “have invoice, will travel” experts.

I would therefore find that the lack of fee pre-approval in Dr. Hewitt’s cases was a jurisdictional defect that made the orders void, even if they were not immediately appealed.

I am authorized to state that Justice Maynard joins in this separate opinion.