

FOR PUBLICATION

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IN THE COURT OF APPEALS OF INDIANA

E. MITCHELL ROOB, JR., in his individual)
Capacity as Secretary of the Indiana Family)
And Social Services Administration, JEANNE)
LABRECQUE, in her individual capacity and as)
Assistant Secretary, Indiana Office of Medicaid)
Policy and Planning, INDIANA FAMILY AND)
SOCIAL SERVICES ADMINISTRATION, and)
INDIANA OFFICE OF MEDICAID POLICY)
AND PLANNING,)

Appellants-Defendants,)

vs.)

JANNIS FISHER, et al.,)

Appellees-Plaintiffs.)

No. 49A02-0602-CV-103

APPEAL FROM THE MARION SUPERIOR COURT, NO. 1, CIVIL DIVISION
The Honorable Cale J. Bradford, Judge
Cause No. 49D01-9309-MI-952

May 21, 2007

OPINION ON REHEARING

BAKER, Chief Judge

In our original published opinion, we concluded that neither Medicaid Providers nor Recipients have a private right of action pursuant to Section 1983. Roob v. Fisher, 856 N.E.2d 723 (Ind. Ct. App. 2006). The Appellees have filed a petition for rehearing in which they point out that the State conceded the issue of Recipient standing at the trial court level. Moreover, the State did not explicitly challenge the Recipients' standing in its opening appellate brief. We concluded in our original opinion that the State's limited mention of the Recipients in its opening brief was sufficient to keep the issue alive. Id. at 732-33. In light of the State's concession below, however, we now find that it has waived the issue of the Recipients' standing. Thus, we grant rehearing for the limited purpose of vacating that portion of our original opinion that holds that the Recipients do not have standing in this matter. In all other respects, we deny the petition for rehearing.

The judgment of the trial court is affirmed with respect to the Recipients, reversed with respect to the Providers, and remanded for proceedings consistent with our original opinion as modified by this opinion on rehearing.

VAIDIK, J., and CRONE, J., concur.