

Childhood Obesity: Is it Abuse?

By Abigail Darwin



With childhood obesity increasing across the nation at dramatic rates, courts and child welfare systems in many states are facing novel issues. One of these issues is whether children whose weight poses serious dangers to life or health are properly considered neglected when their parents disobey medical orders to put them on diets. A second issue is what the state should do in these cases. That is, is it proper to remove these children and place them in foster care; or should states take other, less drastic steps to help children attain a normal, healthy weight, making removal unnecessary and allowing these families to remain intact?

Few state courts have experience dealing with this issue, although in recent years more cases have begun to emerge and it is likely only a matter of time before other states will face the issue. The state courts that have heard cases involving children whose obesity threatened life or health, and whose parents were unable or unwilling to follow medical orders to reduce their children's weight, have considered this a form of medical neglect. They have ordered myriad forms of state intervention in an attempt to help these children and their families, using judicial discretion to make their decisions.

These courts have been willing to expand their state's statutory definition of medical neglect to encompass morbid obesity. But no state has a statute on the books specifically

addressing how and under what circumstances a dangerously obese child may be considered "neglected" or "medically neglected." Additionally, no state has statutory language addressing what forms of state intervention are proper in cases dealing with child victims of obesity-related medical neglect.

Who Is Accountable?

In the United States, the number of overweight and obese adults and children has increased steadily over the last three to four decades. Today, according to researchers, almost 66% of adults and 14% to 19% of children and adolescents are considered overweight; approximately 33% of adults and 11% of children are obese.

The ramifications of obesity are arguably more severe for children than for adults. Indeed, obesity deprives youngsters



of many of the social and physical activities that comprise a meaningful childhood. Also, obese children must often endure excessive teasing, social stigmatization, and discrimination by their peers and teachers. Indeed, obesity, with all its attendant social and physical maladies, tends to be a life-long affliction if it is not curbed early in a child's life.

Children, especially very young children, often have little or no control over what they eat and how much they exercise. Parents dictate this, serving as strong role models who shape their children's eating and exercise habits early in life. Even in cases of older children and adolescents who have more control over their food intake and exercise, severe obesity is largely traceable to their parents.

Some critics may question whether it is fair to hold parents responsible for their children's obesity in all cases. After all, many external influences can determine a child's weight. In other words, what a child weighs is not solely determined by what he or she is fed at home. This is especially true as a child gets older and is capable of making more independent choices. Indeed, schools are at least partly to blame, considering that most children consume anywhere from a third to more than half their total daily calories at school.

On the other hand, the few courts that have heard cases involving children with severe obesity that threatened life or health whose parents disobeyed medical orders to reduce their children's



weight have processed these cases as neglect cases. These courts did not examine factors that were external to the family setting that could have contributed to the child's extreme obesity; thus, by omitting consideration of extra-familial factors, state courts have arguably concluded that in cases involving alleged obesity-related medical neglect, even if the child's poor eating and exercise habits are to blame for her condition, it is her parents who are legally responsible.

Other critics assert that it is unfair to punish parents for their children's morbid obesity because of the large role genetics play in determining weight. Research shows that genetic factors do make some people more susceptible to gaining weight and keeping it on. Further, some genetic disorders, such as Turner Syndrome and Prader-Willi Syndrome, prevent a child from ever feeling full after eating. Children with these syndromes are almost always severely obese as a consequence.

Some medical disorders that are not genetic, such as hypothyroidism and central nervous disorders, can cause obesity. But while it is almost impossible for parents to control the weight of children with certain genetic and medical disorders, these abnormalities are rare. For the vast majority of children, proper diet and exercise can usually temper genetics and help them maintain a healthy weight.

The United States Supreme Court has consistently recognized that parents have a fundamental Constitutional right to direct the upbringing of their children free from government interference. They are viewed as being the people most likely to act in their child's best interests. But there are limits to parental autonomy. The Supreme Court has also found that the state has a compelling interest in the health, safety, and welfare of children within its borders.

What constitutes abuse or neglect, however, is often a matter of debate. Federal legislation passed in the mid-1990s presented a baseline definition of child abuse and neglect. This legislation was known as the Child Abuse Prevention and Treatment Act of 1996 (CAPTA). Although each state defines child abuse and neglect in a manner that is consistent with CAPTA, because these statutes tend to be written in broad language, courts must often interpret the statutory language to determine whether specific parental acts or failures to act violate the state child abuse and neglect statutes.

Recent Court Cases

In recent years, as a result of the obesity epidemic that has swept the nation, several state courts have had to grapple with deciding cases of first impression. Specifically, state courts in California, Indiana, New Mexico, New York, Pennsylvania, and Texas have had to determine whether morbidly obese children whose parents are unable or unwilling to control their children's weight against medical orders are properly considered abused or neglected.

The California case, decided in 1998, involved a 13-year-old girl named Christina Ann Corrigan* who weighed more than 680 pounds; the Indiana case, decided in the late 1990s, involved a 4-year-old boy named Cory Andis who weighed 111 pounds; the New Mexico case, decided in 2000, involved a 3-year-old girl named Anamarie Martinez-Regino who weighed 131 pounds; the New York case, decided in 2007, involved a young adolescent girl named Brittany who weighed 261 pounds; the Pennsylvania case, decided in 2002, involved a 16-year-old boy named D.K. who was just over five feet tall but weighed in excess of 451 pounds; and the Texas case, decided in 2002, involved a 4-year-old boy named G.C. who weighed more than 136 pounds. All these courts, except the California court, adjudicated the children to be neglected

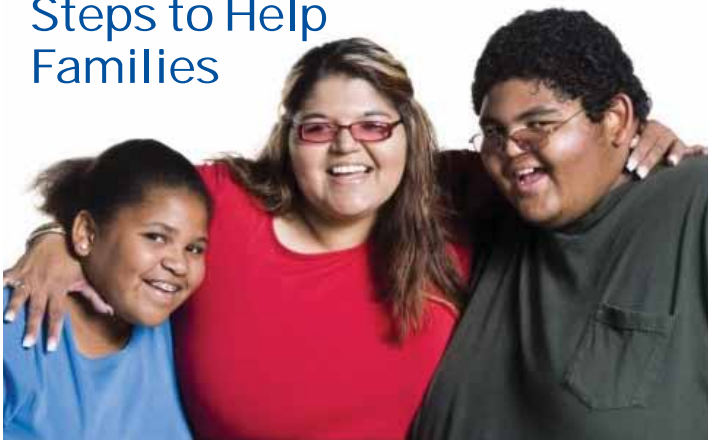
* Though Children's Voice doesn't typically publish the real names of children, in these instances, their names have already been used in the media.

and reached this conclusion by expanding their states' statutory definition of medical neglect to encompass morbid obesity. In the California case, the child died before the case was heard. The court did, however, ultimately charge her mother with misdemeanor child abuse through inaction.

A second issue that state courts have struggled with in cases involving dangerously obese children is determining the proper mode of state intervention to help these children and their families prior to and after adjudication. The New York court ordered nutritional counseling and cooking classes for the obese child and her mother and also required the parents to purchase a gymnasium membership for their morbidly obese daughter and take her there two or three times per week; several state courts ordered that state-commissioned homemakers be sent into the households to model appropriate cooking and feeding techniques; and the Pennsylvania court ordered the child be taught how to exercise. In each of these cases, except the California case, the child was removed from the home at least temporarily and placed in foster care.

In the Texas case, parental rights were terminated, and in the California and Indiana cases, criminal charges were filed against the parents. It should be noted, however, that in the California case, the charges were ultimately reduced, and in neither the California nor the Indiana case were the parents sentenced to prison. In the California case, the mother was originally charged with felony child abuse and endangerment, but she was eventually convicted only of misdemeanor child abuse through inaction. In the Indiana case, Cory Andis' parents plead guilty to criminal child neglect. The court ordered Cory's mother to serve one-and-a-half years probation and perform 100 hours of community service for endangering Cory's health. Cory's father was placed on probation for three years.

Steps to Help Families



Courts should look at whether the state has provided the family with intensive, family-oriented services including: family counseling, education regarding proper nutrition and exercise, income supports, menu planning, a visiting nurse, and a visiting homemaker. These components are necessary to form the basis of a comprehensive "reasonable efforts"

protocol to help families with morbidly obese children overcome all the challenges associated with helping their children lose weight.

Family Counseling

The family counseling component ensures all family members are mentally healthy. Severe obesity can often be the result of mental illness or family dysfunction. A family counselor can treat minor mental health problems, especially those that can be solved by talk therapy, such as situational depression.

For more serious mental illnesses, such as chronic depression, the counselor can refer the parent or child to a higher certified mental health professional. Family counseling can also help a family develop and maintain strong bonds and enhance trust so that members are well equipped to provide one another with the emotional support they will need to get through the difficult ordeal of helping a morbidly obese child lose weight.

Health Education

The education component provides parents and children with information about proper nutrition and exercise. Many parents of severely obese children do not act intentionally to inflict harm on their children. Rather, they are often unaware of the composition or importance of a proper diet and exercise.

In the Indiana case involving 4-year-old, 111-pound Cory Andis, for example, his parents told child welfare officials and nutritionists the reason they did not provide their child with a proper diet was because "they did not understand the suggested diets [which] were too hard to follow." In addition, when Cory had to later be hospitalized for conditions related to his severe obesity, his parents were seen giving him a fast food meal. And in the New Mexico case involving 3-year-old, 131-pound Anamarie Martinez-Regino, "[h]er parents blamed the weight gain on 'uneven sidewalks,' which prevented Anamarie from exercising at home," according to an article published by Deena Patel in the *Family Court Review*.

Further evidence that parents of morbidly obese children are often not malicious but rather just unaware of the importance and composition of a healthy diet and exercise is the fact that these parents are often severely obese themselves. In the New York case of *In re Brittany T.*, for example, Brittany's mother weighed more than 430 pounds. In the Pennsylvania case, *In re D.K.*, the court noted that D.K.'s mother weighed about 600 pounds.

Research also shows that 80% of children are obese when at least one parent is obese, while only 10% of children are obese when neither parent is obese. Thus, obesity of parents and children is intricately connected. While the connection may in part be genetic, proper nutrition and exercise can usually mitigate the effects of genes responsible for weight.



Secondly, a visiting nurse can help ensure the family maintains dietary compliance. The visiting nurse can also provide treatment for any minor health ailments afflicting the child as a consequence of the child's severe obesity. Finally, a visiting homemaker benefits the family by modeling healthy cooking and feeding techniques for parents. She could teach the parents alternatives to cooking with products that are high in fat, for example, such as cooking with margarine instead of lard or butter. She can also help parents and children discern more appropriate portion sizes at mealtimes.

Preparing for the Future

Since obesity among children and adults has been increasing at an alarming rate in the United States, it is certain that more courts will soon have to decide whether children with levels of obesity that threaten life or health and whose parents are unable or unwilling to follow medical orders to help them lose weight may properly be adjudicated to be neglected. Beyond that, more courts will also have to determine what the proper forms of state intervention are for helping these children and their families. In addition, they will have to determine under what circumstances removal of dangerously obese children from their homes is warranted. ■

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And when parents are aware of the importance of a proper diet and exercise, they are more likely to be able to help their children engage in a healthy lifestyle. As Cory Andis' parents' legal counsel argued while their criminal neglect case was pending, educating the family—especially the parents—is key to helping morbidly obese children attain and maintain a healthy weight.

Income Supports

The income support component would be highly beneficial for impoverished families. Studies show that poor people tend to have higher rates of obesity than wealthier people. Indeed, many of the state court cases dealing with obesity-related medical neglect have involved impoverished families. As one scholar astutely noted, "[h]ealthy foods cost more than fast food, and if a parent has to choose between feeding his or her child fast food or nothing at all, fast food will prevail." Thus, income supports to impoverished families will often be necessary to help parents of morbidly obese children purchase healthy food for their children.

Menu Planning, a Visiting Nurse, and a Visiting Homemaker

The remaining three components also are beneficial to creation of a comprehensive "reasonable efforts" protocol. First, the menu planning component benefits families with morbidly obese children by helping parents prepare more nutritious meals that have the appropriate caloric content for their child. For best results, a treating physician, dietician, or other medical professional should plan the children's menus.

Tell Us What You Think

Should childhood obesity be considered a form of parental neglect? We'd like to hear your thoughts on or your experiences in handling this issue and share them with other readers in a future issue of *Children's Voice*. E-mail voice@cwla.org.

