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Legal claims for the provision of nutritional formulas: readings on the right to health

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Initially, we are thankful for the invitation to participate on the debate about lawsuits on health, in particular with regard to the provision of nutritional formulas. Data presented in the article "Profile of lawsuits for the provision of nutritional formulas forwarded to the Brazilian Ministry of Health" appear quite comprehensive and can generate several analyzes. In this debate, we chose to focus on an argumentative line based on major claims of 38.3%, which includes children under two years of age, plus 12.1% for children who are from two to ten years of age, totaling 50,4% only for this segment of the population.

Another reason for such selection is that we understand that it enables us to deepen the perspective of the reviewed right of children to life and health, both guaranteed by the Federal Constitution of Brazil itself, and by the Statute of Children and Adolescents, reverberated in public policies to protect children. Such policies, largely proposed and / or undertaken by the Ministry of Health itself, as specified in the "Agenda of Commitments for the Comprehensive Health and Reduced Mortality of Children",1 aim to strengthen the agreement with states and cities of building a network of comprehensive public assistance that is qualified and humanized to benefit Brazilian children.

Expressed data shown by the authors of this present paper depict the possibility of bringing to the discussion scene the responsibility of the Ministry of Health as a promulgator of policies and, essentially, organizer of practices in the field of health, despite being the recipient of emanating claims, largely by the Public Defender (65.6%). Hence, it becomes also possible to bring the effectiveness of health services to debate, in terms of provision of comprehensive care to children.

Certainly families have claimed, through the Public Defender, a guarantee of what they considered necessary to recover their children's health. It would be up to the Ministry of Health, then, to analyze children's vulnerabilities, particularly of those under two years old, both in the sense of risk, and in the occurrence of malnutrition, given the significant vulnerability and high mortality rates that still occur to this population; in addition to their fragile health condition associated with recurrent diseases.[2] This is a leading fact in this present study, for instance, food allergies and intolerances (80.7%), referred to the group of endocrine, nutritional and metabolic diseases.

Our studies[2,3] highlight how the judiciary has been accepting with the claims of the right to health, by considering the vulnerability of humans in different stages of life, particularly when it comes to children at an early age. Moreover, low effectiveness of health services in the monitoring of children is denoted, in this present paper, due to the lack of diagnostic confirmation (40.5%) of diseases / disorders among applicants, which generate the need for nutritional formulas, particularly in the group related to allergies and food intolerances (87.0%); and also for not presenting the assessment of the nutritional status of the applicant, including multi-tracking.

Such potentially complex situation exposes the programmatic component in the genesis of vulnerabilities, a component referred to access to services, existence and support of programs, quality of care,[4] among others, which highlights government failure to comply with its duties to reduce damage and risk to human health.

It is thus relevant to question whether the lawsuit for the provision of nutritional formulas, particularly for children under two years old, actually has the power to undermine the reasonable allocation of public resources with worsening of inequities in access to health care; or whether it shows that the Ministry of Health fails to meet the needs of the population, forcing families to take this path in order to guarantee their children's right to good health.

The Public Defender, an institution that pushes the instances of the Judiciary, has as privileged forum the defending of the rights of a portion of the population considered

to be "inapt", including the elderly, children and adolescents. Thus, its intervention should be understood as a warning to the Ministry of Health as promulgator of policies and organizer of practices aimed at promoting, protecting, and recovering the health of this population.

We have also focused on data offered by this present paper, which show steep growth of lawsuits made to the Ministry of Health from 2007 to 2013, increasing from 39 to 168, respectively. This interval of seven years coincides with the so-called phenomenon of "judicialization of health" as public space for conflict resolution, in which the provocation and the actions of the judiciary, or its provocative entities, such as the Public Defender and the Public Ministry, act towards the realization of the right to health, by achieving the purposes of health assistance.[5]

We understand that on the assessment made by the technical sector of the Ministry of Health, of the claims received by this entity, the analysis of early age children health monitoring should be privileged, particularly of more vulnerable children, such as those addressed in this paper. Such analysis would have the purpose of reordering professional practices that could accomplish what is advocated in public policies that support children and adolescents, reinforced by more specific policies, such as it is the case of the National Policy on Food and Nutrition.[6]

It is also necessary to question the condition in which individual reviewed claims do not generate, on the part of the Ministry of Health, the concern of turning them into collective claims; – we explicitly expose here the fact that, in 2013, there were 57 individual claims whose plaintiffs were children under two years old requiring the provision of formula.

Accordingly, legalization, in its genesis, can have both a domino effect fostering its maintaining, recalling that the population seeks for a "legal remedy",[7] and changes that substantiate the effectiveness of occupational health practices, by reordering them, to make them more comprehensive and resolving. Concerning such changes, the Ministry of Health should expand the analysis of legal claims, covering assessing elements of its lines of comprehensive care, with the purpose of leveraging the monitoring of health and, within this present matter, ensuring nourishment for a healthy life.

Finally, we emphasize that the discussion fostered hereby is implicated in studies we have been conducting, and is grounded on the defense of the right to health, particularly, as in this case, for children. We believe that comprehensive care is part of that right, and legalization is one of the expressions that represent its deficiency. Thus, considering the

focus of our discussion, we perceive an urgent need for effort synergy[3] by the Ministry of Health and the Public Defender, as well as by other entities that support the right to health, to guarantee the actual enforcement of such right.

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