

British Clinic Is Allowed to Deny Medicine

Decision on Cost Has Broad Impact

By SARAH LYALL

LONDON, Feb. 15 — When her local health service refused to treat her breast cancer with the drug Herceptin, 54-year-old Ann Marie Rogers sued. But on Wednesday, a High Court judge ruled against her.

In his decision the judge, David Bean, said that although he sympathized with Ms. Rogers's predicament, the health service in Swindon, where she lives, had been justified in withholding the drug.

"The question for me is whether Swindon's policy is irrational and thus unlawful," Justice Bean wrote. "I cannot say it is."

The ruling has potentially serious implications for patients across the taxpayer-financed National Health Service.

Despite health officials' contention that decisions about treatment are based solely on clinical effectiveness, critics contend that with drugs growing ever more expensive, cost has become an increasingly important factor. They also say patients are at the mercy of the so-called postcode lottery, in which treatments are available in some postal zones but not others.

"This drug could save the lives of 1,000 women a year," Jeremy Hughes, chief executive of the lobbying group Breakthrough Breast Cancer, said of Herceptin. "It is unfair and cruel for women like Ann Marie Rogers to know that it is money and their postcode that stands between them and this potentially life-saving treatment."

Herceptin, made by Roche, is currently licensed for use in late-stage breast cancer. Although some studies have shown that it is also effective in treating HER-2 early-stage breast cancer, it has not yet been licensed for such use. If it does receive a license, the drug will be appraised for potential countrywide use.

Last fall, in response to a case in which a breast cancer patient threatened to sue her local health service, Patricia Hewitt, the health secretary, publicly praised Herceptin for its potential in early-stage breast cancer treatment. The Health Department then ordered local health services not to withhold the drug "solely on the grounds of cost."

But Herceptin is an expensive drug, costing \$36,000 to \$47,000 a year for each patient, and the health service has finite resources. Around the



Fiona Hanson/Press Association

Ann Marie Rogers yesterday at High Court, London, where a judge denied her request for a costly cancer drug through the health service.

country, some local health services said they would approve the use of Herceptin in early breast cancer cases; others said they would not.

Figures compiled by CancerBacup, a charity, showed that the number of breast cancer patients with access to Herceptin varied considerably across England, from 14 percent in the Midlands to 61 percent in the southwest.

Ms. Rogers, who has three children and who worked in the dining

rejected the recommendation.

Jan Stubbings, chief executive of Swindon Primary Care Trust, the local health service, said on Wednesday that "difficult choices" have to be made in a service that answers to all 200,000 residents. "The primary care trust has to care for the whole population," she said in a statement. "We have other people in our community who don't have a strong voice, and we have to consider them."

Ms. Rogers's lawyer, Yogi Amin, said on Wednesday, "Ann Marie believes that the decision made by this primary care trust to pit one cancer patient against another and decide on their personal circumstances is just quite simply unfair."

After her treatment was denied, Ms. Rogers borrowed £5,000 (\$8,700) to pay for the drug herself. But she could not borrow more — and she could not remortgage her house because of her cancer diagnosis, she said — so she stopped the treatment.

A lower court had ruled that she should be allowed the treatment while her case was pending, and she was put back on Herceptin. She is to continue receiving the drug at least until the end of March, when the case is to be heard by the Court of Appeal.

Both her mother and a cousin died of cancer, she said in a written statement to the court, and she felt sure, given her family history and her prognosis, that denial of the treatment was "like a death sentence."

"One of the most difficult things to deal with when you are diagnosed with cancer is having to live with the constant fear of the time when the cancer will come back," she said. "This is particularly difficult as I know that if it comes back, it will be terminal."

Balancing financial prudence against rocketing drug prices.

room of her sister's pub before she fell ill, noticed a lump on her breast in October 2004. After tests showed that the lump was cancerous, she underwent surgery, chemotherapy and radiotherapy.

Last March, her son read on the Internet that Herceptin had been found to be an effective treatment for the HER-2 form of breast cancer. Subsequent tests, demanded by Ms. Rogers, revealed that she was, in fact, suffering from HER-2.

She asked for Herceptin. But the Swindon health service has a policy of allowing its use for early-stage breast cancer only in "exceptional circumstances," and her doctor said that her case was no different from those of "the 20 or so other residents in the Swindon area in the same position." He urged that all the patients be given the drug. The health service