

CDCAN REPORT

CALIFORNIA DISABILITY COMMUNITY ACTION NETWORK

ADVOCACY WITHOUT BORDERS: ONE COMMUNITY

REPORT #280-2009 OCTOBER 15, 2009 – EARLY THURSDAY AM

California Disability Community Action Network Disability Rights News goes out to over 50,000 people with disabilities, mental health needs, seniors, traumatic brain & other injuries, veterans with disabilities and mental health needs, their families, workers, community organizations, including those in Asian/Pacific Islander, Latino, African American communities, policy makers and others across California.

REMEMBERING THE LIVES OF EDWARD M. KENNEDY, EUNICE KENNEDY SHRIVER, JOAN B. LEE, DONALD ROBERTS & BILL YOUNG.

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California Budget Crisis

HEARING ON FEDERAL LAWSUIT TO STOP IHSS BUDGET CUTS SET FOR OCT 19 MONDAY IN OAKLAND AT 10:00 AM BEFORE JUDGE CLAUDIA WILKEN

Another Court Hearing Before US 9th Circuit Court of Appeals Set for October 22 in San Francisco To Hear Appeal on Medi-Cal Optional Benefits Lawsuit

SACRAMENTO, CALIF(CDCAN) [Updated 10/15/09 12:30 AM (Pacific Time) - Federal District Court Judge Claudia Wilken is scheduled to hear on October 19, Monday morning at 10:00 AM in Oakland, a motion filed by attorneys representing In-Home Supportive Services (IHSS) recipients and disability and senior advocacy groups, to stop state budget cuts set to go into effect November 1st impacting over 136,000 children and adults with disabilities, the blind and low income seniors who could lose eligibility for all or many of their services under the In-Home Supportive Services program.

The motion comes from a federal lawsuit filed on October 1 (*V.L. v. John Wagner*, case number C-09-4668) [for copy of the original complaint go to the CDCAN website at www.cdcan.us]

The IHSS lawsuit court hearing is scheduled at:

US District Court, Northern District of California

Judge Claudia Wilken

Courtroom Deputy: Sheilah Cahill

301 Clay Street - 4th Floor – Courtroom 2 (could change)

Oakland, CA 94612-5212

Main Phone: 510-637-3530

Building Hours:

9:00 AM - 4:00 PM

Some groups talked about a protest rally in support of the lawsuit at or around the time of the hearing outside the courthouse in Oakland on Monday.

Another Major Court Hearing On Budget Cuts Set October 22 in SF

Meanwhile in a separate lawsuit that could have sweeping impact on other cuts that receive funding from Medicaid, will also face a critical hearing next week, on October 22, Thursday morning at 11:00 in San Francisco before the US 9th Circuit Court of Appeals:

Federal Court Building – Courtroom 1 (on first floor)

95 Seventh Street (between 7th and Mission Streets)

San Francisco, CA

Note: court hearing date for this case, the time and courtroom could change.

That lawsuit, *Gray Panthers of SF, et al v. Arnold Schwarzenegger, et. al.*, seeks to restore the 9 Medi-Cal Optional Benefits that were eliminated as part of the budget cuts passed in February 2009, claiming the State was in violation of several federal laws, including the federal American Recovery and Reinvestment Act (ARRA).

The suit claims the State accepted the temporary higher rate of Medicaid reimbursement and as a result was required to maintain not only eligibility as it was as of July 1, 2008 – but also benefits and services. The State disputes that claim, saying the federal economic stimulus act only required the states to maintain eligibility to Medicaid services in their states as it was as of July 1, 2008.

The elimination of the 9 Medi-Cal optional benefits for adults – including adult dental, podiatry services, went into effect on July 1, 2009.

The federal lawsuit was filed by the Medicaid Defense Fund on behalf of people with disabilities and seniors in the Medi-Cal program in August, but a lower federal court refused to issue an order to block that cut.

If the US 9th Circuit Court of Appeals however overrules that federal district court judge – and on the claim that the State was in violation of the federal economic stimulus act provisions, then the ruling could have sweeping impact on many other State budget cuts that use Medicaid dollars, including In-Home Supportive Services and many of the regional center funded community-based services that were subjected to major budget reductions.

The Medicaid Defense Fund was successful last year and earlier this year in blocking several Medi-Cal provider rate reductions (a separate federal lawsuit filed by another group was successful in stopping other Medi-Cal provider cuts last February).

Lawyers Hope Federal Judge Will At Least Delay IHSS Budget Cuts From Going Forward Before Notices Are Sent Out Next Week

Lawyers and others involved with the lawsuit are hoping the federal district court will hold a hearing and issue a ruling stopping the cuts before October 19th – the date when the State intends to begin sending out written notices (called notices of action) to the over 136,000 people impacted who could lose all or some of their services under the IHSS program.

Similar notices have already gone out earlier this week regarding new requirements for IHSS workers (providers) for mandatory fingerprinting and background checks – and also mandatory fingerprinting for IHSS recipients, and also the possibility of unannounced home visits by certain state agencies. Those new requirements were part of the revised 2009-2010 State Budget passed in late July by the Legislature controlled by Democrats and approved by Republican Governor Arnold Schwarzenegger.

The notices next week will contain the person’s “functional index score” and “functional index ranking” which, under the revised 2009-2010 State Budget passed by the Legislature and approved by the Governor in late July, will determine whether or not a person remains eligible for any services under IHSS or some domestic and related services under IHSS.

But lawyers for the case say that doesn’t give people impacted enough time to respond either for a fair hearing or to request a re-assessment.

Melinda Bird, attorney with Disability Rights California (formerly Protection and Advocacy Inc or PAI) said earlier this month that she believed that there is “strong argument” for the federal court to hold an early hearing and to issue an order blocking the cut from taking place.

“It is expensive [for the State] to mail a notice to 130,000 people. It is a waste of taxpayer funds – if we prevail – to send out another notice ... The State already has delayed these cuts by two months. They could have told people their functional index scores then – and given people some time to get reassessments, get their lives in order. What we are asking for a few more months...to give people a more comprehensive notice.”

Bird said that those functional index scores and functional index rankings have been kept “secret from IHSS recipients” and that “people have tried to get their rankings and were told it was confidential. Essentially is a secret evaluation and people haven’t had a chance to review [it] for accuracy. “ She said that now crucial because the functional index scores and functional index rankings “is now the bright line that [will] determine whether you get services to remain safely at home” or whether you lose those services completely.

She said the notice that the State intends to send out on October 19th to those impacted is “grossly inaccurate” that either omits or does not make clear that a person has a right to

request a fair hearing or a re-assessment and that the notice would be the very first time persons receiving IHSS would be informed about their functional index scores and rankings.

Bird said that the time period of 10 days allowed in the notice that goes out on October 19th before the cuts take effect November 1st, is “not enough for people to prepare for a devastating cut of this nature. The court needs to require the State to do a more comprehensive notice of the cuts and to give people more time.”

Lawsuit Plaintiffs Include Several IHSS Recipients

The lawsuit’s main plaintiffs include a several persons receiving In-Home Supportive Services, including an 81 year old senior, 2 children with disabilities with significant medical needs and a young adult man with mental health needs, though the lawyers on the case say they are asking the court to approve the case as a “class action” – meaning that it is being filed on behalf of all those impacted by these cuts to IHSS.

The State, represented by the California Department of Justice, will fight the legal action.

Lawsuit Claims IHSS Cuts Violates Several Federal Laws

The lawsuit says that the State violated federal laws, including the Americans with Disabilities Act (ADA) that protect the rights of persons with disabilities, mental health needs and seniors to remain in their own homes and communities, federal Medicaid laws and regulations protecting health and safety and imposes “standards of fairness” and also violations of due process under the US Constitution’s 14th Amendment.

While conceding that a state can make budget cuts to programs under certain conditions, Melinda Bird, an attorney with Disability Rights California (formerly Protection and Advocacy Inc or PAI) said earlier this month, adding that “States do have obligation to provide services in the most integrated settings. California does have an “Olmstead Plan” and IHSS is a corner stone of that plan.”

But she said that the major cuts to IHSS was “as if the State had built a ramp to enable people to function in the community and now the State is dismantling that ramp”.

Olmstead Decision Landmark 1999 US Supreme Court Decision

The “Olmstead Plan” refers to the landmark 1999 US Supreme Court decision – referred to as the Olmstead Decision (named after the Georgia State Commission on Health and Human Services) that required states to take steps to avoid the unjustified or unnecessary institutionalization of people with disabilities and seniors. The lawsuit was filed in the early 1990’s on behalf of two women with developmental and other disabilities, Elaine Wilson and Lois Curtis.

Lawsuit Filed by Several Advocacy Groups and Unions

The lawsuit was filed on behalf of persons receiving IHSS, by several advocacy organizations and four unions representing IHSS workers (providers):

- Disability Rights California (formerly Protection and Advocacy Inc or PAI)
- Disability Rights Legal Center
- National Senior Citizens Law Center
- National Health Law Program
- SEIU/United Long Term Care Workers
- SEIU-United Healthcare Workers West
- SEIU Local 521
- United Domestic Workers (UDW) Providers Union (AFSCME Local 3930)

The main attorneys for the lawsuit can be reached as follows:

Melinda Bird, Disability Rights California, 213-427-8747

Stacey Leyton, Altshuler Berzon LLP, 415-421-7151

Paula Pearlman, Disability Rights Legal Center, 213-736-1031

IHSS Reductions Part of Revised 2009-2010 State Budget Passed Last July

- Last July the Legislature controlled by the Democrats passed and Governor Arnold Schwarzenegger approved, a revised 2009-2010 State Budget that included major additional cuts to In-Home Supportive Services, along with major reductions to other health and human service programs.
- Those cuts are contained in ABx4 4 (“x4” stands for 4th special or extraordinary session) a budget related bill – called “budget trailer bill” because it follows or trails the main budget bill (see below for text from the bill that deals specifically with the cuts to IHSS). A copy of that bill is on the CDCAN website at www.cdcan.us
- The Assembly approved in late July, the IHSS cuts in ABx4 4 by a vote of 73 to 3 with 3 members not voting (and 1 vacancy). Those opposing were Republican Assemblymember Joel Anderson of La Mesa and Democratic Assemblymembers Sandre Swanson of Oakland and Mariko Yamada of Davis. Three members abstained or did not vote (all Republicans): Assemblymembers Bill Berryhill of Ceres, Mike Duvall of Brea and Ted Gaines of Roseville.
- At the time the Democrats controlled the Assembly with 49 members, 1 independent (Juan Arambula) and 29 Republicans and 1 vacancy, the 51st Assembly District (that eventually was filled by a Democrat in September).
- The State Senate approved also in late July, those IHSS cuts in ABx4 4 by a vote of 35 to 5. Those opposing were Democratic State Senators Gil Cedillo of Los Angeles, Lou Correa

of Santa Ana, Loni Hancock of Berkeley, Carol Liu of Pasadena, and Leland Yee of San Francisco. Democrats control the State Senate 25 to 15.

- Republican Governor Schwarzenegger approved the main revised budget bill and the budget trailer bills – including ABx4 4, on July 28, 2009.

Cuts Included Elimination of All Services Under IHSS For Thousands of People

Those cuts – which the lawsuit seeks to stop - included elimination of all services under IHSS for any person with a “functional index score” under 2. That score is a weighted average of what is called the “functional index ranking” for each task authorized under IHSS that a person is eligible to receive. Those assessments are done by county social workers, though up until recently, virtually no person receiving IHSS or even advocates and policymakers knew what a “functional index score” or “functional index ranking” was.

In addition the revised 2009-2010 State Budget passed last July also included a further reduction, that would eliminate domestic and related services for a person under IHSS who had a “functional index ranking” (different from the score, which is an average of the rankings) that was under 4 in that particular domestic or related service.

Some persons – including children under “protective supervision” – were exempted from the reductions, though the budget trailer bill gives the director of the Department of Social Services to waive (eliminate) any or all of those exemptions if it threatens federal matching funds. It is not known officially at this point if any of those exemptions have been waived or eliminated.

The original effective date for these cuts in the revised 2009-2010 State Budget was September 1, which was pushed back due to implementation problems at the state and local levels – to November 1st. The notice of action, that will also contain the functional index scores and rankings of the person impacted by the cuts, is scheduled to be sent out October 19.

IHSS Cuts Will Impact Over 136,000 People

The California Department of Social Services, which oversees statewide the IHSS program that is administered locally by the counties, reported earlier this month that nearly 40,000 people would lose eligibility for all services under IHSS, while over 90,000 additional persons would lose some or all of their domestic and related services under the program due to cuts in the 2009-2010 State Budget passed by the Legislature and approved by the Governor in late July in order to close a shortfall of over \$23 billion.

The cuts to IHSS have an impact on other health and human service programs where budget reductions were also made. It is not certain how the cuts to IHSS will impact a specific cut to regional center funded community-based services that required persons with developmental disabilities in supported living service programs to obtain services under IHSS, with a corresponding reduction in their supported living services.

Many other health and human service programs – including developmental services, Medi-Cal, SSI/SSP (Supplemental Security Income/State Supplemental Payment Program),

senior programs, mental health services, community college disabled student programs and more were hit with major permanent budget cuts.

Statewide, the In-Home Supportive Services program, currently serves close to 450,000 children and adults with disabilities, mental health needs, the blind and low income seniors. The Department of Health Care Services also plays a major role in overseeing the program for the state, because nearly all of the IHSS program receives matching federal Medicaid (Medi-Cal) funding, along with state and county dollars. The IHSS program is administered locally by the counties.

Lawsuit Is One of Several Fighting Budget Cuts

The IHSS lawsuit seeking to stop the cuts to eligibility and services, is one of several filed by various advocacy groups over the past year and half to stop budget reductions (copies of those lawsuits can be viewed or downloaded from the CDCAN website at www.cdcan.us)

- **IHSS Worker Wages:** A previous federal lawsuit filed in June by SEIU on behalf of In-Home Supportive Services workers, was successful in blocking a reduction in what the State helps to pay for IHSS worker wages (called “state participation”). While the State is appealing that ruling, that federal district court’s order remains in effect.
- **IHSS “Share of Cost Buy-Out” Program:** Still another separate lawsuit may be filed to reverse the budget reduction that eliminated what is known as the IHSS “Share of Cost Buy-out Program”. That program was reduced by the 2009-2010 State Budget passed in February 2009, that froze the numbers of people in that “buy-out” program to who was in it as of July 1, 2009, The revised 2009-2010 State Budget passed in late July took the reduction even further by eliminating the “buy-out” program entirely effective October 1, 2009.
- **Medi-Cal Adult Day Health Centers:** A federal lawsuit filed by Disability Rights California (formerly Protection and Advocacy Inc) and other groups successfully blocked the budget reduction to adult day health centers, in a ruling issued in September. That ruling was significant because it was the first time that a case was won based in large part because the suit alleged the state violated the federal Americans With Disabilities Act (ADA)
- **Line Item Vetoes –** two different – but similar lawsuits filed by disability and other advocacy groups, and another on behalf of Senate President Pro Tem Darrell Steinberg (Democrat – Sacramento) that seeks to overturn the line item vetoes that resulted in additional spending cuts that the Governor made after the revised 2009-2010 State Budget was passed in late July. No hearing or final action on either lawsuit has been reported.

REMINDER – CDCAN TOWNHALL TELEMEEETING ON IHSS CUTS

As reported earlier, with widespread fear and growing near panic reported across the State among thousands of people with disabilities, the blind, mental health needs, seniors, their families and workers on the impact of major cuts to In-Home Supportive Services (IHSS) set to take effect November 1, a CDCAN Townhall Telemeeeting has been scheduled for

October 21, Wednesday from 1:00 to 2:45 PM featuring advocates who will answer questions and provide latest updates and information on the reductions and what people can do.

CDCAN TOWNHALL TELEMEEETING

“BRINGING POLICYMAKING TO WHERE PEOPLE LIVE”

OCTOBER 21, 2009 – WEDNESDAY 1:00 – 2:45 PM

TOLL FREE LINE: 877-551-8082 (no passcode)

FEATURING ADVOCATES INCLUDING DEBORAH DOCTOR OF DISABILITY RIGHTS CALIFORNIA (FORMERLY PROTECTION & ADVOCACY INC), KAREN KEESLAR (DISABILITY RIGHTS ADVOCATE & ADVOCATE FOR UNITED DOMESTIC WORKERS) AND OTHERS (TO BE ANNOUNCED).

- ADVOCATES WILL ANSWER QUESTIONS ON IHSS BUDGET CUTS
- ALSO PROVIDE LATEST UPDATES, INCLUDING LATEST INFORMATION ON PENDING LAWSUITS (TWO FEDERAL LAWSUITS WILL BE HEARD NEXT WEEK: A FEDERAL LAWSUIT SEEKING TO STOP THE IHSS CUTS FROM GOING THROUGH IS SET FOR AN EMERGENCY HEARING IN FEDERAL DISTRICT COURT ON OCTOBER 19th.
- WILL ALSO PROVIDE ANY UPDATES ON A DIFFERENT LAWSUIT SEEKING TO RESTORE THE 9 ELIMINATED MEDI-CAL OPTIONAL BENEFITS IS SCHEDULED FOR HEARING BEFORE THE US 9th CIRCUIT COURT OF APPEALS ON OCTOBER 22, ALSO IN SAN FRANCISCO.

Note: For those who cannot participate in the CDCAN Townhall telemeeting, you can forward your questions or concerns to Marty Omoto at martyomoto@rcip.com who will ask your questions for you during the townhall.

All CDCAN Townhall Telemeetings are recorded and posted on the CDCAN website at www.cdcan.us

URGENT!!!!

PLEASE HELP CDCAN CONTINUE ITS WORK!!!

We need your help. CDCAN Townhall Telemeetings, reports and alerts and other activities cannot continue without your help.

To continue the CDCAN website, the CDCAN News Reports. sent out and read by over 50,000 people and organizations, policy makers and media across California and to continue the CDCAN Townhall Telemeetings which since December 2003 have connected thousands of people with disabilities, seniors, mental health needs, people with MS and other disorders, people with traumatic brain and other injuries to public policy makers, legislators, and issues.

Please send your contribution/donation (make payable to "CDCAN" or "California Disability Community Action Network):

CDCAN

1225 8th Street Suite 480 - Sacramento, CA 95814

paypal on the CDCAN site is not yet working – will be soon.

MANY, MANY THANKS TO **TOWARD MAXIMUM INDEPENDENCE, INC (TMI), FRIENDS OF CHILDREN WITH SPECIAL NEEDS, UCP OF LOS ANGELES, VENTURA & SANTA BARBARA COUNTIES**, Southside Arts Center, San Francisco Bay Area Autism Society of America, Hope Services in San Jose, FEAT of Sacramento (Families for Early Autism Treatment), RESCoalition, Sacramento Gray Panthers, Easter Seals of Southern California, Tri-Counties Regional Center, Westside Regional Center, Regional Center of the East Bay, UCP of Orange County, Alta California Regional Center, Life Steps, Parents Helping Parents, Work Training, Foothill Autism Alliance, Arc Contra Costa, Pause4Kids, Manteca CAPS, Training Toward Self Reliance, UCP, California NAELA, Californians for Disability Rights, Inc (CDR) including CDR chapters, CHANCE Inc, , Strategies To Empower People (STEP), Harbor Regional Center, Asian American parents groups, Resources for Independent Living and many other Independent Living Centers, several regional centers, People First chapters, IHSS workers, other self advocacy and family support groups, developmental center families, adoption assistance program families and children, and others across California