

CDCAN DISABILITY RIGHTS REPORT CALIFORNIA DISABILITY COMMUNITY ACTION NETWORK



#131-2010 – JUNE 30, 2010 – WEDNESDAY

Advocacy Without Borders: One Community – Accountability With Action - California Disability Community Action Network Disability Rights News goes out to over 55,000 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.

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California Budget Crisis:

FRESNO COUNTY IHSS WORKER WAGE CUT STOPPED BY FEDERAL JUDGE - ADVOCATES CLAIM VICTORY FOR DISABILITY RIGHTS & COMPLIANCE WITH “OLMSTEAD DECISION”

Other IHSS News: AB 1763 Passes Out of Senate Public Safety Committee That Would Not Require IHSS Workers To Repeat Background Checks When They Work In More Than One County

SACRAMENTO, CALIF (CDCAN) [Updated 06/30/2010 07:45 AM (Pacific Time)] – As reported late yesterday afternoon, federal district court judge Claudia Wilken blocked Fresno County from implementing an hourly wage cut to their In-Home Supportive Services (IHSS) workers from \$10.25 to \$8 per hour, that was scheduled to go into effect in July, granting a temporary restraining order that was requested by lawyers representing SEIU on behalf of IHSS workers and persons receiving services under the IHSS program.

The federal district court judge ordered Schwarzenegger Administration officials to take all steps immediately to rescind any approval given to Fresno County to reduce those wages and to officially notify the court of compliance.

Last week, Fresno County mailed notices to the more than 12,000 IHSS workers in that county informing them that their wages and benefits would be cut in July.

Temporary Restraining Order Remains In Effect Until Court Issues Ruling On A More Permanent Ruling (Preliminary Injunction)

The temporary order remains in effect until the federal court issues an order whether a preliminary injunction – which is a more permanent order that would stop the wage reduction in Fresno County – should be issued. [A copy of the order – a 3 page pdf file is attached to this CDCAN Report and is also copied in below in this report and can be viewed and downloaded – along with the original 30 page complaint – from the CDCAN website at www.cdcan.us].

The temporary restraining order will remain in effect indefinitely because the judge did not set a hearing date and said in her order that the defendants in the lawsuit (the State

and local officials named) can submit their legal documents opposing a preliminary injunction “whenever they wish”.

Action by Federal Court Linked To Olmstead Decision Compliance

The action by the federal court represents at least a temporary victory for thousands of IHSS workers and people with disabilities, mental health needs, the blind and seniors in Fresno County who receive services under the IHSS program.

The legal documents filed by the lawyers on behalf of the IHSS workers, claimed the issue had major impact on the state’s compliance with the landmark 1999 US Supreme Court *Olmstead Decision* under the federal Americans with Disabilities Act (ADA).

That 1999 decision, filed on behalf of two Georgia women with developmental and other disabilities – Elaine Wilson and Lois Curtis, among other things, required the states to take steps to avoid the unnecessary or unjustified institutionalization of people with disabilities, mental health needs and seniors.

Dave Regan, Trustee of SEIU-United Healthcare Workers, the union that represents the Fresno IHSS workers that requested the restraining order and filed the original June 2009 lawsuit, praised the court’s ruling saying that “...you can't balance the budget by hurting the state's most vulnerable citizens. We are pleased that the wage cuts [in Fresno County] have been stopped and we're confident that the court will continue to recognize that this program is essential for a healthy and fair California.”

Natasha Garcia, a Fresno County IHSS worker was relieved about the court order yesterday, saying that “My family is barely making ends meet as it is on my wages. If the County cuts my wages I won’t be able to afford to take care of my client anymore, and he would end up in a nursing home—miserable, and costing the state more. These cuts don’t make any sense.”

AB 1763 Passes Out of Senate Public Safety Committee

Meanwhile in other news impacting IHSS, a bill, AB 1763, that would make changes to existing state law so that an In-Home Supportive Services (IHSS) worker would not be required to repeat (and pay for) a background check if he or she is working in more than one county, passed out of Senate Public Safety Committee yesterday (June 29) and heads to Senate Appropriations Committee.

AB 1763 is an “urgency” bill, meaning it would take effect immediately if passed by the Legislature and signed by the Governor. “Urgency” bills require 2/3rds approval in both the Assembly (54 votes out of the 80 members) and the State Senate (27 votes out of the 40 members).

The bill, authored by Assemblymember Ted Lieu (Democrat – Torrance, 53rd Assembly District) is sponsored by the United Domestic Providers of America/AFSCME (American Federation of State, County and Municipal Employees, AFL-CIO). The bill passed out of the Assembly on June 3rd by a vote of 54 to 22.

What the Federal Court Order Does

The federal district judge's order does the following:

- Temporarily stops – until the court decides on whether a preliminary injunction should be issued – state and local officials from implementing Fresno County's reduction of IHSS worker hourly wages from \$10.25 to \$8.00 and a reduction in benefits from \$0.85 to \$0.60 and orders all defendants (state officials named) to “take all actions necessary to ensure that no [Fresno County IHSS] providers' wages are reduced to the \$8.00 per hour wage rate and \$0.60 per hour benefit contribution.”
- Orders John Wagner, director of the Department of Social Services – the state agency that oversees statewide the IHSS program, and David Maxwell-Jolly, director of the Department of Health Care Services, the state agency that oversees the Medi-Cal program (IHSS is almost completely matched with Medi-Cal funding) to rescind their approval of Fresno County's IHSS worker wage reduction request and that this be done in writing and sent to Fresno County within one business day from the date of this order, which is dated June 29. Judge ordered that a copy of that rescission must be also submitted to the lawyers representing those workers and to the Court, along with a declaration – under penalty of perjury – verifying that it was sent to Fresno County as ordered.
- Judge ordered that state local officials named in this order shall take “all steps necessary” to reverse actions that were taken to implement the Fresno County IHSS worker wage reduction.
- Judge orders that state officials update the state's computer payroll system with five business days of this order (dated June 29) so that it reflects the Fresno County IHSS worker wage of \$10.25 per hour
- Orders that within seven business days of this order (dated June 29) that state officials named in this lawsuit shall “serve and file a declaration” to the Court verifying that they have complied with this court order.
- Accepts the documents submitted by the attorneys representing the IHSS workers, in support of the request for a temporary restraining order as their motion (request) a preliminary injunction (a more permanent order that would block the Fresno County IHSS worker wage cut).
- Defendants – the state and local officials named in the lawsuit – may file “their opposition to the motion for a preliminary injunction whenever they wish” but that”...State and Fresno Defendants shall coordinate their oppositions and file them on the same date.”
- The Court will decide whether to issue a preliminary injunction on the documents filed by both parties in the case unless a hearing date is set by the Court and that a written order will follow that.

Court Order Yesterday Linked to June 2009 Statewide Lawsuit

The temporary restraining order was linked to a previous statewide lawsuit filed in June 2009, “Lydia Dominguez, et al v. Arnold Schwarzenegger, et al.” (case number C 09-02306 CW) before the same judge that stopped the State from implementing a reduction in the State's participation (funding) toward IHSS worker wages and benefits. That reduction was proposed by the Governor in January 2009 and approved by the

Legislature in February 2009 as part of the 2009-2010 State Budget passed four months early. The State is appealing that ruling to the US Supreme Court, after the 9th US Circuit Court of Appeals upheld the lower court's June 2009 ruling. The appeal is pending.

The June 2009 lawsuit – that yesterday's temporary restraining order was linked to - was filed on behalf of IHSS workers and persons receiving services under the IHSS program by SEIU (Service Employees International Union) United Healthcare Workers West, SEIU United Long-Term Care Workers, SEIU Local 521 and the SEIU California State Council.

The Schwarzenegger Administration was blocked last fall in a separate lawsuit dealing with a different major cut to the IHSS program through use of "functional index scores", filed in October 2009 by several disability rights advocacy groups and unions, including SEIU. The same federal district court judge, Claudia Wilken, issued an order then blocking that reduction from taking place. The Schwarzenegger Administration appealed that ruling to the US 9th Circuit Court of Appeals, which recently heard the case earlier this month and has not yet issued a decision.

Fresno County Says It Took Action to Lower Wages Due to County Budget Deficit

- The action to reduce wages in Fresno County was taken by the Board of Supervisors is not directly tied to the actual rollback in State participation toward IHSS workers wages that was passed by the Legislature and signed by the Governor in February 2009, which a federal court stopped from taking effect last July. However the temporary restraining order the federal court granted Tuesday (June 29th) is based on the reasoning from that lawsuit. Attempts then in 2009 by Fresno County to lower their IHSS worker wages based on the state's rollback of funding, was part of the June 2009 lawsuit, but at the federal judge then, declined to make a specific ruling on the Fresno issue. That June 2009 ruling is being appealed by the Schwarzenegger Administration to the US Supreme Court which has not yet decided whether to take up the case or not.
- The Fresno County Board of Supervisors say they took the action to cut IHSS worker wages because of an enormous county budget shortfall, claiming that the reduction would save the county about \$5 million. Advocates however contended that the reduction of IHSS worker wages there would mean loss of state and federal matching funds costing Fresno County \$33 million.
- The SEIU, the union representing IHSS workers in Fresno County, and the Fresno County Board of Supervisors have attempting to come up with a new contract for over a year, when the Board of Supervisors decided to take action to lower the wages for county IHSS workers to the State's minimum wage.

COPY OF ORDER ISSUED BY FEDERAL DISTRICT COURT JUDGE WILKEN JUNE 29, 2010:

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

LYDIA DOMINGUEZ, et al.,
Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et al.,
Defendants.

No. C 09-02306 CW

**ORDER GRANTING PLAINTIFFS' APPLICATION FOR A TEMPORARY
RESTRAINING ORDER
AND ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT
ISSUE**

IT IS HEREBY ORDERED that, pending an order by the Court as to whether a preliminary injunction should issue, Defendants ARNOLD SCHWARZENEGGER, Governor of the State of California; JOHN A. WAGNER, Director of the California Department of Social Services; DAVID MAXWELL-JOLLY, Director of the California Department of Health Care Services; JOHN CHIANG, California State Controller; FRESNO COUNTY; and FRESNO COUNTY IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY; and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, are HEREBY RESTRAINED AND PROHIBITED from implementing the Fresno County rate change reducing hourly wages of IHSS providers from \$10.25 to \$8.00 and benefits from \$0.85 to \$0.60, and Defendants WAGNER and MAXWELL-JOLLY SHALL HEREBY RESCIND their approval of such rate change request. This rescission must be in writing and be sent to Fresno County within one business day from the date of this order. At the same time, a copy shall be submitted to Plaintiffs' counsel and to the Court, along with a declaration under penalty of perjury verifying that it was sent.

IT IS FURTHER ORDERED that all Defendants take all actions necessary to ensure that no providers' wages are reduced to the \$8.00 per hour wage rate and \$0.60 per hour benefit contribution. To the extent that Defendants have already taken action in preparation for implementing the new rate, Defendants shall take all steps necessary to reverse such actions. State Defendants are ordered to complete updating the Case Management, Information and Payrolling System ("CMIPS") within five business days from the date of this order so that it reflects the \$10.25 per hour wage rate for IHSS providers in Fresno County. Within seven business days from the date of this order, State Defendants shall serve and file a declaration verifying that they have complied with this order.

The papers submitted by Plaintiffs in support of their temporary restraining order request will be deemed to be their motion for a preliminary injunction. Because the temporary restraining order will remain in effect until the Court issues an order as to whether a preliminary injunction should issue, Defendants may file their opposition to the motion for a preliminary injunction whenever they wish. However, State and Fresno Defendants shall coordinate their oppositions and file them on the same date. Plaintiffs shall reply

*within one week of the filing of Defendants' oppositions. The motion will be decided on the papers unless a hearing date is set by the Court.
A reasoned written order will follow.*

IT IS SO ORDERED.

Dated: 06/29/10

CLAUDIA WILKEN

United States District Judge

VERY URGENT!!!!

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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 the Pacific Homecare Services, Easter Seals, California Association of Adult Day Health Centers, Valley Mountain Regional Center, Toward Maximum Independence, Inc (TMI), Friends of Children with Special Needs, UCP of Los Angeles, Ventura and 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.