



California's protection and advocacy system

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SETTLEMENT OF IHSS LAWSUIT WILL PREVENT DEVASTATING CUTS TO HOME CARE SERVICES

*Seniors and People with Disabilities Will Continue
to Receive IHSS without interruption;
Settlement Creates a Pathway for Full Restoration of all IHSS Cuts*

Lawyers representing IHSS consumers, unions and the State of California have reached a settlement that will prevent the implementation of devastating cuts to In-Home Supportive Services (IHSS). The settlement resolves a federal lawsuit, David Oster et al. v. Lightbourne (formerly V.L. v. Wagner). The settlement also resolves a second lawsuit challenging wage reductions for IHSS providers.

In the Oster lawsuit, IHSS recipients and their caregivers had won temporary court orders over the past 4 years that stopped the State from implementing cuts to IHSS. These cuts would have meant a significant reduction in hours, or complete disqualification from IHSS, for hundreds of thousands of current IHSS recipients. The State had appealed the earlier favorable court decisions, which meant that a higher court could allow the deep cuts in IHSS to go into effect. Finally, the settlement provides a pathway to stabilize the IHSS program with new revenue and the possibility of restoring all cuts in IHSS hours (including the 3.6% cut that went into effect in 2009) over the next two years.

In the settlement, the State has agreed to repeal and eliminate two major cuts to IHSS: (1) the 20% across-the-board reduction in IHSS hours from 2011, and (2) the termination or reduction in IHSS for many recipients based on their functional index score from 2009.

Instead, the settlement:

- Replaces the permanent 20% cut in IHSS hours with a temporary 8% cut in July 2013. (This is an additional 4.4% on top of the 3.6% current cut.)
- Reduces the cut to 7% (3.4% on top of the 3.6% current cut) in July 2014.
- Restores the hours lost from the 7% cut as early as the spring of 2015 if the State obtains federal approval of a provider fee which could bring significant new federal revenue to California.
- Commits any savings from retroactive federal approval of the new provider fee to fund a program to benefit IHSS recipients, such as the SSI Special Circumstances program, which was used to pay for refrigerators and stoves, rent to avoid eviction and other emergency needs but has not been funded in the budget for many years.

David Oster, lead plaintiff in the lawsuit said: "The uncertainty of the IHSS cuts was always in the back of my mind. If the cuts had gone into effect, I was worried that I would lose all my hours and not be able to stay in my home. The temporary cuts will be hard, but I know I will be able to remain at home and that is a relief."

The settlement also clarifies that IHSS consumers have a right to request a reassessment based on a change in circumstances, even if this change is not medical. The State has agreed to clarify that recipients will not be required to provide medical certification of a change in their medical condition to obtain a reassessment. This will help ensure that consumers who need additional hours will be able to obtain them.

Melinda Bird, Co-Litigation Director for DRC and lead counsel for Mr. Oster and other IHSS recipients in the case, said: "Although we won two court orders stopping the cuts temporarily, we faced a risk that these could be reversed in the next year and both the 20% cut and the functional index cuts could go into effect at the same time. That would have been unthinkable. The settlement was the best compromise to achieve long-term stability of the IHSS program and remove the uncertainty for our Class Members."

The lawyers representing IHSS consumers in the Oster case are Melinda Bird, Fred Nisen, Sujatha Branch, Maria Iriarte, Disability Rights California; Anna Rich, National Senior Citizens Law Center; Paula Pearlman, Disability Rights Legal Center; Jane Perkins, National Health Law Program; and the law firm of Charles Wolfinger. The 6 union plaintiffs in the case were represented by Altshuler Berzon LLP. The federal court in the Oster case must still approve the settlement.

The websites for each of the public interest law programs representing consumers will have up-to-date information about the settlement, copies of all court documents, and details about how to request additional information and submit objections to the settlement. See:

- www.disabilityrightsca.org
- www.disabilityrightslegalcenter.org
- www.healthlaw.org
- www.nsclc.org