

CCWRO Weekly New Welfare News

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Alamed County Court Issues Temporary Restraining Order In GA Case.

On June 11, 2008, Alameda Superior Court Judge Lindell Williams, issued a TRO stopping Alameda County from terminating or time-limiting General Assistance based on whether individuals are deemed "employable", including the sending of notices thereof.

Judith Gold from the law firm of Heller Ehrman, LLP, Steve Ronfeldt of Public Interest Law Project and Steve Weiss Bay Area Legal Services file the lawsuit, Watkins v. County of Alameda.

In 1996, at the urging of counties, the Legislature changed the statute and authorized counties to limit General Assistance to "employable individuals" who were previously defined as "able-bodied and mentally competent" in Welfare and Institutions Code (Welf. & Inst.) §17001.5. In the landmark case of Mooney v. Picket, 4 Cal.3d at 679 the California Supreme Court held:

The term "employability" ...is used by the county to denote merely that a man is physically and mentally fit for work; it does not signify that a job awaits him. Even in times of full employment a person may be physically and mentally fit, but lack the necessary skills to obtain a job; in periods, such as the present, of substantial unemployment, even the skilled and experienced worker may be unable to obtain work."

Mooney, coupled with Welf. & Inst. Code § 10000 which provides that the Welf. & Inst. I Code shall be construed "fairly and equitably" leads to the proposition that the current unlawful practice in many counties of assuming that a person who is not disabled or mentally unfit is employable is a violation of existing law and ripe for judicial challenge.

IHSS-Plus Waiver to Expire

- The IHSS Plus Waiver, which allowed California to use a large portion of federal funds to operate the IHSS program, will expire July 31, 2009. At this time, the federal government has informed California that the waiver will not be extended. The state has no plan to shut down the IHSS plus waiver program at this time.

Advocates Meeting with DSS-Counties Deny Forcing Clients to Sign Release of Information Forms

- Advocates meet with the IHSS Bureau of CDSS on a quarterly basis to discuss statewide issues. In previous meetings, advocates discussed the failure of IHSS workers to process requests for protective supervision, especially during home visits. Workers do not enter the request on the work sheet as part of the process to determine the IHSS hours. When the worker issues a notice of action for the authorized hours, frequently there is no entry that protective supervision was requested and denied. At the hearing, the IHSS recipient must argue that protective supervision was, in fact, requested. If the ALJ believes the recipient, the case is remanded for an evaluation for protective supervision.

In an effort to save time and money for the cost of the administrative hearings, advocates suggested either an All County Letter (ACL) or an All County Information Notice (ACIN) reminding of their ministerial duty to assess for protective supervision. In response, IHSS said that they did not know

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that this was a problem and wanted advocates to present specific cases to IHSS. The advocates did supply several cases.

During the April 9, 2008 CWDA meeting, the Department of Social Services Adult Services division informed counties of the advocate meetings and shared some of the issues, such as: informing counties that persons with moderate dementia should be assessed for protective supervision; assessing clients with diabetes; and, bowel and bladder problems who may need paramedical services. DSS also told the Counties that advocates wanted IHSS to issue ACLs or ACINs. Counties informed DSS that they were fully aware of the regulations and did not need ACLs or ACINs. The Counties characterized advocates concerns and identified cases as "case specific" and suggested that advocates bring their concerns to them.

One major issue is that counties require IHSS applicants and recipients to sign releases of information so counties can gather information to grant or deny IHSS services. MPP 19-0071 provides: "if any applicant/recipient does not wish the county to contact a source in order to determine eligibility, the applicant/recipi-

ent shall have the opportunity to obtain the desired information or verification him or herself. Therefore, an applicant/recipient is not required to sign the release of information form and can provide any all information directly to the county."

When DSS discussed this concern with the Counties, they told DSS that applicants and recipients want the Counties to obtain the verification. Why else would applicants and recipients sign the authorization for release of information?

Advocate response to DSS was that it is not voluntary. Counties as a practice coerce applicants and recipients into signing the release of information and even tell clients that their IHSS benefits will be denied if they refuse to sign it. Second, applicants and recipients are not told of the right to obtain the information themselves.

Advocates working on IHSS issues are encouraged to participate either in person or via telephone. Our next IHSS meeting is scheduled for August 28, 2008.