

CCWRO Welfare News

Coalition of California Welfare Rights Organizations, Inc.
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<http://www.ccwro.org>

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In Brief

● The California Welfare Directors Association will have a new President in 2012. Bruce Wagstaff, who started at the State Department of Benefit Payments, which was later named the State Department of Social Services, as a food stamp analyst was in charge of implementing the GAIN workfare program. He started on the 18th floor of 744 "P" Street with a staff of three. He later went on to become Deputy Director for Welfare Programs and then Deputy Director for Child Welfare Services. He then became the Director of the Sacramento County Welfare Department, a position that paid much better than the State. He is currently the Administrator of the Sacramento Countywide Services Agency. He holds an MPA from California State University, Sacramento, and a BA Degree from University of California, Davis. The Vice President at Large will be Charlene Reid, the County Welfare Director of Tehama County.

● The Obama Administration conducted a "secret conference call" with the American Public Human Services Association with states facing federal work participation rate penalties. Health and Human Services Administration for Children and Families is beginning to respond to states' good cause requests for 2007. To date, Oregon and Maine have entered into corrective action plans for 2007. California met the federal work participation rates for 2007.

● In a letter from the American Public Human Services Association (APHSA) to the Food and Nutrition Service (FNS) dated October 17, 2011, FNS was urged to adopt the SSI Martinez settlement to clarify of Eligibility of Fleeing Felons in lieu of coming up with a whole new method of determining who is a fleeing felon. Welfare advocates of California adopted the same position in their letter to FNS.

● Frank Mecca, Executive Director of CWDA, was notified on September 21, 2011 that he has been selected to be a member of the National Association of Counties (NACo) Human Services and Education Steering Committee. As a member of the steering committee Frank will have the responsibility to read and understand the established policy positions in the steering committee's section of the American County Platform. Moreover, Frank will have to contact Members of Congress in Washington and in their district and state. Congratulations Frank.

Litigation Update

Hartley v. Lightbourne, Alameda Superior Court - Collecting Overpayments from Former Minors Challenged

On November 23, 2011, The Public Interest Law Center based in Oakland in concert with Western Center on Law & Poverty filed a Petition for Writ of Mandate to stop counties recouping overpayments from members of the family who were minors when the overpayment occurred. In one case the county was trying to recoup an overpayment against a family member who was not even born when the overpayment occurred.

The attorney filing this case are Patti Prunhuber and Judy Gold of PILC, Antionette Dozier and Dick Rothchild of WCLP.

See copy of pleadings at:

http://www.ccwro.org/index.php?option=com_docman&Itemid=104

David Ouster v. Will Lightbourne, Director of DSS and Toby Douglas, Director of DHCS - IHSS 20% Reductions Stopped Cold

On December 1, 2011, federal judge Cladia Wilken issued a temporary restraining order directing DSS and DHCS not to take any actions to implement the reductions in IHSS services mandated by SB 73. The judge also ordered the department not to make any changes in the IHSS CMISP system to implement the 20% hour reductions. The court ordered DSS and DHCS to stop any actions already taken to implement the 20% reductions immediately.

The lead lawyer was Melinda Bird of California Disability Rights.

Great work and a real Christmas gift for our impoverished disabled and aged recipients receiving IHSS services. Copy of Order is enclosed.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

DAVID OSTER, *et al.*,

) Case No.: CV 09-04668 CW

Plaintiffs

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

v.

WILL LIGHTBOURNE, Director of the
California Department of Social Services;
TOBY DOUGLAS, Director of the California
Department of Health Care Services;
CALIFORNIA DEPARTMENT OF HEALTH
CARE SERVICES; and CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES,

Defendants

1 Plaintiffs' application for a temporary restraining order and order to show cause why a
2 preliminary injunction should not issue came before this Court for consideration on December 1,
3 2011. Upon consideration, and for good cause shown, IT IS HEREBY ORDERED that the TRO
4 application is GRANTED.

5 "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
6 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
7 balance of equities tips in his favor, and that an injunction is in the public interest." Winter v.
8 Natural Res. Def. Council, Inc., 129 S. Ct. 365, 374 (2008). Alternatively, "a preliminary
9 injunction could issue where the likelihood of success is such that serious questions going to the
10 merits were raised and the balance of hardships tips sharply in plaintiff's favor," so long as the
11 plaintiff demonstrates irreparable harm and shows that the injunction is in the public interest.
12 Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation and
13 internal quotation and editing marks omitted).

14 A court employs a sliding scale when considering a plaintiff's showing as to the likelihood
15 of success on the merits and the likelihood of irreparable harm. Id. "Under this approach, the
16 elements of the preliminary injunction test are balanced, so that a stronger showing of one element
17 may offset a weaker showing of another." Id.

18 In support of this Order, the Court makes the following findings. Defendants' proposed
19 notices regarding the reduction in most In Home Supportive Services ("IHSS") recipients' service
20 hours and regarding Care Supplements raise serious questions of violations of the federal Due
21 Process Clause. In addition, SB 73 also raises serious questions of violations of Title XIX of the
22 Social Security Act, 42 U.S.C. § 1396a ("the Medicaid Act"), the Americans with Disabilities Act
23 of 1990, 42 U.S.C. § 12312 ("ADA") or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.
24 § 794 ("Section 504"), by placing IHSS recipients at imminent risk of unnecessary and unwanted
25 out-of-home placement, including in institutions such as nursing homes, board and care facilities,
26 and psychiatric hospitals; by discriminating on the basis of type of disability; and by using
27 methods of administration that will exclude individuals with disabilities from IHSS. The potential
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1 for IHSS recipients to apply for relief from the reductions mandated by SB 73 does not cure these
2 defects.

3 The planned IHSS reductions, unless enjoined, will cause immediate and irreparable harm
4 by placing members of the plaintiff class at imminent and serious risk of harm to their health and
5 safety, as well as of unnecessary and unwanted out-of-home placement including
6 institutionalization.

7 Plaintiffs have no adequate remedy at law.

8 Thus, serious questions going to the merits are raised and the balance of hardships tips
9 sharply in Plaintiffs' favor. The balance of equities strongly favors Plaintiffs because Defendants'
10 only interest is fiscal, whereas the plaintiff class faces life or death consequences. Plaintiffs have
11 demonstrated irreparable harm and that the injunction is in the public interest.

12 The Court finds that no bond is necessary. *Temple Univ. v. White*, 941 F.2d 201, 220 (3d
13 Cir. 1991); *Sherr v. Volpe*, 466 F.2d 1027, 1035 (7th Cir. 1972); *see also* Preliminary Injunction
14 Order (Dkt. 198) at 29 (waiving bond requirement in this action because Plaintiffs “are indigent
15 and to ensure their ability to access the courts on behalf of themselves and other class members”).

16 Accordingly, IT IS HEREBY ORDERED that, pending an order by this Court as to
17 whether a preliminary injunction should issue, Defendants, their officers, agents, servants,
18 employees, and attorneys, and all persons acting by, through, under, or in concert with Defendants
19 (referred to collectively hereinafter as “Defendants”) are enjoined from taking any actions to
20 implement the reduction in IHSS recipients’ service hours mandated by SB 73.

21 IT IS FURTHER ORDERED that Defendants take all actions necessary to ensure that no
22 IHSS consumers’ hours are reduced because of SB 73 during the pendency of this injunction.

23 IT IS FURTHER ORDERED that Defendants refrain from making any changes to the
24 Case Management, Information and Payrolling System (“CMIPS”) to implement the reductions
25 contemplated by SB 73.

26 IT IS FURTHER ORDERED that, to the extent Defendants have already taken any actions
27 to implement those reductions, Defendants immediately undo any such actions. This includes, but
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1 is not limited to, immediately undoing any changes to the Case Management, Information and
2 Payrolling System (“CMIPS”) made to implement the reductions contemplated by SB 73.

3 IT IS FURTHER ORDERED that Defendants immediately rescind All-County Letter
4 (ACL) No. 11-81 and inform all counties that it has been rescinded and that the reductions in
5 IHSS recipients’ service hours mandated by SB 73 have been enjoined.

6 IT IS FURTHER ORDERED that Defendants immediately halt issuance of any notices
7 (including but not limited to Notices of Action), letters, time sheets, e-mails, web postings, or any
8 other written materials to IHSS recipients or providers in any way suggesting that their authorized
9 hours have been or will be reduced as a result of SB 73, or as a result of any actions undertaken to
10 implement SB 73.

11 IT IS FURTHER ORDERED that, if Defendants have already issued any notices
12 (including but not limited to Notices of Action), letters, time sheets, e-mails, web postings, or any
13 other written materials to IHSS recipients or providers in any way suggesting that their authorized
14 hours have been or will be reduced as a result of SB 73, or as a result of any actions undertaken to
15 implement SB 73, Defendants immediately issue notices to those IHSS recipients or providers,
16 informing them that their authorized hours will not be reduced as a result of SB 73, or as a result
17 of any actions undertaken to implement SB 73, due to this injunction. Any such notice shall be
18 accessible to recipients and/or providers whose primary language is not English, and/or who have
19 vision impairments.

20 IT IS FURTHER ORDERED that, within five business days from the date of this order,
21 Defendants shall serve and file a declaration verifying that they have complied with this order and
22 detailing what steps, if any, they have taken to do so.

23 IT IS FURTHER ORDERED that Plaintiffs’ papers filed in support of their application for
24 a temporary restraining order shall be treated as Plaintiffs’ moving papers for a preliminary
25 injunction. Defendants may file and serve their opposition to Plaintiffs’ request for a preliminary
26 injunction on or before December 7, 2011. In the event that Defendants file their opposition by
27 that date, Plaintiffs may file a reply brief in support of their motion for preliminary injunction no
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1 later than December 9, 2011, and a hearing on Plaintiffs' request will be held on December 15,
2 2011 at 2:00 pm.

3 Alternatively, Defendants may file and serve their opposition to Plaintiffs' request for a
4 preliminary injunction at their convenience. Plaintiffs shall file a reply brief in support of their
5 motion no later than two full court days thereafter. A hearing on Plaintiffs' request for a
6 preliminary injunction will be scheduled for the first or second Thursday after Plaintiffs' reply is
7 filed, at 2:00 pm. The temporary restraining order shall remain in effect until the day the hearing
8 is held.

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10 IT IS SO ORDERED.

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13 Dated: December 1, 2011



Honorable Claudia A. Wilken
United States District Court Judge