

Alameda Superior Court Judge Frank Roesch granted a Temporary Restraining Order November 24th on the *Ellis versus Wagner* case. This is the lawsuit spearheaded by well-respected Oakland attorney Peter Sheehan. It requests a writ commanding respondents (CDSS) to rescind and set aside policy (reflected in All County Letter 09-52) that all persons convicted of a felony and specific "serious misdemeanors" at anytime are ineligible to become or remain IHSS providers. Further, any actions taken on the basis of the policy in ACL 09-52 are null and void and must for now be set aside.

The state is temporarily prohibited from using standards that go beyond those in Welfare & Institutions Code § 12305.81 (shown below). This decision is pending the hearing on the merits of the case, which is scheduled for January 29, 2010. This means the state must:

"(1) Cease using enrollment forms or other documents requiring prospective enrollees or applicants to declare that they have never been convicted of a felony crime or serious misdemeanor crime and/or that state that persons convicted of any felony are not eligible to be IHSS providers.

(2) Cease disqualifying, or finding ineligible for IHSS provider status, persons who are not otherwise disqualified, on the basis that they have been convicted of a felony at some point of their life or have been convicted of a serious misdemeanor crime at some point of their life.

Welfare & Institutions Code § 12305.81 requires IHSS providers to sign a form stating the following:

(1) A person who, in the last 10 years, has been convicted for, or incarcerated following conviction for, fraud against a government health care or supportive services program is not eligible to be enrolled as a provider or to receive payment for providing supportive services. (2) An individual who, in the last 10 years, has been convicted for, or incarcerated following conviction for, a violation of subdivision (a) of Section 273a of the Penal Code [relating to child abuse] or Section 368 of the Penal Code [relating to elder or dependent adult abuse], or similar violations in another jurisdiction, is not eligible to be enrolled as a provider or to receive payment for providing supportive services. (3) A statement declaring that the person has not, in the last 10 years, been convicted or incarcerated following conviction for a crime involving fraud against a government health care or supportive services program. (4) A statement declaring that he or she has not, in the last 10 years, been convicted for, or incarcerated following conviction for, a violation of subdivision (a) of Section 273a of the Penal Code or Section 368 of the Penal Code, or similar violations in another jurisdiction. (5) The person agrees to reimburse the state for any overpayment paid to the person as determined in accordance with Section 12305.83, and that the amount of any overpayment, individually or in the aggregate, may be deducted from any future warrant to that person for services provided to any recipient of supportive services, as authorized in Section

12305.83.

Now, this does not mean that everything in Section 12305.83 is valid--it only means that implementation of Section 12305.83 is not prohibited by this order.

Also, W&IC § 12301.6 provides:

(A) Any nonprofit consortium contracting with a county pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients pursuant to paragraph (3) of subdivision (e) for the purposes of collective bargaining over wages, hours, and other terms and conditions of employment. (B) Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services for them.

(Thanks to coalition members Karen Keeslar, Deborah Doctor and Deb Roth for their contributions on this overview)