S249593

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

KERRIE REILLY
Plaintiff & Appellant,

vs.

MARIN HOUSING AUTHORITY
Defendant & Respondent.

AFTER A PUBLISHED DECISION BY THE COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION TWO, APPEAL NO. A149918
ON APPEAL FROM JUDGMENT OF MARIN COUNTY SUPERIOR COURT
CASE NO. CIV1503896, HONORABLE PAUL HAAKENSON

RESPONDENT'S SUPPLEMENTAL BRIEF

Robert Cooper (SBN: 209641)
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP
555 S. Flower Street, Suite 2900
Los Angeles, CA 90071
T: (213) 443-5100
F: (213) 443-5101
robert.cooper@wilsonelser.com

Attorneys for Defendant & Respondent
MARIN HOUSING AUTHORITY

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INTRODUCTION

This case involves a claim by petitioner, Kerrie Reilly, that the Marin Housing Authority misapplied a U.S. Department of Housing & Urban Development (HUD) regulation in calculating the amount of her rental voucher under HUD's Section 8 voucher program. Ms. Reilly asserts that payments she received under California's In-Home Supportive Services program to compensate her for time spent caring for her disabled daughter should not be counted as "income" for purposes of calculating her rental voucher. Ms. Reilly invokes the following income exclusion in the subject regulation:

> "[a]mounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home."

(24 C.F.R. § 5.609(c)(16).) Pursuant to rule 8.520(d) of the California Rules of Court, Marin Housing Authority respectfully submits this supplemental brief addressing new case authority decided after the completion of briefing in this case.

DISCUSSION

The issue presented here was decided recently by the Minnesota Supreme Court. In *In re Ali* (Minn. 2020) 938 N.W.2d 835, the court held that "amounts allocated to a parent to care for her disabled child are not excluded as income under section 5.609(c)(16)." (*Id.* at p. 837.)

In that case, the parent of a disabled child participated in the Section 8 program, in addition to receiving funds under Minnesota's Consumer Directed Community Support program (CDCS). (*Id.*) Under the latter program, the parent "chose to allocate a portion of the budget to herself as a paid parent to provide to her son some of the necessary services." (*Id.*)

The court first held that "the CDCS amounts paid to Ali qualify as 'annual income'" because section 5.609(a) defines this term as "all amounts, monetary or not, which: (1) Go to, or on behalf of, the family head or spouse . . . ." (*Ali,* at p. 838.) The court observed that annual income includes the "full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services." (*Ibid.* [quoting § 5.609(b)].)

The court then turned to the exclusionary language at issue here: "amounts paid … 'to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.'" (*Ali*, at p. 839 [quoting § 5.609(c)(16)].)

Rejecting the same arguments raised by Ms. Reilly here, the court held that this exclusion contemplates actual, tangible costs paid to obtain services for a disabled family member. The court reasoned this provision "refers to amounts that 'offset the cost of services *and* equipment.'" (*Id.* at p. 839 [emphasis in original].) The italicized word "suggests that the same measurement is used" for both services and equipment; because "the cost of equipment is calculated in monetary terms—such as the cost to buy or lease," the court applied the same standard in evaluating whether the "cost" of services includes family-provided services where there is no monetary transaction. (*Id.*)

The court also examined another provision in the same regulation that excludes from income "[a]mounts received by the family that are specifically for, or in reimbursement of, the *cost* of medical expenses for any family member." (*Id.* [emphasis in original].) Noting this language in section 5.609(c)(4) ties cost and expense together, the court held that "cost means a monetary expense," thereby requiring an actual expense to trigger an income exclusion under section 5.609(c)(16) by analogy. (*Ali*, at p. 839.)

Furthermore, the court reasoned that "when the regulators wanted to exclude amounts paid to family members for their own services, they … did so unambiguously." (*Id.*) "For example, paragraph (c)(12) excludes from annual income '[a]doption assistance payments in excess of $480 per adopted child.'" (*Ibid.*)

This language, unlike paragraph (c)(16), does not require a "cost" in connection with services provided to family members to trigger an income exclusion. "Similarly, paragraph (c)(2) excludes '[p]ayments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone)." (*Ibid.*) This language, unlike paragraph (c)(16), does not require a "cost" in connection with the care provided to foster children/adults to trigger an income exclusion. "This contrast suggests that amounts paid to family members for their own services are not excluded from the income calculation" under paragraph (c)(16), the provision at issue in this case. (*Ibid.*)

The court concluded "there is only one reasonable interpretation of 'cost' as used in the phrase 'offset the cost of services and equipment.' Cost means an actual monetary expense that has been, or will be, incurred by the family to keep the disabled family member living at home." (*Id.* at p. 840.) In sum, *Ali* directly supports Marin Housing Authority's position.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

DATED: May 22, 2020

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

By: */s/ Robert Cooper*
Attorneys for Defendant
MARIN HOUSING AUTHORITY

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WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

By: */s/ Robert Cooper*
Robert Cooper
Attorneys for Defendant
MARIN HOUSING AUTHORITY

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Supreme Court of California, Case No. S249593
Wilson Elser File No. 21727.000001

Frank S. Moore Law Office of Frank S. Moore 235 Montgomery Street, Suite 854 San Francisco, CA 94104 Telephone: (415) 292-6091 Facsimile: (415) 292-6694 Email: fsmoore@pacbell.net	Attorneys for Plaintiff and Appellant KERRIE REILLY *By True Filing*
Autumn M. Elliott Benjamin T. Conway Disability Rights California 350 S. Bixel Street, Suite 290 Los Angeles, CA 90017 Telephone: (213) 213-8000 Facsimile: (213) 213-8001 Emails: autumn.elliott@disabilityrightsca.org Ben.Conway@disabilityrightsca.org	Attorneys for Plaintiff and Appellant KERRIE REILLY *By True Filing*
Michael Soloff Munger Tolles & Olson 355 South Grand Ave., 50th Floor Los Angeles, CA 90071 Telephone: (213) 213-8000 Facsimile: (213) 213-8001 Email: Mike.Soloff@mto.com	Attorney for Amicus Curiae National Housing Law Project and Western Center on Law and Poverty (supporting plaintiff) *By True Filing*

Thomas M. Peterson Morgan, Lewis & Bockius, LLP One Market Street, Spear Tower San Francisco, CA 94105 Telephone: (415) 442-1000 Email: thomas.peterson@morganlewis.com	Attorneys for Amicus Curiae supporting plaintiff: Association of Regional Center Agencies, Autism Society of Los Angeles, CASHPCR, Disability Voices United, Fairview Families and Friends, Inc., Housing Choices, Jewish Los Angeles Special Needs Trust, National Disability Rights Network, Alison Morantz and Public Counsel *By True Filing*
Bradley A. Hinshelwood Civil Division, Appellate Staff U.S. Department of Justice 950 Pennsylvania Avenue NW Room 7256 Washington, D.C. 20530 Telephone: (202) 514-7823 Bradley.a.hinshelwood@usdoj.gov	Attorneys for Amicus Curiae HUD supporting defendant *By True Filing*
Honorable Paul Haakenson Courtroom F Marin County Superior Court 3501 Civic Center Drive San Rafael, CA 94903 Telephone: (415) 444-7000	Case No. CIV1503896 *By Mail*
Office of the Clerk CALIFORNIA SUPREME COURT 350 McAllister Street San Francisco, CA 94102-4797 Telephone: 415-865-7000	S249593 *By True Filing*

Court of Appeal First Appellate District Division Two 350 McAllister Street San Francisco, CA 94102 Tel: (415) 865-7300	Case No. A149918 *By True Filing*

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Cooper, Robert (209641)

Last Name, First Name (PNum)

Wilson Elser - Los Angeles

Law Firm