Supreme Court Case No. S249593

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

KERRIE REILLY
Petitioner and Appellant,

v.

MARIN HOUSING AUTHORITY
Defendant and Respondent.

After a Decision of the Court of Appeal for the First Appellate District, Division Two, No. A149918

Affirming a Judgment of the Superior Court of Marin County
Case No. CIV 1503896, Honorable Paul M. Haakenson, Judge

PETITIONER'S REPLY BRIEF ON THE MERITS

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In its Answer Brief on the Merits ("Answer Brief"), Respondent Marin Housing Authority ("Respondent" or "MHA") errs in three fundamental ways. First, it misreads the language and structure of the regulation at issue in this appeal. Second, its position is based on a faulty understanding of the purpose of the exclusions listed in subsection (c) of 24 C.F.R. § 5.609. And third, it misunderstands the nature of this Court's review. Because it presents no meritorious arguments in support of the Court of Appeal's holding below, this Court should rule in favor of Petitioner Kerrie Reilly.

ARGUMENT

I. Respondent Misreads the Language and Structure of 24 C.F.R. § 5.609.

Respondent Marin Housing Authority's analysis of the language and structure of 24 C.F.R. § 5.609 generally tracks the reasoning of the Court of Appeal in this case. As a result, it adopts the errors of that approach, which were previously analyzed in Petitioner's Opening Brief on the Merits. Respondent also raises new arguments in its Answer Brief regarding the language and structure of the regulation. These contentions are also without merit, as discussed below.

A. Respondent's Analysis of the Language of the Regulation at Issue in this Appeal is without Merit.

Respondent contends that Ms. Reilly urges the Court to ignore portions of the regulation at issue in this case. Answer Brief at 52 (stating that "Appellant urged that the courts below to [*sic*] ignore the words 'to offset the cost of services' in order to have reached the result which she desires."). This contention is in error.

Instead, Ms. Reilly asks the Court to take into account every word of the

regulation, and to take each word at face value. The developmental disability State payments exclusion set forth in 24 C.F.R. § 5.609(c)(16) provides that public housing authorities are to exclude from "annual income":

> Amounts 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).

MHA does not dispute that In-Home Supportive Service payments, by definition, are limited to "services ... needed to keep the developmentally disabled family member at home." 24 C.F.R. § 5.609(c)(16). It also does not disagree with the Court of Appeal's acknowledgement in this case that the term "'offset' means generally to counterbalance or compensate for something, not only to reimburse for out-of-pocket expenses previously incurred." *Reilly v. Marin Hous. Auth.*, A149918, Slip Opinion at 8 (Cal. Ct. App. April 25, 2018) ("*Reilly*").

Instead, MHA contends that the term "cost" must be limited to expenses "found on an accounting ledger." Answer Brief at 56-57. However, there is nothing in either the developmental disability State payments exclusion itself or in the entirety of 24 C.F.R. § 5.609 to suggest that only expenses found on an accounting ledger are contemplated by the regulation.

MHA's theory relies instead on importing terms from elsewhere in the regulation that were not used in 24 C.F.R. § 5.609(c)(16). One of the other exclusions listed in subsection (c) of 24 C.F.R. § 5.609, for instance, covers payments to a family "specifically for or in reimbursement of out-of-pocket expenses." 24 C.F.R. § 5.609(c)(8)(iii). Another covers "[a]mounts received by the family that are specifically for, or in reimbursement of, the cost of medical

expenses." 24 C.F.R. § 5.609(c)(4). Each of these uses specific terms ("in reimbursement of out-of-pocket expenses" and "specifically for, or in reimbursement of, the cost of medical expenses") that were *not* used in the developmental disability State payments exclusion.

MHA, then, has it backward when it argues that Ms. Reilly's analysis requires the Court "to read into the meaning of the word 'cost' additional words." Ms. Reilly asks the Court to give the term "cost" its facial meaning. It is MHA's interpretation instead that would require reading in additional words such as "specifically for, or in reimbursement of ... expenses" that are not found in the developmental disability State payments exclusion.

Importing these concepts into 24 C.F.R. § 5.609(c)(16) would violate the canon of interpretation that where an entity "has employed a term or phrase in one place and excluded it in another, it should not be implied where excluded." *People v. Buycks*, 5 Cal. 5th 857, 880, 422 P.3d 531, 541 (2018) (citation omitted). Here, had HUD intended the developmental disability State payments exclusion to be limited to "reimbursement of out-of-pocket expenses," it could have said so, as it did in 24 C.F.R. § 5.609(c)(8)(iii). If it had intended the exclusion to be limited to amounts covering out-of-pocket expenses *whether or not* they were not paid up front by the family, it could have used the terms "specifically for, or in reimbursement of ... expenses," as it did in 24 C.F.R. § 5.609(c)(4) and 24 C.F.R. § 5.609(c)(8)(iii). Because it did neither in 24 C.F.R. § 5.609(c)(16), these terms (and the concepts they represent) should not be read into the developmental disability State payment exclusion.

Respondent states that the exclusions in 24 C.F.R. § 5.609(c) "are consistently expressed in monetary terms." Answer Brief at 58. It is correct that each of the exclusions listed in 24 C.F.R. § 5.609(c) describe monetary payments to the family that are nonetheless excluded from the definition of "annual

income." However, a number of these provisions, in common with the developmental disability State payments exclusion, address government payments to compensate for things that are *not* "found on an accounting ledger," such as serving in the Armed Forces under hostile fire or experiencing Nazi-era persecution. 24 C.F.R. §§ 5.609(c)(7), (10).

In her Opening Brief on the Merits, Petitioner Reilly explained that the cost of providing services to a family member with a developmental disability is not "zero" to the individual providing that care, and that the costs of such care can be steep. Opening Brief on the Merits at 14-15. MHA characterizes this as a new argument regarding the "emotional cost" of providing care to a family member with a developmental disability, and suggests that the developmental disability State payments exclusion only recognizes costs that require an expenditure of money by the family. Answer brief at 12, 54-56. However, MHA's position disregards what it takes to provide care to a household member with a disability and is not supported by the rest of the regulation.

The cost to someone, like Ms. Reilly, who keeps an adult family member at home rather than placing her in an institution, cannot be reduced to the "emotional cost" of that work. Ms. Reilly has consistently presented before the lower courts in this case the idea that what she does for her daughter is significant, and the costs to her for doing it are real and not "zero." In her Opening Brief, Ms. Reilly expounded on this point, explaining that the cost to her is great and multi-faceted. It includes the toll, mental and physical, that responsibility for 24-hour care can take on a caregiver, and also includes the sacrifice of her own time, needs, and interests.

MHA dismisses the fact that Ms. Reilly is obligated to ensure care and supervision of her daughter 24 hours a day, but only paid by the State for a small portion of that time, as "employment concerns." Answer Brief at 22, 44-45. But

the serious responsibility that Ms. Reilly and other family caregivers for people with developmental disabilities take on cannot be reduced to an employment grievance. It is instead the reality that Ms. Reilly and other caregivers face, and is a part of the actual "cost" to families who keep a family member with a developmental disability at home rather than placing their loved one in an institution.

The parameters of the developmental disability State payments exclusion are found within the terms of 24 C.F.R. § 5.609(c)(16) itself. To be excluded, an amount must be from the State, it must offset the cost of services or equipment, and the services or equipment must be needed to keep a family member with a developmental disability at home. The nature of the "cost" to be offset is not otherwise specified or limited.

B. Respondent's Position is Based on a Misunderstanding of the Structure of the Regulation at Issue in this Appeal.

Respondent also contends that In-Home Supportive Services payments are included in the definition of "annual income" found in 24 C.F.R. § 5.609 because In-Home Supportive Services payments are "wages." More specifically, MHA argues that, because subsection (b) of 24 C.F.R. § 5.609 provides that "the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services" is included in "annual income," public housing authorities must count In-Home Supportive Services payments as income. Answer Brief at 27, 47. This contention misunderstands the structure of the regulation.

The regulation at issue, 24 C.F.R. § 5.609, is divided into three subsections: (a), (b), and (c). Subsection (a) sets forth the overall definition of

"annual income" as follows:

> (a) Annual income means all amounts, monetary or not, which:
>
> (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
>
> (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
>
> *(3) Which are not specifically excluded in paragraph (c) of this section.*
>
> (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

24 C.F.R. § 5.609(a) (emphasis added). In other words, annual income means payments to the family that are not specifically excluded in subsection (c).

Subsection (b) of 24 C.F.R. § 5.609 is a nonexclusive list of examples of payments included in "annual income." Subsection (b) provides that "Annual income includes, but is not limited to ..." and lists a number of categories of payments.

One of those categories is "[t]he full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services." 24 C.F.R. § 5.609(b)(1). This is a broad category and does include In-Home Supportive Services payments, which are designed to compensate (though only partially) families for services needed to keep a person with a developmental disability in the home.

Respondent makes much of the notion that In-Home Supportive Service payments are wages. Ms. Reilly has never shied away from this idea, nor from the fact that the State pays Ms. Reilly for the services she provides to keep her

daughter in her home because it recognizes that there is a cost to Ms. Reilly for providing those services. The conclusion that In-Home Supportive Services are "wages ... and other compensation for personal services" under 24 C.F.R. § 5.609(b)(1), however, does not end the analysis.

Under 24 C.F.R. § 5.609, "annual income" includes only payments to the family "[w]hich are not specifically excluded in paragraph (c) of this section." 24 C.F.R. § 5.609(a)(3). Subsection (c) of 24 C.F.R. § 5.609 provides that "[a]nnual income does not include the following:" and then lists sixteen specific types of payments. Under the structure of 24 C.F.R. § 5.609, then, payments to a family covered by subsection (c) must be excluded from "annual income"—*even if they fall within the broad definition of "annual income" provided in subsection (a) or within one or more of the example categories of subsection (b).* This structure is made clear by 24 C.F.R. § 5.609(a)(3), which defines "annual income" as amounts "[w]hich are not specifically excluded in paragraph (c) of this section."

It is also made clear by the fact that many of the categories listed in subsection (c) of 24 C.F.R. § 5.609 concern payments that would otherwise be covered by subsections (a) and (b) of the regulation. The first exemplar category listed in 24 C.F.R. § 5.609(b), "wages ... and other compensation for personal services," alone would cover a number of payments that are instead excluded under subsection (c). These excluded "wages ... and other compensation for personal services" include:

- "Income from employment of children (including foster children) under the age of 18 years," excluded under 24 C.F.R. § 5.609(c)(1);
- "Payments 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)," excluded under 24 C.F.R.

§ 5.609(c)(2);

- "The special pay to a family member serving in the Armed Forces who is exposed to hostile fire," excluded under 24 C.F.R. § 5.609(c)(7);
- "Amounts received ... by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development," excluded under 24 C.F.R. § 5.609(c)(8)(iv);
- "Incremental earnings ... resulting to any family member from participation in qualifying State or local employment training programs," excluded under 24 C.F.R. § 5.609(c)(8)(v); and
- "Earnings in excess of $480 for each full-time student 18 years old or older," excluded under 24 C.F.R. § 5.609(c)(11).

If Marin Housing Authority were correct that *all* "wages ... and other compensation for personal services" must be counted as "annual income" then each of these provisions would be rendered null. If a payment to a family member that met the description of "wages" or "other compensation for personal services" in 24 C.F.R. § 5.609(b)(1) had to be included as annual income, regardless of whether it was *also* covered by one of the exceptions listed in subsection (c), then 24 C.F.R. §§ 5.609(c)(1), (2), (7), 8(iv), 8(v), and (11) would be rendered useless and ineffective. However, as MHA itself concedes, it is a well-settled principle that statutory constructions which would render particular words or provisions extraneous should be avoided. *Dyna-Med, Inc. v. Fair Employment and Housing Comm.*, 43 Cal.3d. 1379, 1386-87, 743 P.2d 1323, 1326-27 (1987); Answer Brief at 46, 48. The fact that many of the provisions of subsection (c) of 24 C.F.R. § 5.609 would be rendered null by MHA's analysis demonstrates that its analysis is incorrect.

As a result, it is beside the point that In-Home Supportive Services payments may be considered "wages" or "other compensation for personal services." So long as they are covered by 24 C.F.R. § 5.609(c)(16), they may not be included in the calculation of "annual income." The language of 24 C.F.R. § 5.609(a)(3) could not make that clearer, and Marin Housing Authority's alternative theory would violate the principle that regulations should not be read in a way that renders portions of them superfluous.

II. Respondent's Position is Based on an Erroneous Understanding of the Purpose of the Exclusions Listed in Subsection (c) of 24 C.F.R. § 5.609.

Respondent attempts to buttress its interpretation of 24 C.F.R. § 5.609 by arguing that subsection (c) of the regulation "permits deductions for specific costs which support HUD's policy goals of encouraging families to pursue economic opportunities." Answer Brief at 27-28; *see also id.* at 58-59 (HUD's goal was "promot[ing] economic opportunity and self-sufficiency."). This contention is belied both by the content of the regulation itself and by HUD's own statements regarding the purpose of the regulation.

Each of the exclusions listed in subsection (c) of 24 C.F.R. § 5.609 was designed to achieve a particular public policy goal. Some of the exclusions concern payments for job training or other education, or funds set aside as part of a plan to attain self-sufficiency. 24 C.F.R. §§ 5.609 (c)(6), (8), and (11). Those do have the purpose of promoting economic opportunity and self-sufficiency (i.e., the possibility that a family may ultimately be able to earn enough income that they no longer require public housing assistance). The remaining exclusions listed in subsection (c) of 24 C.F.R. § 5.609, however, each reflect goals *unrelated* to economic opportunity and self-sufficiency. For example, one exclusion has the purpose of encouraging people to take in foster children (24 C.F.R. § 5.609(c)(2));

another has the purpose of encouraging people to adopt children (24 C.F.R. § 5.609 (c)(12)).

The developmental disability State payments exclusion likewise does not deal with job training stipends or other economic opportunity issues. On its own terms, it is concerned with a family's efforts to "keep the developmentally disabled family member at home." 24 C.F.R. § 5.609(c)(16). HUD's own guidance makes clear that the purpose of the regulation was encouraging, not punishing "families that strive to avoid institutionalization" of family members with developmental disabilities. Combined Income and Rent, 60 Fed. Reg. 17388, 17391-17393 (April 5, 1995). MHA is simply incorrect that the goal of 24 C.F.R. § 5.609 (c)(16) is to facilitate economic opportunity.

Respondent's understanding of the purpose of the regulation is also divorced from the reality faced by Ms. Reilly and others who provide care for family members with developmental disabilities needed to keep them at home rather than in an institution. MHA states that both "social norms" and "legal duty" require Ms. Reilly to ensure that her adult developmentally disabled daughter is supervised at all times. Answer Brief at 22. Ms. Reilly can fulfill that obligation in one of two ways. She can put her daughter in an institution, where the government will pay institutional staff to provide 24-hour care and supervision of her daughter. Or, she can keep her daughter at home.

The State of California designed the In-Home Supportive Services program to encourage Ms. Reilly and others like her to make the latter choice. The level of payments in the program are carefully calibrated to achieve that purpose by helping to offset the cost of services needed to keep a developmentally disabled family member at home.

The purpose of 24 C.F.R. § 5.609(c)(16) is to avoid upsetting that calibration and undermining the incentive set up by the State to promote the care

of people with developmental disabilities at home with their family. As a result of 24 C.F.R. § 5.609(c)(16), accepting In-Home Supportive Services payments should not cause a family's monthly rent payment to increase, because they should not be counted as "annual income."

MHA cavalierly suggests that, instead of accepting In-Home Supportive Services payments directly, someone in Ms. Reilly's situation could "put in an eight-hour day, commute and even stop for groceries on the way home" while a third party provided care for her daughter, and that allowing her to do that without penalty is the sole purpose of the developmental disability State payment exclusion. Answer Brief at 22. Not only does the language of the regulation fail to support that reading, however, but there is no evidence in the record that such outside employment is a real option for Ms. Reilly. There is no reason to assume that a person could successfully hold down a full-time job while also taking on the responsibility for full-time care and supervision during all of the other hours of the week. *See, e.g.,* Sarah Thomason & Annette Bernhardt, U.C. Berkeley Labor Center, *California's Homecare Crisis* 6 (Nov. 2017), available at http://laborcenter.berkeley.edu/pdf/2017/Californias-Homecare-Crisis.pdf (last visited November 18, 2018), ("The majority of IHSS homecare workers (64 percent) are 'family providers,' meaning they care for a spouse, parent, sibling, or other family member (Ko et al. 2015). Becoming a full- or part-time caregiver of a family member often means leaving or reducing hours at a higher paying job." (citing Michelle Ko et al., UCSF Health Workforce Research Center on Long-Term Care, *California's Medicaid Personal Care Assistants: Characteristics and Turnover among Family and Non-Family Caregivers* 15 (July 15, 2015), available at https://healthforce.ucsf.edu/sites/healthforce.ucsf.edu/files/publication-pdf/Report-Characteristics_and_Turnover_among_Family_and_Non-Family_Caregivers.pdf (last visited November 18, 2018))); Family Caregiving

Alliance, *Caregiving, at* https://www.caregiver.org/caregiving (last visited November 18, 2018) (reporting the cost to businesses due to employees who are forced to leave work, reduce work hours, and engage in absenteeism due to caregiving responsibilities); and Joan C. Williams & Lynn Feinberg, AARP Public Policy Institute, "Protecting Families from Employment Discrimination," *Insight on the Issues 68* (August 2012), available at https://www.aarp.org/content/dam/aarp/research/public_policy_institute/health/protecting-caregivers-employment-discrimination-insight-AARP-ppi-ltc.pdf (last visited November 18, 2018) (describing workplace discrimination against employees with caregiving responsibilities).

Like the Court of Appeal, Marin Housing Authority raises the issue of whether following the plain language of 24 C.F.R. § 5.609(c)(16) treats families with a developmentally disabled member differently from families with a member with a different disability. This issue was addressed in Ms. Reilly's Opening Brief on the Merits at pages 30-33. In its Answer Brief, MHA goes further, arguing that compliance with 24 C.F.R. § 5.609(c)(16) would expose it to charges of disparate treatment in violation of disability rights laws. This argument is also without merit.

An entity may rebut a claim of disparate treatment by putting forward a "legitimate, nondiscriminatory reason" for an adverse action against a member of a protected class. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). Here, the reason is to keep the developmentally disabled family member at home rather than in an institution. Given the historical bias against and exclusion of people with developmental disabilities from mainstream society, providing for the inclusion of people with developmental disabilities in family homes within the community is a governmental purpose of the highest legitimacy. There can be no colorable legal claim against public housing authorities for following the letter of

24 C.F.R. § 5.609(c)(16).

HUD has found similarly. In its statement published in the Federal Register accompanying the final rule publication of the Rules and Regulations regarding Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development, 24 C.F.R. Part 8, it observed that some HUD-sponsored housing programs were directed at people with particular types of disabilities and therefore excluded people who did not have those disabilities, including people with different disabilities. 53 Fed. Reg. 20216, 20220 (June 2, 1988). HUD found that such policies, designed to benefit a particular class of people with disabilities, were not discriminatory. *Id.*

Here, regardless of the interpretation of the word "costs," the developmental disability State payments exclusion on its face treats families with a developmentally disabled family member differently from other families. Doing so does not constitute illegal discrimination.

III. Respondent's Answer Brief Makes Clear that It Misunderstands the Nature of California Supreme Court Review.

Marin Housing Authority misunderstands the nature of this Court's review. In its Answer Brief, it attempts to put at issue matters that are extraneous to the question of law accepted for review, and it asks this Court to defer to an administrative hearing officer on that question of law. Neither effort has merit.

The California Supreme Court's review is limited to the issues accepted for review, and "[u]nless the court orders otherwise, the parties must limit their briefs and arguments to those issues and any issues fairly included therein." Cal. R. of Court 8.5016. In this case, the issue accepted for review was:

> Local housing authorities calculate rent for people living in HUD subsidized housing based on their income. 24 C.F.R. § 5.609(c)(16) prohibits counting as income "[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." California's In-Home Supportive Services program pays family members for services they provide to keep people with developmental disabilities in their homes. Are these payments excluded as income pursuant to Section 5.609(c)(16)?

Instead of limiting its briefing to this question and issues fairly included therein, however, MHA also discusses Ms. Reilly's "course of conduct, spanning a ten-year period" regarding missed payments to the housing authority. Answer Brief at 11-12, 16, 29-31. That history has no bearing on the legal question before this Court and serves only as an attempt by Respondent to discredit Ms. Reilly's personal character, which is not at issue in this case. Petitioner disputes MHA's disparaging and incomplete[1] account of that history but, given its irrelevance to the legal issue before this Court, will not engage in further back-and-forth on the matter. After this Court has resolved the legal question before it in this case, it will fall to the Superior Court below to address the application of this Court's ruling to the underlying facts of the case and the parties may make any relevant arguments at that time.

Respondent acknowledges, as it must, that this Court's review is de novo. Answer Brief at 37. This position is consistent with that of the Court of Appeal,

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[1] For example, it does not reflect Ms. Reilly's position that, had MHA complied with its legal obligation to inform her that it was required to provide reasonable accommodations to people with disabilities, the entire situation could have been avoided. Nor does it acknowledge the extent to which Ms. Reilly's actions were taken in an effort to provide for her daughter's disability-related needs.

which also understood its review of the trial court's order sustaining Respondent's demurrer to be de novo. *Reilly* at 4. There is no factual determination by a tribunal below for this Court to evaluate; before this Court is a pure question of law. The Court "reviews determinations of law under a nondeferential standard, which is independent or de novo review." *People v. Cromer*, 24 Cal. 4th 889, 894, 15 P.3d 243, 245 (2001).

Despite its acknowledgement of the de novo review of this Court on the question of law in this case, Respondent nonetheless contends that this Court should defer to *Marin Housing Authority's own* interpretation of the regulation at issue. Answer Brief at 38-40. None of the cases cited by MHA support this argument. *Lamar Cent. Outdoor, LLC v. State*, 64 A.D.3d 944, 948 (N.Y. App. Div. 2009), concerns the application of New York State law regarding judicial deference to a New York State department's interpretation of a state regulation, which has no relevance here. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844-45 (1984), concerns federal judicial deference in situations where Congress has implicitly delegated authority for statutory interpretation to a federal executive agency, none of which is at issue here. *Feinerman v. Bernardi*, 558 F. Supp.2d 36, 45 (D.D.C. 2008), concerns review under the federal Administrative Procedures Act, a statute which is not at issue here. *Fukuda v. City of Angels*, 20 Cal.4th 805, 808 (1999), affirmed the ability of California trial courts to exercise "independent judgment" even in cases where the trial court was required to begin its review with a presumption of the correctness of administrative findings; that presumption is inapplicable here, where there are no factual findings to review. And *Robinson v. District of Columbia Housing Authority*, 660 F.Supp.2d 6, 17 (D.D.C. 2009), concerned a situation where the regulation at issue *itself* gave the local public housing authority discretion whether or not to take certain factors into account; 24 C.F.R. § 5.609, by contrast, provides

that local public housing authorities *must* follow its directives.

As the Court of Appeal in this case recognized, the issue on appeal concerns a question of law that is fully within the competence and ability of the California appellate courts, including the Supreme Court, to determine. This Court can and should review de novo the question of whether In-Home Supportive Services payments to family members for services they provide to keep people with developmental disabilities in their homes are excluded as income pursuant to the developmental disability State payments exclusion regulation.

CONCLUSION

Petitioner Kerrie Reilly respectfully requests this Court to find that the language, structure, and purpose of 24 C.F.R. § 5.609(c)(16) provide that In-Home Supportive Services payments for services needed to keep family members with developmental disabilities in their homes are excluded from a public housing authority's calculation of "annual income." Respondent Marin Housing Authority's arguments to the contrary are without merit.

Dated: November 19, 2018

Respectfully submitted,

DISABILITY RIGHTS CALIFORNIA

By: 
Autumn M. Elliott

CERTIFICATE OF WORD COUNT

As required by Rule 8.520, subdivision (c)(1), of the California Rules of Court, I certify that this Reply Brief contains 4676 words, including footnotes, according to the computer program used to generate the document.

Dated: November 19, 2018

By: 
Autumn M. Elliott

PROOF OF SERVICE

I am over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 1330 Broadway, Suite 500, Oakland, California 90017. On November 19, 2018, I served **Petitioner's Reply Brief on the Merits** on the interested parties as follows.

By overnight delivery: I enclosed a true copy of the document identified above in an envelope or package provided by an overnight delivery carrier and addressed to the interested parties listed below. I ensured that overnight postage was prepaid. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier in time for overnight delivery.

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By mail: I enclosed a true copy of the document identified above in an envelope. I placed those envelopes in my office's outgoing mail box. I am familiar with my office's practice of processing mail. Under this practice, envelopes in the outgoing mail box are daily posted for U.S.P.S. first class mail and are then deposited with the U.S.P.S.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 19, 2018, at Oakland, California.

Hayley Jones