



FORUM

More Than Money: The Costs of Caretaking for People with Disabilities

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Many states have instituted governmental programs that provide support for people with disabilities that also assist those who are low-income. One major federal provision that often intersects with these disability rights programs is the U.S. Housing Act of 1937. Section 8 of this piece of legislation includes the Housing Choice Voucher program, which helps low-income families obtain housing that they can afford. Families that qualify as low-income receive vouchers that they can use to subsidize their rent for eligible properties. The voucher subsidy amounts are calculated based on the property and the family's income. Due to payments from state programs that offer support for disability caretaking, however, many people with disabilities and their families often struggle to receive adequate and fair subsidies. Although the entire nation has made significant progress in increasing disability rights and care, this is an ongoing journey to increase protection for those with disabilities.

The case *Reilly v Marin Housing Authority* (2020) involves both the Section 8 Housing Choice Voucher program and California's In-Home Supportive Services (IHSS) program. IHSS allows those with disabilities to stay in the safety of their homes instead of entering a care facility by paying for the caretaking services that the individual receives at home, such as protective supervision, personal care services, and more. In this case, Kerrie Reilly and her family were supported by Section 8 Housing Choice Vouchers for their rent, and Reilly was also paid by IHSS to take care of one of her daughters who had a serious developmental disability. However, Marin Housing Authority (MHA) included these IHSS payments in their

calculation of Reilly's income when determining the amount for her voucher subsidies, resulting in lower subsidies. Reilly's request for her IHSS payments to be excluded from MHA's calculations was denied. Ultimately, the California Supreme Court ruled that the MHA was violating Section 8 and that the IHSS payments should not be incorporated into the calculation of Reilly's income. This case meaningfully expanded the rights of those with disabilities coming from low-income households, and its ruling should be applied to other related cases to expand disability rights.

Most significantly, *Reilly* solidified the precedent of a more expansive interpretation of Section 8. IHSS's payments are supposed to offset the costs that a family endures by taking care of the family member with a disability. During the case, MHA claimed that "cost" solely refers to money: it "does not encompass emotional costs Reilly bears in caring for her daughter, nor any lost opportunity costs when Reilly forgoes outside employment to be her daughter's IHSS provider." However, the California Supreme Court rejected this narrow view. The majority opinion declared that the term "cost" not only entails the monetary definition, but also "the expenditure of something, such as time or labor, necessary for the attainment of a goal," which in this case is providing adequate care to Reilly's daughter. This comprehensive understanding of "cost" has powerful implications for the future of those with disabilities: it is remarkably unrealistic to believe that caretakers only encounter strictly monetary obstacles. MHA's perspective is, therefore, a superficial understanding of the time and effort required in caretaking for people with disabilities, and proceeding with their definition would result in countless instances of careless oversight by IHSS providers. By establishing a more holistic definition of the term "cost," the California Supreme Court encouraged a more accurate governmental and legal understanding of caretaking and ensured that those with disabilities and their caretakers are legally protected.

Other related cases, even those that take place in other states, should be reconsidered through the framework of this more expansive interpretation of "cost" in order to better protect the financial security and emotional wellbeing of those with disabilities. For instance, *Anthony v. Poteet Housing Auth (2009)*, mentioned in the dissent for *Reilly*, saw plaintiff Brenda Anthony and her disabled son living together in low-rent housing calculated based on income. Anthony's son required attentive care and qualified for personal-assistant services through an organization called MED TEAM. Anthony started working at MED TEAM as a personal-care attendant; her main client was her son, but she also had other patients. Anthony's salary from MED TEAM was included in calculations of her income for her rent, and Anthony argued that it should be excluded. The United States Court of Appeals

for the Fifth Circuit ruled that Anthony did not qualify for wage exemptions because she never “[incurred] any costs.” The majority opinion in *Reilly* also argues that *Anthony* does not apply at all because it is impossible to distinguish between Anthony’s MED TEAM wages for her son and for her other clients. This is a misguided evaluation: applying the broader definition of “cost” from *Reilly*, regardless of the fact that Anthony also received payment for other clients, Anthony was still incurring costs specifically because of her services for her son. It is important to consider the opportunity cost of this situation: if, for example, Anthony did not have to provide services for her son, then she could have worked with more patients and increased her wages. To determine that the lack of clarity among Anthony’s various sources of income is more important than the costs she endured disregards the root issue: Anthony’s losses from taking care of her son. Therefore, *Reilly* should provide a new method of understanding this case by raising questions beyond the monetary element of Anthony’s relationship with MED TEAM.

Another relevant case which merits the application of this more expansive perspective of “cost” is in the Matter of Cindi Ali (2020), an appeals case that came before the Minnesota Supreme Court. The case is similar in many ways to those previously discussed. Cindi Ali’s son has autism spectrum disorder and was eligible for protective services through Minnesota’s Developmental Disability Waiver program. Ali received monetary support from the Consumer Directed Community Support (CDCS) program, and she utilized part of this budget to pay herself as the main caretaker for her son. The amount of CDCS money that Ali allocated as her own wages was included in calculating her income for Section 8 housing. The court ruled that “cost” simply refers to monetary expenses, and since Ali incurred no monetary expenses for taking care of her son, her income was rightly calculated. Once again, this is a flawed conclusion—“cost” is a term that should be used to entail the “expenditure (as of effort or sacrifice) made to achieve an object,” as Ali argued. Just like *Reilly*, however, Ali should have received protection. While Minnesota’s programs and legislation for this issue differ slightly from California’s IHSS program, both programs entail offsetting costs in relation to Section 8. Other states like Minnesota should adopt California’s expansive view of this topic to increase legal protections for those with disabilities.

Revisiting and analyzing related cases according to the *Reilly* majority opinion illuminates previously neglected concerns regarding the challenges faced by those taking care of people with disabilities. *Reilly*’s definition of “cost” should be applied to other cases to better protect disability rights, and its interpretation of IHSS’s protections should also be adopted by similar programs in other states. This will have

a transformative effect on creating a safer environment, society, and legal climate for those with disabilities.