APPENDIX

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APPENDIX A

IN THE SUPREME COURT OF CALIFORNIA

S249593

[Filed: August 31, 2020]

KERRIE REILLY,

Plaintiff and Appellant,

v.

MARIN HOUSING AUTHORITY,

Defendant and Respondent.

First Appellate District, Division Two
A149918

Marin County Superior Court
CIV 1503896

August 31, 2020

Justice Chin authored the opinion of the Court, in which Justices Liu, Cuéllar, and Groban concurred.

Chief Justice Cantil-Sakauye filed a dissenting opinion, in which Justices Corrigan and Kruger concurred.

Opinion of the Court by Chin, J.

The federal Housing Choice Voucher program is a key program in section 8 of the United States Housing Act of 1937. (42 U.S.C. § 1437 et seq., as amended by § 201(a) of the Housing and Community Development Act of 1974.) Commonly referred to as "Section 8," the program provides low-income families a monthly subsidy to pay for a portion of their rent. The amount of the subsidy depends, in part, on the income Section 8 families receive. The program, which is funded and regulated by the United States Department of Housing and Urban Development (HUD), is administered locally by public housing authorities (PHAs). In this case, we address whether a Section 8 beneficiary's compensation for providing in-home care for a severely disabled adult daughter should be excluded from income in calculating the rental subsidy. For reasons that follow, we conclude that it should be excluded and reverse the Court of Appeal's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In 1998, plaintiff Kerrie Reilly and her two daughters moved into a three-bedroom apartment in Novato and began receiving Section 8 housing assistance payments to subsidize their monthly rent. Reilly has an adult daughter, K.R., who is severely disabled and requires constant supervision. Reilly receives compensation to provide in-home supportive care for K.R. through the state and federally funded In-Home Supportive Services (IHSS) program.

In 2004, Reilly's other daughter, R.R., moved out of their subsidized apartment, but Reilly did not inform

the Marin Housing Authority (MHA), which is responsible for administering Reilly's Section 8 voucher. Five years later, when Reilly told MHA that R.R. no longer lived with her, MHA advised her that her failure to report her daughter's leaving constituted a violation of the program rules. Reilly could only stay in the government-subsidized apartment if she paid approximately $16,000 in damages to MHA.

Reilly agreed to pay MHA in monthly installments, initially starting at $486 and eventually lowered to $150 per month at Reilly's request. In 2010, after Reilly missed an installment payment, MHA warned her that future missed payments would result in termination of her housing assistance. Reilly missed multiple payments in 2012, 2014, and 2015.

In 2015, Reilly requested that MHA recalculate her rent and exclude her IHSS compensation from "income" under the relevant federal regulation. (See 24 C.F.R. § 5.609(c)(16) (2020).) MHA did not respond to this request, but instead served Reilly a notice of termination of her Section 8 voucher. After a hearing on MHA's decision to terminate Reilly's housing voucher, the hearing officer upheld the agency's decision, noting that Reilly's failure to pay amounts under the settlement agreement constituted grounds for terminating her housing assistance. The hearing officer did not address whether the IHSS compensation counted as income, however.

On October 26, 2015, Reilly filed a petition for writ of mandate seeking an order requiring MHA to terminate her repayment plan and reinstitute her Section 8 voucher; she also sought an administrative

writ ordering MHA to terminate the repayment plan and exclude Reilly's IHSS payments in calculating her income going forward. The trial court rejected Reilly's assertion that IHSS payments were excepted from the meaning of "annual income" (24 C.F.R. § 5.609(c)(16) (2020)). It sustained MHA's demurrer without leave to amend, and the CA affirmed the judgment. (*Reilly v. Marin Housing Authority* (2018) 23 Cal.App.5th 425.) Both lower courts ordered "a stay in the enforcement of the administrative order terminating Reilly's Section 8 benefits." MHA later agreed to an extension of this stay pending review in this court.

We granted review, limited to the issue whether IHSS payments should be excluded from "annual income" for purposes of calculating a Section 8 beneficiary's home assistance payment.

DISCUSSION

A. Overview of Section 8 voucher program

In 1974, Congress added the Section 8 housing program to the United States Housing Act of 1937 "[f]or the purpose of aiding low-income families in obtaining a decent place to live." (42 U.S.C. § 1437f(a); see generally Friedman et al., Cal. Practice Guide: Landlord-Tenant (The Rutter Group 2019) ¶ 12.) The program gives eligible families either "tenant-based" or "project-based" rent subsidies administered locally through PHAs. (See *Park Village Apartment Tenants Ass'n v. Mortimer Howard Trust* (9th Cir. 2011) 636 F.3d 1150, 1152–1153 [overview of Section 8 housing assistance].) "'[T]enant-based assistance'" is a rent subsidy that is tied to a specific family even if the

family moves to other suitable housing. (42 U.S.C. § 1437f(f)(7).) "'[P]roject-based assistance,'" on the other hand, is tied to a specific housing development or unit. (42 U.S.C. § 1437f(f)(6).) We focus on tenant-based assistance, which is at issue in this case.

Under the tenant-based assistance program, at least 75% of all admitted families must be "[e]xtremely low[] income," i.e., their income may not exceed 30% of the median income calculated by HUD for the relevant area (24 C.F.R. § 5.603(b) (2020)); and all remaining admitted families must be "[l]ow income," i.e., their income may not exceed 50% of the median income. (*Ibid.*; *id.*, § 982.201(b)(1), (2)(i) (2020) [eligibility and targeting].)

After a Section 8 family selects an eligible rental unit approved by the applicable PHA, the PHA enters into a contract with the rental property owner. That owner "functions as a landlord in the private rental market. The owner signs a lease with the Section 8 tenant (which includes a HUD Lease/Tenancy Addendum) and also signs a Housing Assistance Payments (HAP) contract with the Housing Authority." (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 123.) The PHA gives the subsidy payments directly to the property owner. (24 C.F.R. § 982.311(a) (2020).)

As we explain below (see *post*, at p. 8), the amount of the housing subsidy depends in large part on the "annual income" the Section 8 family receives or expects to receive. (See 24 C.F.R. § 5.609(a) (2020); *id.* § 982.201(a), (b) (2020).) The issue is whether the IHSS payments Reilly receives to provide services to keep her

developmentally disabled daughter at home are excluded from income under 24 Code of Federal Regulations part 5.609(c)(16) (2020).

B. IHSS

IHSS is a state social welfare program implemented under The Burton-Moscone-Bagley Citizens' Income Security Act for Aged, Blind and Disabled Californians, enacted in 1973. (Welf. & Inst. Code,[1] § 12000 et seq., added by Stats. 1973, ch. 1216, § 37, p. 2904; see *County of Sacramento v. State of California* (1982) 134 Cal.App.3d 428, 430–431.) The purpose of the legislation is to give the aged, blind and disabled the "assistance and services which will encourage them to make greater efforts to achieve self-care and self-maintenance, whenever feasible, and to enlarge their opportunities for independence." (§12002.) IHSS is specifically "designed to avoid institutionalization of incapacitated persons." (*Basden v. Wagner* (2010) 181 Cal.App.4th 929, 931.) Providers perform nonmedical supportive services for IHSS recipients, such as domestic services, personal care services, protective supervision, and accompaniment to health-related appointments. (§ 12300; see *Miller v. Woods* (1983) 148 Cal.App.3d 862, 867, disapproved on other grounds by *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 986, fn. 15.)

"IHSS is actually provided under three programs: the original IHSS program (the residual program) (§ 12300 et seq.); the Medi-Cal personal care services

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[1] All further statutory references are to Welfare and Institutions Code unless otherwise noted.

program (PCSP) (§ 14132.95); and the IHSS Plus waiver program (§ 14132.951).[2] The latter two programs tap into federal funds, and IHSS recipients will receive services under the residual program only if they do not qualify under the other two programs. (§§ 12300, subd. (g); 14132.95, subd. (b); 14132.951, subd. (d).)" (*Basden v. Wagner*, *supra*, 181 Cal.App.4th at p. 933, fn. 4; see 2 Dayton et al., Advising the Elderly Client (2019) § 22:40 (Advising the Elderly Client); *Calderon v. Anderson* (1996) 45 Cal.App.4th 607, 609–610.)

The State Department of Social Services (Department) administers the IHSS program in compliance with state and federal law. The Department promulgates regulations to implement the relevant statutes, which are set out in its Manual of Policies and Procedures: Social Services Standards (July 2019) (MPP). (MPP, §§ 30-700 to 30-785; see *Norasingh v. Lightbourne* (2014) 229 Cal.App.4th 740, 744–745.) County welfare departments administer the IHSS program with the Department's supervision, and determine an applicant's individual needs to authorize necessary services. (*Norasingh v. Lightbourne,* at pp.

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[2] Section 14132.951, subdivision (a) provides: "It is the intent of the Legislature that the State Department of Health Services seek approval of a Medicaid waiver under the federal Social Security Act in order that the services available under Article 7 (commencing with Section 12300) of Chapter 3, known as the In-Home Supportive Services program, may be provided as a Medi-Cal benefit under this chapter to the extent federal financial participation is available. The waiver shall be known as the 'IHSS Plus waiver.'"

744–745; see MPP, § 30-761 [needs assessment standards].)

A county welfare department may either obtain and pay directly a provider of the supportive services, or pay the recipient who hires one. (*Basden v. Wagner*, *supra*, 181 Cal.App.4th at p. 940 [when state pays provider or recipient directly, it assumes certain "'employer' duties"]; MPP, § 30-763.44.) Or, as in this case, it may compensate the parent who provides in-home care to her disabled child. (See § 12300, subd. (e); MPP, § 30-763.45 et seq.; see also Fam. Code, § 3910, subd. (a) [parent's responsibility extends to a "child of whatever age who is incapacitated from earning a living and without sufficient means"].) It bears noting that "[t]he vast majority of home care is provided by family and friends." (Advising the Elderly Client, *supra*, § 22:17.)

Reilly's daughter suffers from a severe developmental disorder and obtained authorization for protective supervision, i.e., 24-hours-a-day supervision that allows her to remain at home safely. (§ 12301.21; MPP, § 30-757.173.) Protective supervision involves "observing recipient behavior and intervening as appropriate in order to safeguard the recipient against injury, hazard, or accident." (MPP, § 30-757.17; see *Marshall v. McMahon* (1993) 17 Cal.App.4th 1841, 1847 ["'Protective supervision' appears to be similar to care given small children, that is, anticipating everyday hazards and intervening to avert harm"].) Such supervision is available for "nonself-directing, confused, mentally impaired, or mentally ill persons only." (MPP, § 30.757.171; see *Marshall v. McMahon*,

at p. 1847; *Calderon v. Anderson*, *supra*, 45 Cal.App.4th at p. 616.) There is no dispute that Reilly's adult daughter was entitled to IHSS services, or that Reilly was authorized to receive IHSS compensation for providing those services to her.

C. HUD regulation on "Annual Income" and its exclusions

The applicable federal regulation defines "annual income" broadly, as "all amounts, monetary or not." (24 C.F.R. § 5.609(a) (2020).) For example, income includes "compensation for personal services" (*id*., § 5.609(b)(1) (2020)) and "[p]ayments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay" (*id*., § 5.609(b)(5) (2020)). However, income does not include such amounts as "specifically excluded" under the regulation. (*Id*., § 5.609(a)(3) (2020).) There are 16 such exclusions. (*Id*., § 5.609(c)(1)–(17) (2020).)

"An extensive set of statutory provisions and regulations governs the calculations of the subsidy that must be paid on behalf of each tenant." (*Nozzi v. Housing Authority of City of Los Angeles* (9th Cir. 2015) 806 F.3d 1178, 1184.) In general, Section 8 tenants must contribute 30% of their monthly adjusted income or 10% of their gross monthly income, whichever is greater, towards each month's rent. (42 U.S.C. § 1437f(*o*)(2)(A).) The housing assistance payment covers the balance of the rent, up to a statutorily capped amount. (*Nozzi v. Housing Authority of City of Los Angeles*, at pp. 1184–1185.)

We do not examine the underlying method used to calculate the rental subsidy, however, but focus on whether Reilly's IHSS compensation for care of her disabled daughter is "specifically excluded" (24 C.F.R. § 5.609(a)(3) (2020)) from income as "[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" (*id*., § 5.609(c)(16) (2020), italics added). The parties do not dispute that if Reilly's daughter received IHSS care from a *third party* rather than a family member, such amounts paid would qualify under the exclusion. MHA argues that for the exclusion to apply, however, a family must incur costs for hiring someone because only then would the "[a]mounts paid" by the state to a family truly "offset" those "cost[s]." (24 C.F.R. § 5.609(c)(16) (2020); see *In re Ali* (Minn. 2020) 938 N.W.2d 835, 840 (*Ali*) ["Cost means an actual monetary expense . . . incurred by the family to keep the disabled family member living at home"].) Because the state pays Reilly to provide care for her own daughter and not to hire a third party provider, MHA maintains there is no actual "cost" to Reilly for such services, and consequently, there is nothing to "offset."

1. Meaning of "Offset" & "Cost"

MHA's interpretation is based in part on the dictionary definition of "offset," which generally means to counterbalance or compensate for something. (See *Steinmeyer v. Warner Cons. Corp*. (1974) 42 Cal.App.3d 515, 518.) Echoing the Court of Appeal, MHA asserts that payments by the state must offset costs the family

itself incurs to keep a developmentally disabled member at home; "[o]therwise the payment does not counterbalance or compensate for the costs of services." As MHA puts it, "the payment must go to the same entity that incurs the cost of those services." MHA further insists that "cost" is a monetary term that 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.

We disagree with MHA's interpretation. Unlike the word "reimburse," which means to "*pay back* or compensate (another party) for *money spent* or losses incurred" (American Heritage Dict. (5th ed. 2020) p. 1214, italics added), "offset" is not similarly restrictive. (See *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1117 ["Where different words or phrases are used in the same connection in different parts of a statute, it is presumed the Legislature intended a different meaning"].) For example, the term "reimbursement" is used in two other exclusions. (24 C.F.R. § 5.609(c)(4), (8)(iii) (2020).) Consistent with the meaning of "reimburse," those exclusions refer to compensation of specific, discrete amounts, e.g., "the cost of medical expenses" (*id.*, § 5.609(c)(4) (2020)) and "out-of-pocket expenses" to participate in a publicly assisted program (*id.*, § 5.609(c)(8)(iii)).

While the term "reimburse" suggests there may be full recompense for any out-of-pocket expenses a family incurs under those exclusions, "offset" as used here does not necessarily reflect that same meaning. (See *Briggs v. Eden Council for Hope & Opportunity*, *supra*,

19 Cal.4th at p. 1117.) Here, what is "offset" is the "cost of services and equipment needed to keep the developmentally disabled family member at home." (24 C.F.R. § 5.609(c)(16) (2020).) "[C]ost," in turn, is defined to include both "an amount paid or required in payment for a purchase; a price" and "the expenditure of something, such as time or labor, necessary for the attainment of a goal." (American Heritage Dict., *supra*, at p. 454.) Whether a family uses homecare payments to support itself so that it may care for a developmentally disabled member at home, or instead uses the funds to pay a third party to provide care for some of the time, these payments do no more than "offset" the "cost" of services and equipment needed to avoid institutionalization, costs that are not otherwise specified or limited. (24 C.F.R. § 5.609(c)(16) (2020).)

Further, contrary to MHA's suggestion, "cost" in this exclusion (24 C.F.R. § 5.609(c)(16) (2020)) does not have the same meaning as "cost" used in other provisions of the regulation. For instance, "actual cost of shelter and utilities" (24 C.F.R. § 5.609(b)(6)(ii) (2020)) and "cost of medical expenses for any family member" (*id*., § 5.609(c)(4) (2020)) both refer to discrete, monetary amounts. "[T]he presumption that 'identical words used in different parts of the same act are intended to have the same meaning . . . readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent.'" (*Roberts v. Sea-Land Services, Inc*. (2012) 566 U.S. 93, 108.)

2. Rulemaking history of 24 Code of Federal Regulations par 5.609(c)(16) (2020)

This interpretation of the terms "offset" and "cost" is also consistent with the rulemaking history of 24 Code of Federal Regulations part 5.609(c)(16) (2020). (See 60 Fed.Reg. 17388–17395 (Apr. 5, 1995) ["Combined Income and Rent"; interim rule as precursor to 24 C.F.R. § 5.609(c)(16) (2020)]; 61 Fed.Reg. 54492–54504 (Oct. 18, 1996) [final rule]). Though the Court of Appeal found this history to be unhelpful and not illuminating, we do not share that view. (See *Thomas Jefferson Univ. v. Shalala* (1994) 512 U.S. 504, 512 [relevance of agency's "'intent at the time of the regulation's promulgation'"].)

In 1995, HUD published an interim rule proposing eight new income exclusions — among them the homecare payments exclusion — to the definition of annual income under Section 8 and other assisted housing programs. (See 60 Fed.Reg. 17388–17395 (Apr. 5, 1995); 24 C.F.R. § 5.609(c) (2020).) It determined that the new exclusions "are essential for achieving its goals of ensuring economic opportunity, empowering the poor and expanding affordable housing opportunities. Moreover, HUD believes that the *costs* of additional exclusions will be *offset* by long-term future savings because the exclusions will increase the number of economically self-sufficient families residing in assisted housing." (60 Fed.Reg. 17388, italics added.)

Regarding the "homecare payments" exclusion in particular, HUD explained that the "exclusion exempts amounts paid by a State agency to families that have developmentally disabled children or adult family

members living at home. *States that provide families with homecare payments do so to offset the cost of services and equipment needed to keep a developmentally disabled family member at home, rather than placing the family member in an institution.* Since families that strive to avoid institutionalization should be encouraged, and not punished, the Department is adding this additional exclusion to income. The Department wishes to point out that today's interim rule does not define 'developmentally disabled' since *whether a family member qualifies as developmentally disabled, and is therefore eligible for homecare assistance, is determined by each individual State*." (60 Fed.Reg. 17388, 17389 (Apr. 5, 1995), italics added.)

In finalizing the rule and responding to public comment that "'developmentally disabled children'" and "'adult family members'" should be expressly defined, HUD rejected the suggestion as unnecessary: "There is no need for HUD to define these terms, as they are defined by the State program providing the payments. *If the family is receiving such a payment from the State because a family meets the criteria of the definition, the [public housing authority] should consider the family eligible for the exclusion.*" (61 Fed.Reg. 54492, 54497 (Oct. 18, 1996), italics added.)

We find several points from this rulemaking history to be significant. As to the meaning of "offset," HUD recognized that states that make payments for in-home services "do so to offset the cost" to the family keeping the developmentally disabled member at home "rather than placing the family member in an institution." (60

Fed.Reg. 17388, 17389 (Apr. 5, 1995).) Significantly, HUD here did not use "cost" and "offset" in terms of a specific monetary expense or amount a Section 8 family incurs, but in a broad sense with respect to describing the overall objective of the exclusion. HUD regarded homecare payments as reducing or offsetting costs to families caring for developmentally disabled individuals, costs that would be borne by state and federal governments if the family member were institutionalized. (See Perkins & Boyle, *Addressing Long Waits for Home and Community-Based Care Through Medicaid and the ADA* (2001) 45 St. Louis U. L.J. 117, 119 ["Most states have reduced costly institutional care by shifting some public funding to home and community settings"].)

This background clearly informs the interpretation of 24 Code of Federal Regulations part 5.609(c)(16) (2020). The language of the regulation ("amounts paid by a State agency . . . *to offset the costs of services and equipment needed to keep the developmentally disabled family member at home*" [italics added]) closely tracks this rulemaking language ("States that provide families with homecare payments do so *to offset the costs of services and equipment needed to keep a developmentally disabled family member at home*, rather than placing the family member in an institution") (60 Fed.Reg. 17388, 17389, italics added), and the italicized phrases at issue here are identical.

The only express limitation HUD has placed on this exclusion is that the in-home care payments must be for services and equipment needed to keep the "developmentally disabled" family member at home.

(See *post*, at pp. 15–16.) Even then, HUD found "no need" to define what "developmentally disabled" meant, and instead left this up to the states to decide. (61 Fed.Reg. 54492, 54497 (Oct. 18, 1996; see 60 Fed.Reg. 17389 (Apr. 5, 1995) ["whether a family member qualifies as developmentally disabled, and is therefore eligible for homecare assistance, is determined by each individual State"].) From HUD's perspective, "If the family is receiving such a payment from the State because a family member meets the criteria of the definition, the [public housing authority] *should consider the family eligible for the exclusion*." (61 Fed.Reg. 54492, 54497, italics added.)

Notwithstanding the general rule that exclusions from income should be construed narrowly (see *Commissioner v. Schleier* (1995) 515 U.S. 323, 328), we find no indication that HUD intended a narrow construction of the homecare payments exclusion. We perceive no reasoned basis — including any basis informed by the regulation's language — why HUD would single out a parent provider's compensation as unworthy for income exclusion. Rather, we find HUD's stated goals of encouraging families to avoid the institutionalization of developmentally disabled individuals through the addition of this exclusion (60 Fed.Reg. 17388, 17389 (April 5, 1995)), and more globally of "ensuring economic opportunity, empowering the poor and expanding affordable housing opportunities" (60 Fed.Reg. 17388), would be furthered by permitting *all* homecare payments for services to keep developmentally disabled family members at home — whether the provider is a family member or third party — to be excluded from the meaning of

"annual income." (24 C.F.R. § 5.609(c)(16) (2020).) By allowing these families to realize the full benefit of the homecare payments without facing a corresponding increase in rent, the exclusion would operate as intended by not penalizing families who take on the onus of caring for a developmentally disabled family member at home.

To that end, it is helpful to remember that "[t]he United States Housing Act is a program of 'cooperative federalism.'" (*James v. New York City Housing Authority* (S.D.N.Y. 1985) 622 F.Supp. 1356, 1359; see 42 U.S.C. § 1437; see also *Hodel v. Virginia Surface Mining & Recl. Assn.* (1981) 452 U.S. 264, 289.) "HUD's delegation of eligibility requirements to local public housing authorities is intended to effectuate the underlying policy of the United States Housing Act by promoting efficient management of the programs . . . ." (*James v. New York City Housing Authority*, at pp. 1361–1362.) With respect to the exclusion for homecare payments specifically (24 C.F.R. § 5.609(c)(16)) (2020)), HUD expressly left it to the states to define "developmentally disabled," which in part determines a family's eligibility for the income exclusion. (See *ante*, at p. 12.)

Along these lines, HUD did not limit the income exclusion based on whether a state allows a family to use a family member or a third party to provide the necessary care; the exclusion covers "[a]mounts paid by a State agency to a family" with a developmentally disabled member (24 C.F.R. § 5.609(c)(16) (2020)). Indeed, acknowledging such a distinction would do little to advance the complementary purposes of the

federal and state statutes. Congress established Section 8 with "the purpose of aiding low-income families in obtaining a decent place to live." (42 U.S.C § 1437f(a).) And our Legislature created IHSS with the goal of providing "supportive services . . . to aged, blind, or disabled persons . . . who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided." (§ 12300, subd. (a).) Like the purpose of the federal exclusion (see *ante*, at pp. 12–13), the IHSS program's purpose is to enable "'disabled poor persons to avoid institutionalization by *remaining in their homes* with proper supportive services.'" (*Basden v. Wagner*, *supra*, 181 Cal.App.4th at p. 939.) Nevertheless, MHA would have us read in the words "from third parties" after the phrase "cost of services" (24 C.F.R. § 5.609(c)(16) (2020)) thereby making it correspondingly harder for certain families to provide necessary in-home care. Given this cooperative federalism regime, we ought to be reticent to interpret the HUD regulation in a way that would foreclose or hinder the objectives of the state IHSS program.

The dissent overstates the import of the authority it cites (see dis. opn., *post*, at pp. 1–2, 16–19). (See *Anthony v. Poteet Housing Authority* (5th Cir. 2009) 306 Fed. Appx. 98, 101 (*Anthony*) ["One must incur costs before they can be offset"]; *Ali*, *supra*, 931 N.W.2d 835.) In *Anthony*, an unpublished Fifth Circuit decision that first addressed the issue, plaintiff Brenda Anthony provided in-home care for her severely disabled son in their Section 8 subsidized apartment. Unlike California, the State of Texas does not pay families

directly for in-home care; such care is provided by third party intermediaries, who in turn employ in-home attendants and pay them wages partially funded by the state. Through her employment as a personal care attendant with two private for-profit companies, Anthony provided care not only for her son but also for other clients under the terms of her employment.

In determining Anthony's annual income for purposes of calculating her subsidized rent, the PHA refused to exclude Anthony's wages under 24 Code of Federal Regulations part 5.609(c)(16) (2020)). The Fifth Circuit agreed with the PHA's decision: "[T]he fact that Anthony's employment income coincides with state funds that are set aside for her son's care does not make that income a form of reimbursement." (*Anthony*, *supra*, 306 Fed. Appx. at pp. 101–102.) The court further rejected Anthony's claim that the services she provided her son were at a cost and were not free: "[F]or Anthony, they are free. She has no out-of-pocket expenses — 'costs' — that must be reimbursed or 'offset' by the state." (*Id.* at p. 102.)

We are not persuaded by *Anthony*'s reasoning on several grounds. Fundamentally, Texas's program is distinct from the IHSS scheme in that "all state-funded in-home attendant-care services in Texas are provided by private intermediaries, and Texas does not provide any amounts directly to families to offset costs incurred to keep a disabled family member at home." (*Anthony*, *supra*, 306 Fed. Appx. at p. 101.) Next, although Anthony's private employers paid her to provide in-home care to her son "with money partially provided by the state" (*id.* at p. 101), it is unclear what portion

of her wages truly constituted "pass-through" state funds. Her employers paid Anthony not just to care for her disabled son, but also to care for other clients. (*Id.* at p. 100.) Thus, Anthony's compensation as an in-home attendant was arguably indistinguishable from wages a parent earns from outside employment, and therefore properly not excluded from income under 24 Code of Federal Regulations part 5.609(c)(16) (2020)). Finally, we do not agree with the Fifth Circuit's narrow interpretation of the exclusion as limited to out-of-pocket expenses that a state directly reimburses. (See *Anthony*, *supra*, 306 Fed. Appx. at pp. 101–102; see *ante*, at pp. 9–11.)

Nor are we persuaded by the Minnesota Supreme Court's recent decision in *Ali*, *supra*, 938 N.W.2d 835, which relied in part on both *Anthony* and the Court of Appeal opinion below to reach a similar conclusion. (See *Reilly v. Marin Housing Authority*, *supra*, 23 Cal.App.5th 425.) Under Minnesota's Consumer Directed Community Support option for home and community-based services, a family receives a budget for specific services and equipment needed to keep a developmentally disabled member at home. (*Ali*, *supra*, 938 N.W.2d at p. 837.) The plaintiff, whose autistic son was eligible for the program, "chose to allocate a portion of the budget to herself as a paid parent to provide to her son some of the necessary services." (*Ibid.*) Following *Anthony* and *Reilly*, the *Ali* court adopted a narrow view of "cost" to mean out-of-pocket expenses, and concluded that the mother incurred no actual monetary expenses to "offset." (*Id.* at p. 840.)

As with the Texas program, the Minnesota program — which allowed the mother to "allocate her budget as she saw fit to keep her son living at home" — is structured differently from the IHSS program in a way that makes *Ali* distinguishable. (*Ali*, *supra*, 938 N.W.2d at p. 837.) Moreover, as with *Anthony*, we disagree with the *Ali* court's narrow interpretation of "cost" and "offset."

D. MHA's policy arguments

Notwithstanding this reading of the HUD regulation, MHA asserts that including a parent's IHSS compensation as income is necessary to achieve a measure of parity between families in similar circumstances. An expansive reading of the exclusion (24 C.F.R. § 5.609(c)(16) (2020)), MHA argues, would unfairly advantage families who provide in-home care to a developmentally disabled member because their compensation is not counted as income for purposes of calculating their rent subsidy, whereas no comparable income exclusion is available for a family with a medically disabled member or for a family who hires a third party provider.

In advancing this argument, MHA asserts the state pays Reilly "wages" under the IHSS program. Describing an employment relationship between Reilly and the State of California, MHA relies in part on the Court of Appeal's reasoning that "IHSS payments substitute in the family's budget for the money the parent would have earned outside the home." Such wages, MHA continues, should be considered part of her annual income just like the outside income of a

parent who instead hires an in-home provider. We address these points in turn.

1. Disparity based on individuals' different disabilities

First, we reject MHA's and the dissent's assertion that excluding Reilly's IHSS payments from annual income under 24 Code of Federal Regulations part 5.609(c)(16) (2020) would create an unfair disparity by extending the exclusion to families with a *developmentally* disabled member but not to families with a *medically* disabled member. To the extent there is any disparity, it is inherent in the federal regulation itself, which specifically limits the exclusion to payments made to families caring for a "developmentally disabled family member." (24 C.F.R. § 5.609(c)(16) (2020).) Put another way, even assuming MHA's position is correct that the exclusion is limited to payments made to third party providers, it would still treat developmental disabilities more favorably than physical disabilities because whatever its scope, the exclusion by its terms applies only to "[a]mounts paid by a State agency to a *family with a member who has a developmental disability*." (*Ibid*., italics added.)

The regulation, moreover, does not require that an individual meet a particular definition of "developmentally disabled" for the income exclusion to apply. As previously discussed (see *ante*, at p. 15), HUD has not defined "developmental disability" in the regulation, but instead left it up to states to determine its meaning. Specifically, if a state program authorizes a family to receive in-home care for a family member, in HUD's view that family member "meets the criteria

of the definition" of developmentally disabled, and the PHA "should consider the family eligible for the exclusion." (61 Fed.Reg. 54492, 54497 (Oct. 18, 1996), italics added.) This expansive view in favor of applying the exclusion is consistent with HUD's expressed concern that families of developmentally disabled members in particular would receive unfair treatment if this income exclusion were *not* made available to them. HUD added the relevant exclusion for families with a developmentally disabled member "[s]ince families that strive to avoid institutionalization should be *encouraged, and not punished*." (60 Fed.Reg. 17388, 17389 (Apr. 5, 1995), italics added.)

The dissent, however, asserts that precluding Reilly from utilizing this income exclusion would not amount to punishment because no other group, besides foster parents, enjoys the benefit of the income exclusion. (See dis. opn., *post*, at p. 34, fn. 18.) This critically misapprehends the nature of the penalty involved. The punishment here is not merely withholding a benefit to a family that is not otherwise given to similarly situated families; in other words, the dilemma a family faces is not choosing between enjoying or forgoing a "preferential benefit," as the dissent seems to suggest. (Dis. opn., *post*, at p. 23.) Rather, if a family cannot utilize the income exclusion to exclude compensation for a parent's in-home care, this may cause the family to lose its Section 8 housing altogether because it is unable to pay an increased portion of rent. Without such housing, a family may face having to institutionalize a developmentally disabled member, a result the exclusion seeks to prevent in the first place.

Further, despite no expressed preference for family providers per se, "[r]ecipients needing 24-hour protective supervision — and other services — are more likely to receive better *continuous care* from relatives living with them whose care is more than contractual." (*Miller v. Woods*, *supra*, 148 Cal.App.3d at p. 870.) This continuity of care is particularly salient here because of the nature of need-based tasks under the IHSS program. Because an IHSS recipient may only receive specific services based on an assessed need — i.e., where "[p]erformance of the service by the recipient would constitute such a threat to his/her health/safety that he/she would be unable to remain in his/her own home" (MPP, § 30.761.14) — not all time that a provider spends with a recipient would be compensable. (See § 12300, subd. (a); MPP, § 30.761.12.) Many tasks are discrete and not clustered together throughout the day (such as feeding, dressing, bowel and bladder care), and a provider may not be compensated for time spent waiting in between those tasks. It would no doubt prove challenging to find many providers — other than family members — willing to work that intermittently during the day.

Family members may also make particularly good providers because IHSS services "involve a most intimate and personal aspect of an individual's life" and family providers often "insure the least intrusion upon the recipient's privacy." (*Miller v. Woods*, *supra*, 148 Cal.App.3d at p. 878; see § 12304.1 ["preference shall be given to any qualified individual provider who is chosen by any recipient"].) Also recognizing that family-provided care is often the best type of care for individuals with disabilities, Congress has included it

as one of the "goals of the Nation" to provide families of children with disabilities the services necessary to "enable families of children with disabilities to nurture and enjoy their children at home"; and "support family caregivers of adults with disabilities." (42 U.S.C. § 15091(a)(6)(B), (D) [congressional findings of Families of Children with Disabilities Support Act of 2000]; *id*., § 15091(a)(1) ["It is in the best interest of our Nation to preserve, strengthen, and maintain the family"].) Congress further emphasized the important cost savings when family members are themselves providers for their disabled children: "Families of children with disabilities provide support, care, and training to their children that can save States millions of dollars. Without the efforts of family caregivers, many persons with disabilities would receive care through State-supported out-of-home placements." (*Id*., § 15091(a)(2); see 60 Fed.Reg. 17388, 17389 (Apr. 5, 1995).) These expressed goals fully align with HUD's objective to have developmentally disabled individuals avoid institutionalization and instead live with their families at home.[3]

This leads us to the inescapable conclusion that parents who keep their disabled child at home instead of in an institution — while also providing care as their child's IHSS provider — *are* different from other

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[3] Contrary to the dissent's suggestion, nothing in our opinion should be construed as implying that third party caregivers as a whole will provide "substandard" care compared to family members. (Dis. opn., *post*, at p. 31.) We merely confirm what Congress has expressly recognized about the benefits of having family caregivers.

caregivers. That difference, however, cuts *in favor* of allowing a parent's IHSS compensation under the exclusion. Unlike third party caregivers whose job it is to take care of someone on an hourly basis, for these parent providers, caring for their child "is not a day job; it is their life." (*In re Hite* (Bankr. W.D.Va. 2016) 557 B.R. 451, 458 [holding parents' in-home care payments excluded from monthly income and consequently not deemed disposable income subject to creditors].) If in-home care payments are not excluded from her income, the benefits Reilly receives — the in-home care for her disabled daughter K.R. and the Section 8 housing assistance — would be at cross-purposes. A family should not be forced to make an impossible choice between these two critical benefits. We perceive no plausible reason why Reilly should not realize the full benefit of what each program has to offer her family.[4]

2. IHSS payments as wages

Next, we reject MHA's underlying assumption that a parent provider's compensation under the IHSS program seeks to replicate the wages and hours of a parent who is employed outside the home. A parent's employment is relevant only to the extent it relates to the parent's suitability or availability to provide IHSS services to a child. (MPP, § 30-763.451; Dept. All-County Letter No. 19-02 (January 9, 2019) (All-County

[4] This conclusion focuses on Reilly's general entitlement to benefits under the Section 8 voucher and IHSS programs, and does not consider any other basis for terminating these benefits such as the failure to comply with any program requirements.

Letter 19-02).) As section 12300, subdivision (e) explains, the predicate for a paid parent provider is that "no other suitable provider is available." (§ 12300, subd. (e); see MPP, § 30-763.451.) In providing the necessary in-home care to a disabled child, a parent forgoes any outside employment — not to displace otherwise competent professional caregivers — but to prevent a third party caregiver's "inappropriate placement or inadequate care" for their child. (§ 12300, subd. (e).)

For instance, in its 2019 All-County Letter 19-02, the Department clarified the paid parent provider requirements: "The paid parent IHSS provider requirements, set forth in MPP Section 30-763.451, do not require or imply that a parent must have marketable job skills or a work history to be their child's paid IHSS provider, *as long as it is the recipient child's needs which prevent the parent from maintaining or obtaining full-time employment*." (All-County Letter 19-02, *supra*, at p. 4, italics added.) Likewise, parents who retire or are laid off may also serve as their child's provider only if their retirement or layoff is due to the child's need for IHSS services. (*Id*. at p. 6.) In short, "if a parent is not employed full-time for a reason other than the recipient child's IHSS needs . . . that parent would not qualify as a paid parent IHSS provider." (*Id*. at p. 4.)

Second, even assuming Reilly's IHSS compensation represents her wages, this does not mean that providing in-home care to her child is "an employment for all purposes." (*Basden v. Wagner*, *supra*, 181 Cal.App.4th at p. 940.) In *Basden v. Wagner*, the Court

of Appeal recognized certain duties — such as the state being responsible for the provider's unemployment compensation, workers' compensation, federal and state income tax and the like — that would suggest providing IHSS full-time could be considered an employment. The court, however, pointed out that "the Legislature defined IHSS providers as employees for limited circumstances, but undisputedly not for all circumstances. More significantly, nothing in the statutes even remotely suggests the Legislature defined the provision of in-home, full-time, IHSS funded care by a parent to a child as full-time employment . . . ." (*Ibid.*, italics omitted.) The question here is whether a parent's compensation for providing in-home care is "specifically excluded" from the definition of annual income for purposes of the HUD regulation. (24 C.F.R. § 5.609(a)(3), (c)(16) (2020).) As explained above, we conclude that IHSS compensation to a parent provider is excluded from income. (See *ante*, at pp. 14–15.)

Nevertheless, the dissent maintains that "[u]nlike funds that reimburse a family's expenditures, funds provided by the state to compensate for the family's caregiving activities are available to meet the family's daily needs. *That is their purpose*." (Dis. opn., *post*, at p. 25, italics added.) This characterization gravely misconstrues the nature and scope of IHSS services.

Under the IHSS program, the main focus is on assessing the disabled individual's "service needs and authorizing service hours to meet those needs." (§ 12301.2, subd. (a)(1).) A caregiver will be compensated only for those authorized service hours

and nothing more. As previously explained (see *ante*, at p. 21), because many tasks are discrete and completed throughout the day, a provider might not be compensated for time spent waiting in between those tasks. Contrary to the dissent's suggestion, excluding a parent's IHSS compensation from income would not artificially reduce a family's income and thereby increase any resulting rent subsidy. At best, a parent's IHSS compensation will offset a portion of the costs of keeping a developmentally disabled family member at home, and would not go far in meeting the family's daily needs.

The dissent's related assertion — i.e., family providers "are effectively selling their labor to the state, and the resulting income is indistinguishable, in its impact on the family's standard of living, from money earned working outside the home" (dis. opn., *post*, at p. 25) — is likewise long on conclusion but short on facts. (See *ibid.* ["to receive funds from IHSS a parent must accept their disabled child's care as, in effect, their *job*"].) In the case of Reilly's daughter, K.R., for example, she required protective supervision that is "only available" if "a need exists for twenty-four-hours-a-day of supervision in order for the recipient to remain at home safely." (MPP, § 30-757.173(a).) A person needing 24-hour supervision would require a provider's services for 720 hours in a 30-day month. However, an IHSS provider is limited to a statutory cap of 283 hours of compensation. (§§ 12303.4, 14132.95, subd. (g).) The discrepancy between a parent provider's actual hours of service and compensation belies any assertion that IHSS payments, at least with respect to protective supervision, are intended to represent wages the

parent would have earned outside the home, where compensation would be based on every hour worked.

Finally, we find it significant that the IRS also treats in-home care payments — *whether the provider is related or unrelated to the disabled individual* — as excludable from a provider's income under Internal Revenue Code section 131. (26 U.S.C. § 131; see Rev. Proc. 2014-7, 2014-4 I.R.B. 445.) In 2014, the IRS explained that Medicaid waiver payments to states, which are used to fund IHSS payments through the state Medi-Cal program (see *ante*, at pp. 5–6 & fn. 2), should be *excluded* from a provider's gross income. (Rev. Proc. 2014-7, 2014-4 I.R.B. 445.) It equated these payments to foster care payments, which are considered "difficulty of care" payments excludable from a provider's income under Internal Revenue Code section 131. (26 U.S.C. § 131(a) ["Gross income shall not include amounts received by a foster care provider . . . as qualified foster care payments"].) "The programs share the objective of enabling individuals who otherwise would be institutionalized to live in a family home setting rather than in an institution, and both difficulty of care payments and Medicaid waiver payments compensate for the additional care required." (Rev. Proc. 2014-7, 2014-4 I.R.B. 445 [these foster parents "'are saving the taxpayers' money by preventing institutionalization of these children'"].) As relevant here, the IRS makes no distinction between care provided by a parent or by a third party — the exclusion for Medicaid waiver payments "*will apply whether the care provider is related or unrelated to the eligible individual*." (*Ibid.*, italics added.)

Seeking to downplay any impact an IRS interpretation has on a HUD regulation, MHA notes that HUD has indicated that the "tax rules are different from the HUD program rules." (HUD, HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs (Nov. 2013) ¶ 5-1.) Be that as it may, we do not conclude that the IRS's interpretation is dispositive or compels the outcome in this case. We do, however, acknowledge that it provides persuasive insight, one that is consistent with the rulemaking record of the HUD regulation (24 C.F.R. § 5.609(c)(16) (2020)). (See *ante*, at pp. 11–13)

For example, though payments to foster parents and in-home care payments are both considered "difficulty of care" payments excludable from a provider's taxable income, these payments would receive unequal treatment under MHA's interpretation of the regulation. Under 24 Code of Federal Regulations part 5.609(c)(2) (2020), "[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)" are excluded from income for purposes of Section 8 housing. If a family takes into their home an unrelated disabled adult who is unable to live alone, and receives payment from the State for providing care to that adult, such payments are excluded from the family's income. However, if that same family receives payment for providing the same care but to a developmentally disabled family member, those payments would not be excluded from income. To ascribe this interpretation to HUD, which would impose a financial penalty on a family simply because

the care is given to a disabled family member rather than a disabled stranger, would not only be inconsistent with the IRS's treatment of both payments, there is no evidence in the regulation's rulemaking record that HUD intended different treatment.

E. HUD's position

At our request, HUD filed an amicus brief in this matter. We first note that at oral argument HUD's counsel indicated that the agency did not request we give deference to its interpretation of the regulation because it believed the plain language controlled. (See *Kisor v. Wilkie* (2019) 588 U.S. ___ [139 S. Ct. 2400, 2415] ["If uncertainty does not exist, there is no plausible reason for deference. The regulation then just means what it means — and the court must give it effect"].) Urging us to affirm the Court of Appeal's judgment, HUD opines that the IHSS payments Reilly receives must be treated as income under the regulation because that "compensation substitutes for income Reilly would otherwise earn for working outside the home." HUD essentially echoes the reasoning of the Court of Appeal below.

Though deference is generally accorded an agency's interpretation of its own regulation in the face of ambiguity (see *Auer v. Robbins* (1997) 519 U.S. 452; *Skidmore v. Swift & Co.* (1994) 323 U.S. 134, 140), we conclude that such deference is not compelled here. (See *United States v. Mead Corp.* (2001) 533 U.S. 218, 228 ["[t]he fair measure of deference to an agency administering its own statute has been understood to vary with circumstances"].) Courts should defer to an

agency's interpretation unless an "'alternative reading is compelled by the regulation's plain language or by other indications of the [agency's] intent *at the time of the regulation's promulgation*.'" (*Thomas Jefferson Univ. v. Shalala*, *supra*, 512 U.S. at p. 512, italics added.)

As explained above (see *ante*, at pp. 12–13), we conclude that HUD's clearly expressed intent at the time it added the exclusion for homecare payments (24 C.F.R. § 5.609(c)(16) (2020)) was to encourage families to provide in-home care to, and avoid institutionalization of, developmentally disabled family members. This contemporaneous intent is fully realized only when in-home payments for services needed to keep the developmentally disabled member at home — are excluded from income for purposes of the Section 8 program, i.e., whether those payments are ultimately made to a family member or to a third party provider. This interpretation is consistent with exclusion's language, which places no restrictions on *who* the provider of services can be. (24 C.F.R. § 5.609(c)(16) (2020).)

Contrary to MHA's suggestion, we do not perceive any intent by HUD to treat families with a developmentally disabled member and families with a medically disabled member the same, or to consider a parent's outside income the same as a parent's IHSS compensation. We will not pursue parity for parity's sake, especially if such pursuit runs counter to the language and purpose of the exclusion. Including a parent's in-home care payments as income to determine a family's Section 8 eligibility will have the

perverse effect of making it *harder* for a family to maintain a home in which to care for the child.

In the end, we refuse to adopt a crabbed interpretation that does little to advance the tandem goals of offering affordable housing to low income families and of supporting families who themselves provide in-home care for developmentally disabled members. We cannot endorse a construction that yields a result antithetical to our nation's "goal of providing families of children with disabilities with the support they need to raise their children at home." (42 U.S.C. § 15091(c).) We conclude a parent's IHSS compensation to provide care to keep a developmentally disabled child at home is excluded from income under 24 Code of Federal Regulations part 5.609(c)(16) (2020).

CONCLUSION

We reverse the Court of Appeal's judgment and remand the matter for further proceedings consistent with this opinion.

CHIN, J.

We Concur:

LIU, J.
CUÉLLAR, J.
GROBAN, J.

Dissenting Opinion by Chief Justice Cantil-Sakauye

The federal Housing Choice Voucher program, 42 U.S.C. section 1437f (hereafter Section 8), provides housing assistance to low-income families, with the amount of the assistance determined by the family's annual income. Under 24 Code of Federal Regulations part 5.609(c) (2020),[1] certain funds are excluded from the calculation of annual income. Among the funds excluded from that calculation are state payments to a family providing at-home care to a developmentally disabled family member *if* those payments "offset the cost of services and equipment needed to keep the developmentally disabled family member at home." (§ 5.609(c)(16).) The majority adopts an expansive interpretation of part 5.609(c)(16), holding that, in addition to excluding the state's reimbursement of out-of-pocket expenses, the regulation also covers the compensation paid to parents who are hired by the state to provide full-time care to their developmentally disabled children. Every other appellate court to consider part 5.609(c)(16) — the United States Court of Appeals for the Fifth Circuit, the Minnesota Supreme Court, and our Court of Appeal — has adopted a narrower construction, limiting the exclusion to those state payments that reimburse a family's expenditures. In contrast, these courts have held that compensation to parents for their labor in caring for a developmentally disabled child, which constitutes

[1] Hereafter part 5.609(c) — and, when referred to in a citation parenthetical, § 5.609(c). (See California Style Manual (2000) § 2:44.)

genuine income to the family, is outside the scope of the exclusion.

The conclusion reached by these other appellate courts is the most straightforward reading of the relevant regulatory language, which is restricted to payments made "to offset the cost of services and equipment." (§5.609(c)(16).) And this interpretation fully serves my understanding of the purpose underlying the regulation, which is to ensure that families caring for a developmentally disabled family member are not disadvantaged in their receipt of Section 8 housing assistance by their acceptance of state help in keeping the family member at home. Significantly, the narrower interpretation is the one urged on us by the United States Department of Housing and Urban Development (HUD), the federal agency that drafted the regulation.

The majority's more expansive construction of the regulation relies on a strained reading that disregards the actual language, and it will have unfortunate and selective public policy consequences. First, the majority's ruling will introduce unintended and unwarranted inequities into the administration of Section 8. Second, the majority's misreading will siphon scarce housing assistance from California's other low-income families, inevitably reducing the number of families who will benefit from the Section 8 program. In light of the misguided, if well-intentioned, nature of the majority's analysis, I respectfully dissent.

I. BACKGROUND

A. Plaintiff's Circumstances

Plaintiff Kerrie Reilly and her adult daughter, K.R., live together in a three-bedroom apartment in Marin County. Due to a severe developmental disability, K.R. requires around-the-clock supervision. Under the In-Home Supportive Services program (IHSS; Welf. & Inst. Code, § 12300 et seq.), the state pays plaintiff to provide full-time home care and supervision to her daughter. Without such care, K.R. would likely be placed in an institution. At the time of the trial court proceedings, the family's annual income exceeded $52,000, comprised ofK.R.'s social security benefits of $11,000 and more than $41,000 in IHSS compensation to plaintiff.

Plaintiff is a long-time participant in Section 8. In 2004, plaintiff's second daughter, R.R., moved from the family's apartment to attend college. For the next five years, plaintiff falsely represented in annual, sworn certifications to the Marin Housing Authority (Authority), the agency responsible for administering her Section 8 benefits, that R.R. continued to live with her.[2] After the Authority learned the truth, plaintiff admitted that she made the misrepresentations because she was concerned that she and K.R. would be required to move from their three-bedroom apartment if she disclosed R.R.'s move. Plaintiff's false

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[2] The majority's statement that plaintiff "did not inform" the Authority of R.R.'s departure (maj. opn., *ante*, at p. 2) is a charitable but misleading characterization of plaintiff's repeated and knowing falsehoods.

representations also caused her to be granted, the Authority concluded, a larger Section 8 housing voucher than she would have received had the Authority known the true circumstances. When the Authority confronted plaintiff, she agreed to repay more than $16,000 in excess subsidies under a payment schedule. Unfortunately, plaintiff was often unable to make the scheduled payments. The Authority's patience ran out in 2015, when it terminated her participation in the Section 8 program.

As the Authority informed the trial court in explaining its decision to terminate plaintiff, its implementation of Section 8 is severely constrained by limited funding. In 2015, more than 5,000 families in Marin County eligible for Section 8 housing assistance were on a waiting list because the Authority was unable to help them. At the time, the Authority was authorized to grant vouchers to only 2,153 families; in practice, it provided rent vouchers only to 1,957 families due to insufficient funding. The Authority decided to terminate plaintiff because, it explained, although it "has been grappling with the possibility of terminating hundreds of compliant families from the Section 8 Program, [plaintiff] has made it a practice to violate rules of the Section 8 Program and her contractual obligations." Contrary to majority's claim (maj. opn.,*ante*, at p. 2), the termination did not require plaintiff's eviction from her apartment, although she would become responsible for paying the entire rent.

In this mandate action challenging her termination, plaintiff argued that the Authority had improperly included her IHSS payments when calculating her

annual income under Section 8, causing the Authority to understate the housing subsidy due her. The trial court disagreed, sustaining the Authority's demurrer without leave to amend upon concluding that the IHSS payments were properly included in plaintiff's income calculation. The Court of Appeal affirmed in a published decision. (*Reilly v. Marin Housing Authority* (2018) 23 Cal.App.5th 425, 439 (*Reilly*).) The Supreme Court now reverses the Court of Appeal.

B. Governing Law

1. Section 8

The Section 8 voucher program "is funded by HUD and administered by state and local public housing authorities . . . in accordance with regulations promulgated by HUD. When a rent payment exceeds a specified percentage of a family's monthly income, the federal program pays the balance." (*Inclusive Communities Project, Inc. v. Lincoln Property Co.* (5th Cir. 2019) 920 F.3d 890, 900.) As HUD characterizes the program in an amicus curiae brief, "Section 8 is not an entitlement program; Congress appropriates only a fixed sum for vouchers . . . each year, and not every otherwise qualified family receives a voucher."[3] Each administering agency is assigned a maximum number

[3] If the Authority's experience is any guide, HUD's concession that "not every otherwise qualified family receives a voucher" is a gross understatement. More than 7,000 families in Marin County are eligible for assistance under Section 8, but fewer than 2,000 are actually provided vouchers.

of annual vouchers and has a fixed budget.[4] Yet Congress has underfunded the program in recent years, requiring these agencies to operate at only 85 percent of their assigned budgets.[5]

Each subsidized family is required to contribute to its rent payment an amount equal to "thirty percent of the tenant family's monthly 'adjusted income' or ten percent of its monthly gross income, whichever is greater." (*Hayes v. Harvey* (3d Cir. 2018) 903 F.3d 32, 36, citing 42 U.S.C. § 1437f(*o*).) "Adjusted income" for this purpose is a family's "annual income," minus certain expenses and allowances. (24 C.F.R. § 5.611 (2020); *DeCambre v. Brookline Housing Authority* (1st Cir. 2016) 826 F.3d 1, 9 (*DeCambre*).) The calculation of annual income therefore determines the proportion of its monthly rent that a family participating in Section 8 must pay.

For purposes of Section 8, "annual income" constitutes "all amounts, monetary or not" that "[g]o to,

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[4] See Congressional Research Service, An Overview of the Section 8 Housing Programs: Housing Choice Vouchers and Project-Based Rental Assistance, No. RL32284 (Feb. 7, 2014). A copy of the report can be found at <https://www.everycrsreport.com/reports/RL32284.html#:~:text=The%20voucher%20program%20is%20funded,an%20annual%20budget%20from%20HUD.> (as of Aug. 28, 2020). All Internet citations in this opinion are archived by year, docket number, and case name at <http://www.courts.ca.gov/38324.htm>.

[5] Eligibility Team, *How the Housing Choice (Section 8) Voucher Program is Funded* (Jan. 22, 2016) <https://eligibility.com/section-8/how-the-housing-choice-section-8-voucher-program-is-funded#> (as of Aug. 28, 2020).

or on behalf of, the family head or spouse . . . or to any other family member." (24 C.F.R. § 5.609(a)(1), (3) (2020); *DeCambre*, *supra*, 826 F.3d at p. 9.) Among other things, this includes "[t]he full amount, before any payroll deductions, of wages and salaries, . . . and other compensation for personal services." (24 C.F.R. § 5.609(b)(1) (2020).) Subpart (c) of part 5.609 lists 16 exclusions from annual income. In addition to the exclusion on which plaintiff relies, part 5.609(c)(16), which excludes certain payments to a family providing at-home care to a developmentally disabled family member, these include payments received "for the care of foster children" (§ 5.609(c)(2)), payments "for, or in reimbursement of, the cost" of medical expenses (§ 5.609(c)(4)), students' financial aid (§ 5.609(c)(6)), certain nonrecurring payments (§ 5.609(c)(3), (9)), and student earnings and adoption assistance payments "in excess of $480" (§5.609(c)(11), (12)).

2. IHSS

The purpose of the IHSS program is "to avoid institutionalization of incapacitated persons. It provides supportive services to aged, blind, or disabled persons who cannot perform the services themselves and who cannot safely remain in their homes unless the services are provided to them. The program compensates persons who provide the services to a qualifying incapacitated person." (*Basden v. Wagner* (2010) 181 Cal.App.4th 929, 931 (*Basden*).) IHSS is administered by the state's counties (*Skidgel v. California Unemployment Ins. Appeals Bd.* (2018) 24 Cal.App.5th 574, 578–579), which either hire a caregiver for the recipient or pay the recipient directly

to cover the costs of a caregiver. (*Basden*, at p. 934; Welf. & Inst. Code, §§ 12302, 12304, subd. (a).) Counties are required to give preference to a care provider selected by the recipient, and some IHSS care recipients are entitled to select and hire their own provider. (Welf. & Inst. Code, §§ 12303.4, subd. (b); 12304, subd. (a), 12304.1; *Skidgel*, *supra*, 24 Cal.App.5th at p. 579.)

The state may hire parents to care for their children under IHSS, but only "when the [parent] leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available." (Welf. & Inst. Code, § 12300, subd. (e); see generally, *Basden*, *supra*, 181 Cal.App.4th at pp. 939–940.) Of the 535,000 IHSS care providers in California, about 70 percent are a relative or spouse of the recipient, and about one-quarter of those are a parent. Slightly less than half of IHSS providers — 250,000 persons — are, like plaintiff, relatives of the person for whom they provide care and live in the same home.[6]

Plaintiff's claim that her IHSS payments should be excluded from the calculation of her Section 8 annual income is premised on part 5.609(c)(16), which excludes "[a]mounts paid by a State agency to a family with a

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[6] The State Department of Social Services reports a wide range of monthly data regarding participation in the IHSS program. The information cited in this paragraph is from a table of data for June 2020, maintained at IHSS Program Data <https://www.cdss.ca.gov/inforesources/ihss/program-data> (as of Aug. 28, 2020). The cited data is available under a tab labeled "Provider Details," which does not appear to be accessible through a separate URL.

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." The Authority and HUD interpret the phrase "[a]mounts paid . . . to offset the cost of services and equipment" to cover only payments by the state to compensate for a family's actual expenditures on services or equipment. (§ 5.609(c)(16.) Because plaintiff's IHSS compensation was not used to pay for the costs of services or equipment purchased by the family to care for K.R., the Authority explains, it did not exclude plaintiff's IHSS payments when calculating her annual income. Plaintiff contends, however, and the majority holds, that the phrase "[a]mounts paid . . . to offset the cost of services and equipment" (*ibid.*) should be construed to cover any payment made to a family by the state in connection with the in-home care of a developmentally disabled family member, regardless of whether the payment offset an expenditure by the family or compensated a family member hired by the state to care for the disabled person.

II. DISCUSSION

A. The Language of Part 5.609(c)(16) Precludes the Majority's Interpretation

We review questions of statutory interpretation de novo. (*Christensen v. Lightbourne* (2019) 7 Cal.5th 761, 771.) Under "our familiar principles of statutory construction," "'[w]e start with the statute's words, which are the most reliable indicator of legislative intent.' [Citation.] "'We interpret relevant terms in light of their ordinary meaning, while also taking

account of any related provisions and the overall structure of the statutory scheme to determine what interpretation best advances the Legislature's underlying purpose.'" [Citations.] 'If we find the statutory language ambiguous or subject to more than one interpretation, we may look to extrinsic aids, including legislative history or purpose to inform our views.'" (*In re A.N.* (2020) 9 Cal.5th 343, 351–352 (*A.N.*).) We take the same approach when interpreting administrative regulations. (*Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1011.) Based on the ordinary meaning of its language, we should conclude that the part 5.609(c)(16) exclusion is limited to state payments that compensate a family's actual expenditures for services and equipment to keep a developmentally disabled family member in their home.

As noted above, part 5.609(c)(16), excludes from a Section 8 family's annual income "[a]mounts paid by a State agency to a family . . . to offset the cost of services and equipment needed to keep the developmentally disabled family member at home." According to Merriam-Webster, the verb "offset" means "to serve as a counterbalance for : COMPENSATE." (Merriam-Webster Dict. Online (2020) <https://www.merriam-webster.com/dictionary/offset> [as of Aug. 28, 2020];_see, e.g., *Steinmeyer v. Warner Cons. Corp.* (1974) 42 Cal.App.3d 515, 518 ["An 'offset' may be defined as a claim that serves to counterbalance or to compensate for another claim"].) Part 5.609(c)(16) therefore excludes payments by the state to a family that are made to "counterbalance" the cost of services

and equipment needed to keep the developmentally disabled family member at home. Necessarily, this language anticipates that an equivalent cost has been or will be paid by the family for those services or equipment, since there would be nothing to counterbalance in the absence of such an expenditure.

If HUD, the agency that drafted part 5.609(c)(16), had intended the regulation to bear the broader meaning imposed by the majority, it could have used a more inclusive phrase, such as amounts paid by the state "*for* services and equipment," instead of requiring the excluded payments to "offset the cost" of services and equipment. This is the approach taken by HUD in drafting the only part 5.609(c) exclusion that undoubtedly bears the breadth bestowed on subpart (c)(16) by the majority. Part 5.609(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)," leaving no uncertainty about its meaning.[7] (Italics added.) By imposing a similar breadth on part

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[7] The parenthetical presumably explains the reason for the breadth of the exclusion: To provide a benefit to low-income families that care for unrelated persons who are in distressed circumstances. The majority contends that interpreting subpart (c)(2) differently from subpart (c)(16) "would be unreasonable" because both families are providing "the same care." (Maj. opn., *ante*, at p. 28.) The different approaches, however, are readily explained. HUD could reasonably have concluded that the familial connection required by part 5.609(c)(16) makes it unnecessary to bestow this type of benefit on families covered by that exclusion. In any event, the distinctly different language in the two exclusions suggests that they should be interpreted differently.

5.609(c)(16), the majority's reading renders pointless the use of the term "offset" because its reading is not restricted to the exclusion of payments that "offset the cost" of services and equipment. It is an elementary principle of statutory interpretation that "'[a]n interpretation that renders statutory language a nullity is obviously to be avoided.'" (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1039.) The majority's expansive approach also defies the general interpretive principle that exceptions to a statute are to be construed narrowly. (*Mathews v. Becerra* (2019) 8 Cal.5th 756, 771; *Simpson Strong-Tie Co. v. Gore* (2010) 49 Cal.4th 12, 22.)

HUD has confirmed this understanding in an amicus curiae brief, arguing that it intended the regulation to reach only state payments that reimburse a family's expenditures. As HUD reasons, this narrower reading "accords with the basic policy objectives of the regulation. [Citation.] As HUD has explained, in promulgating [part] 5.609(c)(16), the exclusion exists because 'families that strive to avoid institutionalization should be encouraged, and not punished.' [Citation.] The regulation pursues this goal in part by ensuring that families that choose different means of keeping the developmentally disabled family member at home are treated evenhandedly."[8]

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[8] Leaving aside debate about the precise degree of deference to be accorded HUD's interpretation under *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7–8, the administrative agency's interpretation undoubtedly deserves serious consideration. Although the majority does address HUD's

Plaintiff argues that the term "cost" could cover more than a monetary expenditure. In ordinary parlance, "cost," admittedly, can refer not simply to the price paid for something, but more broadly to "the outlay or expenditure (as of effort or sacrifice) made to achieve an object" or the "loss or penalty incurred especially in gaining something." (Merriam-Webster Dict. Online (2020) <https://www.merriam-webster.com/dictionary/cost> [as of Aug. 28, 2020].) In this connection, plaintiff invokes the economic concept of an "opportunity cost," that is, the opportunities foregone when a person makes a particular economic choice. Here, the argument goes, "cost" refers to the employment opportunities that plaintiff has foregone in order to provide care under IHSS. The payments therefore "offset" the cost to plaintiff of not having other employment. This is hardly the "ordinary meaning" of the language HUD chose to use. (*A.N.*, *supra*, 9 Cal.5th at p. 351.) We typically refer to a payment for services as "compensation" or, more simply, "payment" for the work performed. We do not refer to compensation for providing a service as "offsetting the cost" of the service provider's own effort, much less the service provider's decision to take this job, rather than a different hypothetical job.

The majority takes a different tack in justifying its interpretation, suggesting that because much of the IHSS compensation paid to plaintiff will ultimately be spent on costs associated with supporting K.R. in the

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views, its explanation for rejecting them amounts to little more than a disagreement with HUD over which interpretation best serves HUD's goals. (Maj. opn., *ante*, at pp. 28–30.)

family home, that compensation is paid to "offset the cost of services and equipment needed to keep [K.R.] at home." (§ 5.609(c)(16); see Maj. opn., *ante*, at p. 10 ["Whether a family uses homecare payments to support itself so that it may care for a developmentally disabled member at home, or instead uses the funds to pay a third party to provide care for some of the time, these payments do no more than 'offset' the 'cost' of services and equipment needed to avoid institutionalization"].) This rationale fails for two independent reasons. First, while it finds a role for the term "offset," it disregards other aspects of the regulatory language. Part 5.609(c)(16) excludes only state payments that offset expenditures for "services and equipment." As rationalized above, the majority's reading necessarily stretches the exclusion to cover *any* cost related to K.R.'s presence in the home, including food, clothing, and rent. These are not normally viewed as "services and equipment."[9] By restricting the exclusion to the costs of "services and equipment," HUD signaled its intent to exclude only costs related to the family member's disability, rather than the ordinary, if necessary, expenses of daily life. Second, the regulation excludes "[a]mounts paid by a state agency . . . to offset the costs of services and equipment." (§ 5.609(c)(16).) As discussed above, the IHSS compensation is paid by the state to compensate plaintiff for her labor in caring for her daughter. While it may be *used* by plaintiff to

[9] Indeed, because the majority reads the regulation to exclude the entirety of plaintiff's IHSS compensation on this basis, it construes "the costs of services and equipment" to cover the cost of anything plaintiff chooses to spend her compensation on.

cover the costs of supporting her daughter, it is not paid by the state to offset those costs.

The restrictive view of part 5.609(c)(16) has been adopted by all other appellate courts that have considered the issue. The plaintiff in *Anthony v. Poteet Housing Authority* (5th Cir.2009) 306 Fed. Appx. 98, the first decision to address this issue, lived with her developmentally disabled adult child. Under a state-funded program in Texas, she was employed by a private entity to care for the child and, like plaintiff, contended that the income she earned in this role should be excluded from her Section 8 income under part 5.609(c)(16). The court was willing to accept that her payments, despite being provided by a private employer, constituted payments by the state. It rejected her argument that the payments should be excluded from the calculation of her Section 8 income under part 5.609(c)(16), however, upon concluding that the exclusion applies only to reimbursements for costs paid for care by third-party providers. As the court explained, "One must incur costs before they can be offset." (*Anthony*, at p. 101.)

The Court of Appeal below reached a similar conclusion after a more extensive analysis. It declined to equate "offset" with "reimburse," but the distinction it found between the two terms was quite narrow and is inconsequential in these circumstances. As the court explained, part 5.609(c)(16) "appears to reach money paid to a family so that the family can go out and hire services or purchase equipment necessary for the developmentally disabled family member. Such payments 'offset the cost of services and equipment'

that would otherwise fall on the family. But they are not reimbursement for out-of-pocket expenses if the family receives payment before, rather than after, incurring the expense."[10] (*Reilly*, *supra*, 23 Cal.App.4th at p. 434.) The appellate court below also rejected plaintiff's argument that the IHSS payments should be excluded because "the services she provides are necessary for her daughter to live at home, and the IHSS payments offset the costs of those services." (*Id.* at p. 432.) The court rightly accepted plaintiff's contention that her services were necessary to keep K.R. at home, but it found the language of the regulation inconsistent with plaintiff's argument that it excludes any payment for necessary services. As the court explained, part 5.609(c)(16) refers to payments "'to a family . . . to offset the cost of services . . . .'" (*Reilly*, at p. 434.) "If a payment is to 'offset the cost of services,' the payment must go to the same entity that incurs the cost of those services. Otherwise the payment does not counterbalance or compensate for the cost of services. . . . This means that the costs these payments offset must be costs that the family itself incurs." (*Ibid.*)

Most recently, the Minnesota Supreme Court reached the same conclusion in *In re Ali* (Minn. 2020) 938 N.W.2d 835 (*Ali*). In that case the plaintiff lived at home with her developmentally disabled son. Under a Minnesota state program, she was provided with a

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[10] The majority contends that "'offset' as used here does not necessarily reflect th[e] same meaning" as "reimburse" (maj. opn., *ante*, at p. 10), but it does not clearly articulate what the difference might be.

budget for the services and equipment needed to keep him in the home, some of which she allocated to herself as compensation for her services as a caregiver. (*Id.* at p. 837.) In concluding that the sums allocated to plaintiff were not excluded from her Section 8 income under part 5.609(c)(16), the court held that the word "cost" should be interpreted as "price." (*Ali*, at p. 839.) It rejected the argument that the word should be given a broader definition for three independent reasons. First, referring to the entirety of the phrase "to offset the cost of services and equipment," the court reasoned that "[t]he 'and' between the words services and equipment suggests that the same measurement is used for each. Typically, the cost of equipment is calculated in monetary terms — such as the cost to buy or lease." (*Ibid.*) Second, like the appellate court below, *Ali* cited the use of the word "cost" elsewhere in part 5.609, where it clearly refers to "a monetary expense." (*Ali*, at p. 839.) Finally, the court noted that "when the regulators wanted to exclude amounts paid to family members for their own services, they knew how to do so — and did so unambiguously." (*Ibid.*) *Ali* cited in support two other subparts of part 5.609(c), in both of which the regulatory language, unlike part 5.609(c)(16), unambiguously excludes state payments made to the Section 8 family.[11] (*Ali*, at p. 839.)

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[11] In addition to addressing part 5.609(c)(2), discussed above, which excludes payments to foster families, *Ali* cited part 5.609(c)(12), which excludes from annual income "[a]doption assistance payments in excess of $480 per adopted child." (*Ali*, *supra*, 938 N.W.2d at p. 839.)

B. Extrinsic Aids to Interpretation Weigh Against the Majority's Approach

I do not agree with the majority that the interpretation it has imposed on the language of part 5.609(c)(16) is sufficiently reasonable to create a statutory ambiguity, but there is no need to debate the issue. The available extrinsic aids to interpretation also weigh against the majority's reading. Its interpretation assigns an unfounded purpose to the part 5.609(c)(16) exclusion that will seriously distort the intended operation of the annual income calculation for families receiving caregiving income under IHSS. In turn, this distortion will not only introduce unintended inequities among Section 8 families, but it is also likely to materially reduce the funds available to support housing subsidies for other low-income families in California. These unfortunate consequences weigh strongly against the majority's ruling.

1. The rulemaking history does not support the majority's reading

The majority finds support for its interpretation in commentary on part 5.609(c)(16) published by HUD around the time of its adoption. (Maj. opn., *ante*, at pp. 11–16.) Reviewing the same materials, the Court of Appeal found them "unhelpful in resolving the interpretive issue before us," and I agree. (*Reilly*, *supra*, 23 Cal.App.5th at p. 436.) As quoted by the majority (maj. opn., *ante*, at p. 12), the commentary never expressly addresses the issue before us — the distinction between state payments made to reimburse a family's expenditures for services and those made to compensate the family's own provision of services —

and does little more than parrot the language of the regulation. The commentary does use the term "homecare payments," but it characterizes those payments in the language of the exclusion itself. That is, "homecare payments," as the term is used by HUD, are payments made "to offset the cost of services and equipment needed to keep a developmentally disabled family member at home, rather than placing the family member in an institution." (60 Fed.Reg. 17388, 17389 (Apr. 5, 1995).) HUD's use of the term is therefore of no help in resolving the question before us.

The majority's contrary conclusion is based on circular reasoning. Beginning with its assumption that "homecare payments" means any payment made by the state in connection with the care in the home of a developmentally disabled person, the majority concludes that by joining that term with the regulatory language HUD signaled its agreement with the majority's broad interpretation. The conclusion that "homecare payments" refers to any payment by the state, however, rather than only those intended to offset family expenditures, is unsupported by anything in the commentary. In fact, the commentary clearly uses "homecare payments" merely as a synonym for the type of payments that are excluded by part 5.609(c)(16). Its use therefore confirms the majority's interpretation only if one assumes that the regulation should be interpreted in the manner adopted by the majority. In reality, the HUD commentary simply does not address the question before us.

The policy argument advanced by the majority in connection with HUD's commentary is, in essence, that

because payments made by the state to compensate a family for caregiving services may be critical in keeping a developmentally disabled family member in the home, they must be included within the part 5.609(c)(16) exclusion. The flaw in this logic, as the Court of Appeal noted in rejecting the same argument below (*Reilly*, *supra*, 23 Cal.App.4th at p. 434), is that it ignores the language of the regulation. Merely because these payments are important in keeping a developmentally disabled family member in the home does not alone mean that they "offset the costs of service and equipment" necessary to that task. As explained above, to reach the majority's conclusion it is necessary to read the phrase "offset the costs" as synonymous with "for," a different and broader term. Because it is the regulation's language that must guide our interpretation, we are required to respect HUD's word choice.

2. *The majority's interpretation misunderstands the limited function of the part 5.609(c)(16) exclusion*

The impetus underlying the majority's interpretation of part 5.609(c)(16) seems to be to maximize the Section 8 subsidy for persons in plaintiff's situation, given the difficulties of their circumstances. In other words, if some subsidy is good, more is better. Because the purpose of the exclusion is to help burdened, low income families, it is difficult to argue with the sentiment. Yet our interpretation must be guided not by our own view of proper public policy, but by the views of Congress and HUD, the agency tasked with administering the Section 8 program. In

implementing the congressional plan, HUD is required to balance a wide variety of pertinent policy and equity considerations, not the least of which is the allocation of very limited public resources among many needy families. Its policy choice is reflected in the language of part 5.609(c)(16), which limits the exclusion to out-of-pocket expenses. As discussed below, HUD's choice is consistent with the foundational concerns of Section 8. The majority's more expansive view upsets the balance struck by Section 8, will create unintended inequities in its implementation, and will ultimately lead to a diminution in the housing assistance available to other low-income Californians.

The purpose of the part 5.609(c)(16) exclusion is to ensure that the acceptance of state financial help by families who keep a developmentally disabled family member at home does not place the families at a disadvantage in receiving Section 8 housing assistance; they are to be "'encouraged, and not punished.'" (Maj. opn., *ante*, at p. 12 [quoting HUD explanation].) To accomplish this, part 5.609(c)(16) excludes from the families' annual income funds provided by the state that the family spends on services and equipment to support at-home care of the disabled family member. By excluding this type of payment, the regulation ensures that the acceptance of state aid by families maintaining a developmentally disabled family member does not inflate their annual income and result in a diminished Section 8 subsidy. Instead, the family receives the same housing subsidy as other Section 8 families having a similar disposable income.

There is no indication in the language of the regulation itself or the limited regulatory history that, in adopting part 5.609(c)(16), HUD intended to go further and provide affirmative *advantages* to families with a developmentally disabled member at home. HUD did not say such families should be *preferentially benefitted*, and not punished. Yet such a preferential benefit is the consequence of the majority's interpretation of part 5.609(c)(16), since it affords families who are paid to provide at-home care of a developmentally disabled family member substantially greater Section 8 housing subsidies than to other low-income families with the same family income.

Section 8 housing subsidies are determined by a participating family's income — that is, the funds available to the family to pay for rent and other daily needs.[12] The part 5.609(c)(16) exclusion is necessary because the regulations defining "annual income" for purposes of Section 8 are very broad, including "all amounts, monetary or not" that "[g]o to, or on behalf of, the family head or spouse . . . or to any other family member." (24 C.F.R. § 5.609(a)(1) (2020).) Given this comprehensive definition, any payments made by the state to a family for the care of a developmentally disabled family member are included in annual income under part 5.609(a), even if the payments are not available to the family to pay for rent and other daily

[12] Literally, it is not the subsidy that is determined by a family's income. Rather, annual income determines the amount the family is required to contribute to its rent payment. The subsidy is then the difference between this contribution and the family's actual rent. For purposes of this analysis, the difference is immaterial.

needs because they merely offset family expenditures for at-home care. Properly understood, part 5.609(c)(16) prevents a family's annual income from being inflated by payments covering such out-of-pocket expenses, recognizing that those payments should not be treated as income because they do not increase the resources available to the family for daily expenses. In the absence of the exclusion, the acceptance of such aid would reduce the family's Section 8 subsidy without improving its standard of living — in the words of HUD, such families would be"punished."

This highlights the fundamental difference, for purposes of Section 8, between IHSS funds that are given to reimburse expenditures by a family and funds that compensate a family for the care of the disabled family member. Unlike funds that reimburse a family's expenditures, funds provided by the state to compensate for the family's caregiving activities *are* available to meet the family's daily needs. That is their purpose. In accepting compensation for their caregiving activities, IHSS participants are effectively selling their labor to the state, and the resulting income is indistinguishable, in its impact on the family's standard of living, from money earned working outside the home. For that reason, HUD has determined that this compensation is properly characterized as income under Section 8.

This is particularly true of parents who are hired to provide caregiving responsibilities under IHSS. As noted above, the state precludes a parent's acceptance of full-time work outside the home if the parent is receiving IHSS compensation; such funding is available

to parents only if "the [parent] leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available." (Welf. & Inst. Code, § 12300, subd. (e).) In other words, to receive funds from IHSS a parent must accept their disabled child's care as, in effect, their *job*. Plaintiff is an example. So far as the appellate record reveals, caring for her daughter is her full-time activity, and IHSS compensation is her only income.

The majority argues that the acceptance of compensation from IHSS is not "'an employment for all purposes.'" (Maj. opn., *ante*, at p. 24.) The issue here, however, is not whether IHSS "employs" caregivers for all purposes. As defined by part 5.609, "annual income" includes any "compensation for personal services," not just income from formal employment. (24 C.F.R. § 5.609(b)(1) (2020).) The issue is therefore whether the compensation received from IHSS by persons like plaintiff should be treated the same as income received by Section 8 participants from other types of compensable labor. By limiting the exclusion of part 5.609(c)(16) to offsetting payments, HUD has declared that it should. The majority may disagree with HUD's policy choice, but it is HUD's choice, not that of the majority, that must govern our interpretation.[13]

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[13] The majority also finds support in the exclusion of in-home care payments from "income" under the Internal Revenue Code. (Maj. opn., *ante*, at pp. 26–27.) Because Section 8 and the Internal Revenue Code are quite different statutes with very different aims, there is no reason why the exclusion of IHSS payments from federal taxable income should weigh in favor of their exclusion from "annual income" under Section 8.

Excluding IHSS compensation from a Section 8 family's annual income, as the majority requires, artificially reduces the family's income and, consequently, increases the family's housing subsidy above the level justified by its actual income. The effect can be substantial. Take, as an example, plaintiff. As noted above, a Section 8 family is ordinarily required to contribute 30 percent of its annual income toward rent. The remainder of its rent is paid by the program. Plaintiff's family income in the latest year for which we have information was more than $52,000, consisting primarily of plaintiff's $41,000 income from IHSS; the remainder was $11,000 in disability payments to K.R. If plaintiff's IHSS compensation is included in her annual income for purposes of Section 8, the family would be expected to contribute $1,300 toward its monthly rent. Here, the majority would exclude plaintiff's $41,000 in IHSS compensation from the family's annual income. Plaintiff's family will therefore be treated as though it had an annual income of $11,000, although it was living on an actual income of $52,000 per year. As a result, the family's expected rent contribution will be reduced to $275.[14] The remaining $1,005 of the family's monthly rent payment, an annual gap of more than $12,000, must be made up from the

[14] This assumes the resulting subsidy does not exceed the maximum permitted. Section 8 housing subsidies are capped by a "payment standard," which is determined by local rental conditions. (See *Nozzi v. Housing Authority* (9th Cir. 2015) 806 F.3d 1178, 1184–1185; 24 C.F.R. § 982.503(b) (2020); 42 U.S.C. § 1437f(*o*)(2).) The appellate record does not contain sufficient information from which we may determine whether plaintiff's subsidy, as re-jiggered by the majority, would be capped.

Authority's Section 8 funds. It is noteworthy that the majority nowhere acknowledges, let alone attempts to explain or justify, that its interpretation will treat a family with an annual income exceeding $52,000, more than three times the federal poverty level for a family of two, as though it were living far below the poverty line.[15] Yet that is the clear and unavoidable import of its decision.

Low-income families caring for a developmentally disabled family member at home face daily challenges unknown to the rest of us. Few would begrudge such families a generous housing subsidy, above and beyond that provided to other low-income families with a similar income — *if* there was evidence that Congress or HUD intended to provide them such assistance. But as noted above, the part 5.609(c)(16) exclusion was intended to ensure that families receiving aid from IHSS are simply treated the same as, not better than, other families — to ensure that they were not punished, rather than to preferentially benefit them.

3. *The majority's interpretation will introduce unintended inequities into Section 8 implementation and reduce the availability of Section 8 housing assistance in California*

As discussed above, the majority's reading of the part 5.609(c)(16) exclusion is contrary to its language and achieves the result, unintended by HUD, of

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[15] The 2020 federal poverty level for a family of two is an annual income of $17,240. (See U.S. Dept. Health & Human Services, Poverty Guidelines (Jan. 2020) <https://aspe.hhs.gov/poverty-guidelines> [as of Aug. 28, 2020].)

granting IHSS participants like plaintiff substantially greater Section 8 subsidies than are justified by their actual income. That alone, of course, would be sufficient to reject the reading. But we should be particularly wary of imposing a rule HUD did not write, given the serious public policy consequences that will follow.

As explained below, these consequences are of two types. First, the interpretation adopted by the majority will create inequities among families participating in the IHSS and Section 8 programs. Families that are paid through IHSS to care at home for a developmentally disabled person will receive a far larger housing subsidy than families of similar income that (1) IHSS funds to hire a third party to care for a developmentally disabled family member in their home or (2) receive IHSS funds to care for a *medically* disabled family member.

Second, and just as important, the majority's interpretation will reduce, by an unknown but potentially sizable amount, the number of families that can obtain Section 8 housing assistance in California. The majority's decision will not increase by a single dollar the Section 8 funds reaching California. Yet it will require the state's counties to steer a significantly larger portion of their Section 8 housing funds to families that receive IHSS compensation for caring for a disabled member in the home. These increased subsidies can come from only one place: The funds available to other low-income families who are, or would have been, receiving housing assistance under

Section 8. The majority's expansive interpretation will come at the cost of assistance to other families in need.

First the inequities. IHSS provides families with the funds necessary to maintain a developmentally disabled family member in their home. The Authority or the family can use these funds to hire a third-party caregiver or, alternatively, a member of the family for the same role. Both approaches serve the purposes of IHSS and the part 5.609(c)(16) exclusion by (1) keeping the developmentally disabled family member out of an institution and (2) ensuring that the family is not disadvantaged in the receipt of Section 8 funds by doing so. So far as appears, neither HUD nor IHSS favors one option over the other; certainly there is no language in either Section 8 or IHSS reflecting a preference, as the majority acknowledges. (Maj. opn., *ante*, at p. 21 ["despite no expressed preference for family providers per se"].) Yet under the majority's reading a family that provides its own compensated care will receive a far larger Section 8 housing voucher than the family that uses IHSS funds to hire a nonfamily member to provide the same care, even if both families have identical incomes. This occurs because, under the majority's interpretation, some or all of the income of the first family, consisting of compensation received from IHSS, is excluded from the annual income, while the income of the second family, earned outside the home, is fully included. Assuming both families end up with similar disposable income,the first family will receive a far larger subsidy under Section 8 due to the exclusion of a significant portion of its disposable income. (See *Reilly*, *supra*, 23 Cal.App.5th at pp. 437–438.) There is no indication in

the language of part 5.609(c)(16) or the regulatory history to suggest that HUD intended this result; in its amicus curiae brief, HUD expressly disavows such an intent.

The majority seeks to explain away this disparity by claiming that persons needing 24-hour care "'are more likely to receive better continuous care from relatives living with them whose care is more than contractual.'" (Maj. opn., *ante*, at pp. 21, quoting *Miller v. Woods* (1983) 148 Cal.App.3d 862, 870.) Neither *Miller* nor our appellate record contains evidence to support the proposition that third-party caregivers provide substandard care, compared to family members.[16] But more to the point, the majority cites no evidence that HUD believed this to be true or that it crafted part 5.609(c)(16) based on any assumptions about the relative competence of family members versus third-party caregivers.

Much of the majority's policy justification for its interpretation is a recognition of the importance and difficulty of the work done by persons who care for a developmentally disabled family member at home. And I agree, there is no doubt that this work is difficult and important. If preferentially benefitting families who care for developmentally disabled members themselves, rather than retain a third-party caregiver, were

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[16] The majority notes that IHSS does not pay for 24-hour care. (Maj. opn., *ante*, at p. 26.) Although true, that is of no policy consequence here. Families that hire a third-party to provide care for a developmentally disabled family member in their home must provide the same type of uncompensated off-hours care for the dependent as families that receive IHSS compensation.

actually a motive underlying part 5.609(c)(16), however, one would expect some express indication that HUD intended to favor family care over care by third-party providers. As noted above, there is no such indication. In fact, the regulation is entirely silent, and therefore presumably neutral, on that issue.[17]

The majority's interpretation will create a similar inequity between families that receive IHSS compensation to care for a developmentally disabled family member and families that receive IHSS funds to care for a *medically* disabled family member. (See *Reilly*, *supra*, 23 Cal.App.5th at p. 438.) Like families maintaining a developmentally disabled member in the home, families that maintain a medically disabled family member in the home can receive IHSS reimbursement for expenditures necessary to keep that person at home as well as compensation for caregiving by a family member. The Section 8 exclusion covering families with a medically disabled member, however, allows the exclusion from annual income only of "[a]mounts . . . that are specifically for, or in reimbursement of, the cost of medical expenses . . . ."

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[17] The majority also claims that if IHSS compensation is not excludable under part 5.609(c)(16), the two programs, IHSS and Section 8, will be at "cross-purposes," presumably because accepting IHSS compensation will reduce a family's Section 8 subsidy. (Maj. opn., *ante*, at p. 23.) Accepting IHSS compensation, however, is no more at cross-purposes with Section 8 than is employment generally, since all income reduces a family's Section 8 subsidy to the same degree. In any event, there are no cross-purposes. The supplement to a family's income from accepting IHSS compensation far exceeds any corresponding decline in its Section 8 subsidy.

(§ 5.609(c)(4).) Although families caring for a medically disabled family member face challenges similar to those of families caring for a developmentally disabled family member, the enhanced Section 8 subsidy made available by the majority's interpretation of part 5.609(c)(16) is unavailable to families with a medically disabled member. Such families will also receive a materially reduced Section 8 subsidy compared to families that benefit from the majority's interpretation of part 5.609(c)(16).

The majority responds that this disparity "is inherent in the federal regulation itself" because part 5.609(c)(4) permits recovery only of payments to third-party providers. (Maj. opn., *ante*, at p. 19.) The argument misses the point. Part 5.609(c)(16) has a materially wider scope than part 5.609(c)(4) only because the majority has interpreted it that way. If "offset the cost of services and equipment" is interpreted to cover only the reimbursement of out-of-pocket expenditures, the two exclusions have a similar scope. It is not "the federal regulation itself," but the majority's interpretation of it, that creates an inequity. The majority otherwise fails to explain what possible public policy supports giving families with a developmentally disabled member far more advantageous treatment under Section 8 than families with a medically disabled family member.[18]

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[18] The majority's claim that HUD believes that families with a developmentally disabled member would "receive unfair treatment" if they were not allowed to exclude income (maj. opn., *ante*, at p. 20) is based entirely on HUD's comment that such families should be "'encouraged, and not punished'" (*ibid.*, italics

The second unfortunate policy consequence of the majority's interpretation of part 5.609(c)(16) is its inevitable diminution of the funds available to other low-income participants in the Section 8 program. In an ideal world, the majority's award of greater Section 8 housing subsidies to low-income families receiving state compensation to care for disabled family members at home would be financed by additional congressional appropriations for the Section 8 program. In our real world, it does not work that way. Already, Section 8 housing subsidies are available only to a relatively small subset of all eligible families. The Authority, for example, is authorized to serve less than one-third of the families that qualify for its help. Yet even that does not fully capture the inadequacy of the program. Presumably because of congressional underfunding, the Authority actually provides vouchers to only 1,957 families, rather than the 2,153 it is authorized to help.

The majority's generosity toward plaintiff and similar IHSS participants does not come without cost, and that cost will likely be borne by other low-income families in California. The funding available to the Authority will not be increased by $12,000 per year merely because the majority has decreed that plaintiff must receive an additional annual subsidy of $12,000.

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omitted). Because no other class of Section 8 participants, besides foster parents, is able to exclude such income, restricting the exclusion to reimbursement of expenditures hardly constitutes punishment. The majority argues that such families will be punished if their income is not excluded because they might not qualify for Section 8 subsidy. (*Ibid*.) Again, the same is true of all other families who have too much income to qualify for Section 8; it is not a punishment.

Instead, given the fixed and inadequate budgets available under Section 8, it is likely that every additional dollar of subsidy provided to families with a developmentally disabled member at home will come directly from the funds available to subsidize the housing of other low-income families that are, or could have been, served by the Authority. By skewing the allocation of Section 8 housing subsidies to families receiving IHSS compensation, contrary to HUD's express intent, the majority's misinterpretation of the regulation will likely lead to a reduction in the housing subsidies available to other low-income families in California, and these will likely be reduced in an amount equal to the enhanced subsidies given by the majority to IHSS participants.[19]

If the language of part 5.609(c)(16) required this result, we would be duty-bound to implement it. In fact, the result is eminently avoidable. To bring it about, the majority stretches the language of the regulation and fails to account for the serious public policy implications weighing against its decision. Further, the dubious end result is to require the

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[19] We lack the evidence necessary to estimate the financial impact of the majority's interpretation, but the limited information available suggests that it could be substantial. According to the state data cited above (see *ante*, fn. 6), there are currently 250,000 "live-in relative providers" caring for a disabled family member under IHSS. If just a tiny proportion of those live-in relatives care for a developmentally disabled person, participate in the Section 8 program, and receive IHSS compensation similar to that of plaintiff, the majority's ruling will divert millions of dollars in Section 8 housing subsidies from other low income families state-wide.

Authority to treat a family with an income of more than $50,000 as though it were living on $11,000. In the process, the majority will divert the Authority's all-too-scarce low-income housing assistance away from other needy families. Every other court to consider the issue has avoided this result, and this court should as well.

CANTIL-SAKAUYE, C.J.

We Concur:

CORRIGAN, J.
KRUGER, J.

APPENDIX B

Certified for publication 5/15/18
(order attached)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

A149918

(Marin County
Super. Ct. No. CIV 1503896)

[Filed: April 25, 2018]

KERRIE REILLY,	)
	)
Plaintiff and Appellant,	)
	)
v.	)
	)
MARIN HOUSING AUTHORITY,	)
	)
Defendant and Respondent.	)
	)

Kerrie Reilly lives with her severely disabled adult daughter in housing subsidized by the Marin Housing Authority (MHA). The family participates in the Housing Choice Voucher program, commonly known as Section 8, which MHA administers according to the

rules and regulations of the United States Department of Housing and Urban Development (HUD). As a Section 8 participant, Kerrie Reilly receives a monthly rent subsidy, or "housing assistance payment," the size of which varies depending on her income.

The Reillys also participate in a state social services program designed to help incapacitated persons avoid institutionalization. The In-Home Supportive Services (IHSS) program compensates those who provide care for aged, blind, or disabled individuals incapable of caring for themselves. (*Norasingh v. Lightbourne* (2014) 229 Cal.App.4th 740, 744 (*Norasingh*).) Reilly's daughter suffers from a severe developmental disability, such that she requires constant supervision, and IHSS pays Reilly for providing her daughter with care-giving services. The question this case presents is whether the money Reilly receives from IHSS is "income" within the meaning of HUD regulations, such that MHA should include it in calculating the size of Reilly's housing assistance payment. We hold that it is, and affirm the trial court in sustaining MHA's demurrer on this basis.

FACTUAL AND PROCEDURAL BACKGROUND

According to the verified petition that is the operative pleading in this case, Reilly and two daughters moved into a three-bedroom apartment in Novato in 1998 and began receiving Section 8 housing assistance payments. In 2004 one daughter moved out, but Reilly failed to inform MHA of her departure. Five years later, when Reilly told MHA that this daughter no longer lived with her, MHA informed Reilly that her failure to report the departure earlier was a violation

of program rules and that she could stay in the apartment only if she paid damages to MHA in the amount of $16,011. Reilly and MHA memorialized a settlement that called for Reilly to make monthly payments, initially of $486, toward that sum. Because Reilly was unable to afford these payments, the parties revised the plan several times, eventually reducing Reilly's obligation to $150 per month. Still, Reilly missed multiple payments.

By letter dated April 7, 2015, Reilly requested that MHA recalculate her rent and exclude her income from IHSS. MHA did not respond to that request, but soon thereafter served Reilly with notice of a proposed termination of her Section 8 voucher. A hearing officer determined that this first proposed termination was defective, but on July 31, 2015, MHA issued a second termination notice, this time alleging that Reilly failed to make multiple payments under the repayment plan. At an informal hearing on August 25, 2015, Reilly argued that MHA had improperly included her IHSS payments as income and that, excluding these payments, there was no lawful basis for MHA to have demanded $16,000 from her.

On September 8, 2015, the hearing officer issued a short, written decision upholding MHA's decision to terminate Reilly's housing voucher. The hearing officer made the following factual findings: Reilly failed to promptly notify MHA when one daughter moved out of the subsidized apartment, then entered into a repayment agreement in 2009; Reilly breached that agreement in 2010, and at a hearing following the breach was warned that any future failure to make

payments would result in the termination of her housing assistance; Reilly breached the agreement again in 2012, and in 2014 and 2015 when she missed payments for 16 months. The hearing officer concluded that Reilly's failure to pay the amounts required under the agreement was grounds for terminating assistance under a HUD regulation (see 24 C.F.R. § 982.552(c)), and under an MHA policy requiring termination after three missed payments in a 12-month period. The hearing officer did not address the issue of whether IHSS payments were properly counted as income, observing only that Reilly did not dispute her non-payment of the debt but instead presented a case "based on factors not related to the actual cause of termination."

On October 26, 2015, Reilly filed in the Marin Superior Court a verified petition for writ of mandate and, on July 20, 2016, an amended verified petition (hereafter petition). The petition alleges two related causes of action, both premised on the theory that counting IHSS payments as income violates the governing HUD regulation, 24 Code of Federal Regulations part 5.609(c)(16) (hereafter section 5.609(c)(16)). Reilly's first cause of action seeks an administrative writ, specifically an order requiring MHA to terminate Reilly's repayment plan and reinstate her Section 8 voucher. (See Code Civ. Proc., § 1094.5.) The second cause of action seeks a writ of mandate directing MHA to terminate the repayment plan and exclude Reilly's IHSS payments in calculating income going forward. (See Code Civ. Proc., § 1085.) Both causes of action include a request for attorney's

fees and costs, asserting the action will benefit the public. (See Code Civ. Proc., § 1021.5.)

MHA demurred to the petition, and the trial court sustained the demurrer after a hearing on November 4, 2016. The trial court concluded that Reilly's interpretation of section 5.609(c)(16) was "wrong as a matter of law." The HUD regulation broadly defines income, subject to exceptions including an exception for payments from a state agency "to offset the cost of services and equipment needed to keep [a] developmentally disabled family member at home." (§ 5.609(c)(16).) The trial court concluded that this exception did not apply, reasoning that Reilly "'has not incurred out-of-pocket expenses that are being 'offset' by the IHSS payment.'" Instead, "[s]he is being paid for her services." Thus, Reilly's IHSS payments count as income. In reaching this conclusion, the trial court relied on a federal case involving the earnings of a Texas mother whose son was the beneficiary of a somewhat similar state program. (See *Anthony v. Poteet Housing Authority* (5th Cir. 2009) 306 Fed. Appx. 98 (*Anthony*).)

Given the trial court's reading of the HUD regulation, the court concluded that no amendment to Reilly's petition would cure the defect the court had identified, so it sustained the demurrer without leave to amend and dismissed Reilly's petition with prejudice. This appeal timely followed. While the case is pending this court ordered, as did the trial court before us, a stay in the enforcement of the administrative order terminating Reilly's Section 8 benefits.

DISCUSSION

We review de novo the trial court's order sustaining MHA's demurrer. (*Williams v. Housing Authority of Los Angeles* (2004) 121 Cal.App.4th 708, 718; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal.App.3d 524, 529.) "[G]iving the pleading the benefit of all facts properly alleged" or judicially noticed, "and all reasonable inferences drawn therefrom," we must determine "whether the pleading has stated a cause of action." (*Busse v. United PanAm Financial Corp.* (2014) 222 Cal.App.4th 1028, 1035; see also *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Even where a pleading fails to state a cause of action, for the trial court to sustain a demurrer without leave to amend is an abuse of discretion if a plaintiff shows "there is a reasonable possibility that the defect can be cured by amendment." (*Ibid.*)

The IHSS Program

IHSS is a "state and federally funded program developed to permit persons with disabilities to live safely in their own homes." (*Calderon v. Anderson* (1996) 45 Cal.App.4th 607, 610.) Counties administer the program, pursuant to the requirements of Welfare and Institutions Code section 12300 et seq. and regulations promulgated by the California Department of Social Services. (*Basden v. Wagner* (2010) 181 Cal.App.4th 929, 933–934 (*Basden*).) The program pays for severely impaired Californians to receive up to 65 hours per week in supportive services, including domestic services, personal care services, protective supervision, and other specifically enumerated categories of service. (*Id.* at p. 934; Welf. & Inst. Code,

§ 12300, subd. (b).) "Protective supervision" is monitoring of the behavior of a mentally impaired or mentally ill recipient to safeguard him or her from injury or accident. (*Norasingh*, *supra*, 229 Cal.App.4th at p. 745.) It is "'nonmedical oversight, akin to baby-sitting.'" (*Ibid*.)

Those who provide services to IHSS beneficiaries "work pursuant to various arrangements. Some are civil service employees of a county; some are employees of an entity that contracts with the county; some contract directly with the county or authorized entity; some are referred to the recipient by the authorized entity; and some contract directly with the recipient. ([Welf. & Inst. Code] §§ 12301.6, 12302, 12302.1, 12302.25.)" (*Basden*, *supra*, 181 Cal.App.4th at p. 940.) Sometimes, as in this case, a recipient's parent receives compensation for providing care through the IHSS program, although the law limits both the circumstances in which a parent can receive such compensation and the categories of service for which the parent can receive compensation. (*Id*. at pp. 934–935; Welf. & Inst. Code, § 12300, subd. (e).)[1]

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[1] Welfare and Institutions Code section 12300, subdivision (e), provides: "Where supportive services are provided by a person having the legal duty pursuant to the Family Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care." Family Code section 3910, subd. (a) places on each parent "responsibility to maintain, to the extent of their

The Language of the HUD Regulation

The applicable HUD regulation defines income broadly, as "all amounts, monetary or not," that a Section 8 program participant receives or anticipates receiving, unless such amounts are specifically excluded. (24 C.F.R. § 5.609(a).) Income includes, for example, "compensation for personal services" and "[p]ayments in lieu of earnings, such as unemployment and disability compensation" (24 C.F.R. § 5.609(b)), except that income does not include any of the 16 categories expressly excluded in paragraph (c) of the regulation. Most importantly for our purposes, income does not include "[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." (§ 5.609(c)(16).)

MHA does not dispute that, to the extent the IHSS program pays for Reilly's daughter to attend a day program for special needs individuals or to receive assistance from a care-giver other than her mother, the value of those benefits must be excluded when calculating the Reilly family's income. According to MHA, such expenditures are precisely the sort of benefits that section 5.609(c)(16) is designed to cover—reimbursement for out-of-pocket expenses the Reillys incur for services necessary to having Reilly's daughter

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ability, a child of whatever age who is incapacitated from earning a living and without sufficient means."

live at home.[2] The dispute in this case is whether, to the extent IHSS pays Reilly, rather than a third party, to care for her daughter, those amounts are excludable under section 5.609(c)(16). Reilly argues they are, on the grounds that the services she provides are necessary for her daughter to live at home, and the IHSS payments offset the costs of those services. MHA argues that one must incur an expense before it can be offset with a reimbursement payment, so the services Reilly provides cannot be characterized as offsetting the costs of the services her daughter needs.

We are aware of only one other case that has construed the language of section 5.609(c)(16), and it is the case on which the trial court relied. In *Anthony*, the Fifth Circuit considered the earnings of a tenant in public housing whose son was disabled by multiple sclerosis. (306 Fed. Appx. at p. 99.) The son received in-home care services from a for-profit company, which the State of Texas and the federal government reimbursed through Medicaid. (*Id*. at p. 100.) The for-profit company employed Anthony, the young man's mother, to care for her son (and other clients) and paid her approximately $13,156 annually. (*Ibid*.) Anthony paid federal income taxes on these earnings, but argued that under section 5.609(c)(16) the local housing

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[2] With no citation to the record, MHA asserts that the Reillys receive IHSS payments to cover costs for attendant care and participation at a YMCA day program, in addition to payments to compensate Reilly for her care-giving services. As these are not facts in the petition or of which the court has taken judicial notice, we ignore this information except to emphasize that nothing in our decision should be understood to include any such expenses in Reilly's income.

authority should exclude them from her income when calculating her rent. (*Ibid*.)

In an unpublished decision, the Fifth Circuit disagreed. The court noted at the outset that "all state-funded in-home attendant-care services in Texas are provided by private intermediaries, and Texas does not provide any amounts directly to families . . . ." (*Anthony*, *supra*, 306 Fed. Appx. at p. 101.) Overlooking this obstacle, the court assumed section 5.609(c)(16) would reach such pass-through funds in an appropriate case. (*Ibid*.) Yet the court refused to exclude Anthony's earnings because it concluded "Anthony has incurred no costs which must be offset with state funds." Equating "costs" with "out-of-pocket expenses," the court concluded "[o]ne must incur costs before they can be offset." (*Id*. at pp. 101–102.) Because the court affirmed a judgment in favor of the local housing authority on the basis of what it called the plain language of section 5.609(c)(16), it declined to consider a letter from HUD that the housing authority proffered as the agency's construction of the regulation. (*Id*. at p. 101.)

MHA urges us to follow *Anthony* in construing section 5.609(c)(16). The plain meaning of "[a]mounts paid . . . to *offset the cost* of services . . ." is that a family must have incurred a cost, or expense, for services before that cost can be offset, or reimbursed, by a state agency's payment, MHA argues. (24 C.F.R. § 5.609(c)(16) (italics added).) To construe the regulation otherwise is to ignore the phrase "to offset the cost of services . . . ," and with it the interpretive maxim that instructs us to construe a statute or

regulation in a manner that gives meaning to every word or phrase if possible, says MHA. (See, e.g., *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386–1387.)

Reilly argues that MHA's construction of section 5.609(c)(16) violates another interpretive maxim—that MHA reads into the regulation limitations that are not there, a practice courts should avoid if possible. (See *People v. Bautista* (2008) 163 Cal.App.4th 762, 777.) To "offset" means generally to counterbalance or compensate for something, not only to reimburse for out-of-pocket expenses previously incurred. (See *Steinmeyer v. Warner Cons. Corp.* (1974) 42 Cal.App.3d 515, 518 [citing dictionary].) Reilly argues that if HUD had intended the narrower concept, it would have used language like "reimburse" and "out-of-pocket," as it did in defining other exemptions from income. For example, another paragraph in the same regulation exempts "[a]mounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member." (24 C.F.R. § 5.609(c)(4); see also 24 C.F.R. § 5.609(c)(8)(iii) [exempting amounts "specifically for or in reimbursement of out-of-pocket expenses incurred" for certain publicly assisted programs].) Reilly also argues that in section 5.609(c)(16) the phrase "cost of services . . . to keep the developmentally disabled family member at home" should be read broadly to include costs that the State of California would incur in the absence of payments such as those to Reilly, as well as Reilly's "'opportunity cost,'" meaning the income she could have been earning at another job had she not

given up opportunities for outside employment in order to care for her daughter.

We agree with Reilly as to the interpretation of "offset." Section 5.609(c)(16)'s exemption from income appears to reach money paid to a family so that the family can go out and hire services or purchase equipment necessary for the developmentally disabled family member. Such payments "offset the cost of services and equipment" that would otherwise fall on the family. But they are not reimbursement for out-of-pocket expenses if the family receives payment before, rather than after, incurring the expense. For this reason, Reilly is persuasive that MHA has too narrowly defined "offset," but this is a comparatively small point that does not mean we agree with Reilly's construction of the regulation.

Considering further the meaning of "offset," we uncover the first of two problems with Reilly's construction of the phrase "cost of services . . . ." If a payment is to "offset the cost of services," the payment must go to the same entity that incurs the cost of those services. Otherwise the payment does not counterbalance or compensate for the cost of services. Here, section 5.609(c)(16) addresses amounts paid "to a family . . . to offset the cost of services . . . ." This means that the costs these payments offset must be costs that the family itself incurs. We recognize that in caring for her daughter Reilly performs services that are of great value to the State of California, but we do not think that the meaning of "cost of services . . . to keep the developmentally disabled family member at home" can be stretched to reach cost savings to the

state from the provision of these services. To the extent that Reilly construes "cost of services . . ." to include costs to the State of California, we reject her construction.

Reilly raises a closer question with her argument that the "cost of services . . ." includes the opportunity cost to Reilly of providing those services. IHSS payments to Reilly do counterbalance or compensate for her loss of income in staying home to care for her daughter. And under one definition of the word "cost," this loss of income is a cost to Reilly. "Cost" can mean a "loss or penalty incurred esp[ecially] in gaining something." (Merriam-Webster's Collegiate Dict. (10th ed. 2001) p. 262.) One speaks, for example, of the human cost of a military campaign. Here, the loss that Reilly suffers in order to care for her daughter is the lost opportunity to earn income outside the home. Reilly plausibly argues that the IHSS payments offset this cost to Reilly of foregoing a job by compensating her for providing in-home care.

There is, however, another more common and concrete meaning of the word "cost," namely "the amount or equivalent paid or charged for something; price." (Merriam-Webster's Collegiate Dict., *supra,* at p. 262.) If "cost" means "price," then the cost of services that Reilly provides her daughter is, to Reilly, zero. And because Reilly's services are free to the family, the family incurs no "cost of services or equipment . . ." that the IHSS payments could be said to offset.

In choosing between these two plausible constructions of section 5.609(c)(16), we look more broadly to the language of the regulation of which

paragraph (c)(16) is a part. Reilly reminds us, words "'that relate to the same subject matter '"must be harmonized to the extent possible."'" (*People v. Gonzales* (2008) 43 Cal.4th 1118, 1127.) The word "cost" appears two other places in section 5.609, one of which is the regulation's exemption from income for medical expenses. That exemption covers "[a]mounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member." (24. C.F.R. § 5.609(c)(4) (§ 5.609(c)(4)).) In this context, the word "cost" has to be understood in its most common and concrete sense, as referring to an amount charged or paid. We reach that conclusion because "medical expenses" are specific amounts paid for medical products or services. And the phrase "specifically for, or in reimbursement of" likewise suggests that a family anticipates incurring, or has already incurred, a medical expense. Similarly in the other place that section 5.609 uses "cost," the word means an amount of money paid, as in "the actual cost of shelter and utilities" for a welfare recipient. (24 C.F.R. § 5.609(b)(6)(B)(ii) (§ 5.609(b)(6)(B)(ii)).) Because "cost" has this concrete and specific meaning in section 5.609(c)(4) and section 5.609(b)(6)(B)(ii), we presume it has the same meaning in section 5.609(c)(16). Generally "'words or phrases given a particular meaning in one part of a statute must be given the same meaning in other parts of the statute'" (*People v. Valencia* (2017) 3 Cal.5th 347, 381), and "[t]he same rules of construction apply to administrative rules as to statutes" (*Exelon v. Local 15, Intern. Broth. of Elec.* (7th Cir. (2012) 676 F.3d 566, 570 (*Exelon*)). Applying this canon to construe section 5.609(c)(16), the "cost of services and equipment needed to keep the

developmentally disabled family member at home" must refer to amounts of money that the Reilly family pays, rather than lost opportunities or other non-financial penalties it incurs.

History, Policy, and Deference to Agency Interpretation

The parties agree that where the language of a regulation lends itself to more than one plausible reading, we must consider other interpretive methods. To the extent the language of section 5.609(c)(16) leaves room for ambiguity, we look to the history of the regulation's enactment and the reasonableness of the competing proposed constructions, and we defer to an agency's authoritative interpretation of its own regulations. (See *Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal.App.4th 1385, 1396–1397; *Bialo v. Western Mutual Ins. Co.* (2002) 95 Cal.App.4th 68, 76–77; *Exelon*, *supra*, 676 F.3d at p. 570; *Robinson v. District of Columbia Housing Authority* (D.D.C. 2009) 660 F.Supp.2d 6, 17.) The parties disagree on whether the language of the regulation is sufficiently ambiguous that the court must engage in this process. We need not settle that dispute, since our analysis of these other issues, like our analysis of the language of the regulation, leads us to conclude that MHA's interpretation of section 5.609(c)(16) is correct.

Reilly cites several passages from the rulemaking record that we think are unhelpful in resolving the interpretive issue before us. On April 5, 1995, HUD published as an interim rule the exact language defining an exclusion from income that later became section 5.609(c)(16). (See 60 Fed. Reg. 17391–17393

(Apr. 5, 1995).) The explanation for HUD's proposal was brief: "This exclusion exempts amounts paid by a State agency to families that have developmentally disabled children or adult family members living at home. States that provide families with homecare payments do so to offset the cost of services and equipment needed to keep a developmentally disabled family member at home, rather than placing the family member in an institution. Since families that strive to avoid institutionalization should be encouraged, and not punished, the Department is adding this additional exclusion to income. The Department wishes to point out that today's interim rule does not define 'developmentally disabled' since whether a family member qualifies as developmentally disabled, and is therefore eligible for homecare assistance, is determined by each individual State." (60 Fed. Reg. 17389 (Apr. 5, 1995).) We view this explanation as too summary to be enlightening. It speaks in generalities, and does not address the specific issue of whether all amounts paid by a state agency to a family with a developmentally disabled person living at home are excluded, or only those amounts that offset the family's expenditures for necessary services and equipment.

Equally unhelpful is the only comment added to the federal register when the rule became final. In response to a suggestion that HUD clarify the terms "developmentally disabled children" and "adult family members," HUD declined. HUD explained that its rule defers to the definitions used by the State program providing payments, so that where a family receives payments the housing authority should consider the family eligible for the exclusion. (61 Fed. Reg. 54497

(Oct. 18, 1996).) This portion of the rule-making record also does not speak to the interpretive issue before us, as both parties agree that Reilly's daughter is a person whose disability makes the family eligible for the exclusion. The question is the scope of payments to the Reilly family that section 5.609(c)(16) excludes, specifically whether or not payments for services that Reilly provides her daughter are excludable as payments "to offset the cost" of necessary services. (§ 5.609(c)(16).)

The rule-making record having failed to answer the question before the court, we turn now to comparing the results of the two proposed constructions. If a regulation "'is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed.'" (*Greening v. Johnson* (1997) 53 Cal.App.4th 1223, 1229; see also *Exelon*, *supra*, 676 F.3d at 570.)

If the court adopts MHA's construction of the regulation, then families with a developmentally disabled family member at home will be able to exclude IHSS payments from income only to the extent the payments go to provide services and equipment for which the family pays. For example, if the family pays an in-home service provider to care for a disabled child while an able parent works outside the home, IHSS payments to cover the cost of that homecare aide are not counted toward the family's income. Only the parent's outside income counts. If instead the parent takes on the job of providing the child's homecare, as occurred in this case, then the IHSS payments to compensate for parental care count toward income, but

the parent has no outside income. Just as IHSS payments substitute in the family's budget for the money the parent would have earned outside the home, so, too, they substitute for those foregone wages in being counted as income.

We believe this result is a reasonable outcome. First, the regulation so construed treats comparably two families with a developmentally disabled family member: one family in which a third party cares for the disabled person, and the other in which a parent does. Presumably the HUD regulation, like the IHSS program, seeks to assist both families, and to assist them equally. A second reason we think the result is reasonable is that it achieves a measure of parity between a family with a developmentally disabled family member and a family with a member disabled by severe medical problems. Under MHA's proposed construction, a family's out-of-pocket costs to provide protective supervision for a developmentally disabled family member are exempted from income under section 5.609(c)(16), just as medical expenses for a medically fragile family member are exempted under section 5.609(c)(4). But IHSS payments that compensate a parent who provides care for her developmentally disabled child are not exempted, just as they would not be for a parent providing care for a physically disabled family member. In this respect, section 5.609(c)(16) as MHA construes it eliminates a disparity between the families of those with a developmentally disabled family member and families with a member disabled by medical problems.

By contrast, Reilly's construction of the regulation gives people in Reilly's position a benefit that comparable families do not receive. Reilly would have her rent calculated as if she had no income from work at all, while another family with a disabled family member in which the parent works outside the home and pays a third party to provide homecare would have to pay rent calculated to include the parent's outside income. Also inequitable would be the result that, by virtue of her daughter's disabilities being developmental rather than physical, Reilly's construction would allow her to exclude IHSS payments for parental care-giving, which a parent receiving IHSS payments to care for a child disabled by medical problems could not do.

In sum, comparing the results of the competing constructions confirms our conclusion that MHA and the trial court correctly construe section 5.609(c)(16). We reach this conclusion without the benefit of the final interpretive tool the parties have urged upon us—deference to an agency's interpretation of its own regulation—because neither party points us toward an authoritative HUD interpretation of section 5.609(c)(16). MHA attempts to do so in its request for judicial notice filed on May 30, 2017, but we deny that request.

MHA requests this court take judicial notice of a short letter dated May 10, 2017, to MHA's general counsel from the Director, Office of Public Housing, U.S. Department of Housing and Urban Development, San Francisco Regional Office – Region IX. The letter attaches a 2007 letter from HUD's Office of General

Counsel – Assisted Housing Division opining that the mother in *Anthony* could not exclude her wages from income under section 5.609(c)(16), representing that this decade-old opinion is "our current interpretation of 24 C.F.R. section 5.609(c)(16)." If the 2017 letter could be characterized as an official act of the executive branch, we could choose to take judicial notice of it (see Evid. Code, § 452, subd. (c); § 459, subd. (a)), but we decline to do so. "Litigation-inspired opinions have no authority" where "the administrative agency is a party to the litigation." (*People ex rel. Lungren v. Cotter & Co.* (1997) 53 Cal.App.4th 1373, 1393.) On its face, the 2007 opinion is litigation-inspired, and like the *Anthony* court we construe section 5.609(c)(16) without reference to it. (See *Anthony*, *supra*, 306 Fed. Appx. at p. 101.)

Because we agree with the trial court and MHA on the meaning of section 5.609(c)(16), we find no error in the trial court's order sustaining MHA's demurrer to the petition. Reilly has shown no reasonable possibility that she could cure the defect if granted leave to amend, so we find no abuse of discretion in the trial court's decision to dismiss the petition with prejudice.

DISPOSITION

The decision of the trial court is affirmed. In the interests of justice, each party shall bear its own costs on appeal.

Tucher, J.*

We concur:

Kline, P.J.

Richman, J.

A149918, *Reilly v. Marin Housing Authority*

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Filed 5/15/18 after nonpublished opinion filed 4/25/18

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

A149918

(Marin County
Super. Ct. No. CIV 1503896)

KERRIE REILLY,

Plaintiff and Appellant,

v.

MARIN HOUSING AUTHORITY,

Defendant and Respondent.

BY THE COURT:

The opinion in the above-entitled matter filed on April 25, 2018, was not certified for publication in the Official Reports. For good cause and pursuant to California Rules of Court, rule 8.1105, it now appears that the opinion should be published in the Official Reports, and it is so ordered.

Dated: _____

_____
Richman, Acting P.J.

Court: Marin County Superior Court

Trial Judge: Hon. Paul M. Haakenson

Attorneys for Appellant	Law Offices of Frank S. Moore Frank S. Moore
Attorneys for Respondent	WFBM, LLP Randall J. Lee Anne C. Gritzer

A149918, *Reilly v. Marin Housing Authority*

APPENDIX C

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

Case No. CIV 1503896

[Filed: November 4, 2016]

KERRIE REILLY,	)
	)
Petitioner,	)
	)
v.	)
	)
MARIN HOUSING AUTHORITY,	)
	)
Respondent.	)
	)

ORDER SUSTAINING RESPONDENT MARIN HOUSING AUTHORITY'S DEMURRER TO PETITIONER'S AMENDED VERIFIED PETITION FOR WRIT OF ADMINISTRATE MANDATE AND WRIT OF MANDATE

Date: November 4, 2016
Time: 1:30 P.M.
Dept: E
Judge: The Honorable Paul Haakenson

On November 4, 2016, Respondent MARIN HOUSING AUTHORITY's ("respondent") demurrer to KERRIE REILLY's ("petitioner") first amended petition for writ came on for hearing in Department E of the above-entitled court, the Honorable Paul Haakenson presiding. John Holman appeared on behalf of petitioner, and Anne C. Gritzer appeared on behalf of respondent.

The Court, having read and considered the pleadings and considered the arguments of counsel and good cause appearing, hereby ORDERS, ADJUDGES, AND DECREES as follows:

Respondent's demurrer to the petitioner's first amended petition is SUSTAINED WITHOUT LEAVE TO AMEND on the grounds that first amended petition as a whole fails to state facts sufficient to state a cause of action. (Code Civ. Proc. § 430.10(e).) Both causes of action are premised on petitioner's position that respondent improperly included her IHSS income in the calculation of her annual income citing 24 C.F.R. § 5.609(c)(16). Petitioner is wrong as a matter of law.

Pursuant to section 5.609(b), annual income includes "[t]he full amount, before any payroll deductions, of wages and salaries...and other compensation for personal services," and [p]ayments in lieu of earnings, such as unemployment and disability compensation [and] worker's compensation..." (§ 5.609(b)(1) and (5).) IHSS "'compensates persons who provide the services to a qualifying individual'" *(Norasingh v. Lightbourne* (2014) 229 Cal.App.4th 740, 744) and therefore is an "employer" for purpose of the state public employee-employer relation laws (i.e., unemployment compensation and workers' compensation). (*Basden v. Wagner* (2010) 181 Cal.App.4th 929, 940.) The issue was specifically addressed in *Anthony v. Poteet Housing Authority* (5th Cir. 2009) 306 Fed.Appx. 98, and the court finds the reasoning in that opinion persuasive. Like the plaintiff in that case, Petitioner has not incurred out-of-pocket expenses that are being "offset" by the IHSS payment. She is being paid for her services. Petitioner's reliance on HUD's background discussion of the interim rule which added the subject exclusion fails. If HUD intended to exclude all amounts paid by a State agency to a family that has a developmentally disabled family member living at home there would have been no reason for it to go on to state in the regulation itself that such excluded amounts are paid "to offset th cost of services and equipment needed to keep the developmentally disabled family member at home[.]" That language must have some meaning.

Both sides' requests for judicial notice are granted. The court did not consider the declaration submitted by Petitioner with her opposition as the court cannot

consider such extrinsic evidence in analyzing a demurrer. (See Code Civ. Proc. § 430.30, subd. (a).)

Because the Court sustains the demurrer to the first amended petition without leave to amend, the first amended petition is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Dated: 11/4, 2016

/s/ Paul M. Haakenson
Honorable Paul Haakenson
Judge of the Superior Court of California

APPENDIX D

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Attorneys for Respondent,
MARIN HOUSING AUTHORITY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

Case No. CIV 1503896

[Filed: November 4, 2016]

KERRIE REILLY,	)
	)
Petitioner,	)
	)
v.	)
	)
MARIN HOUSING AUTHORITY,	)
	)
Respondent.	)
	)

JUDGMENT DISMISSING PETITIONER'S AMENDED VERIFIED PETITION WITH PREJUDICE

Date: November 4, 2016
Time: 1:30 P.M.
Dept: E
Judge: The Honorable Paul Haakenson

On November 4, 2016, the Court sustained Respondent MARIN HOUSING AUTHORITY's ("respondent") demurrer to KERRIE REILLY's ("petitioner") first amended petition without leave to amend and dismissed this action with prejudice.

Accordingly, IT IS ORDERED, ADJUDGED, and DECREED that JUDGMENT is entered in favor of MARIN HOUSING AUTHORITY that petitioner KERRIE REILLY shall take nothing by way of her petition, and that this action is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Dated: 11-4, 2016

/s/ Paul M. Haakenson
Honorable Paul Haakenson
Judge of the Superior Court of California

APPENDIX E

SECTION 8 INFORMAL HEARING DECISION MARIN HOUSING AUTHORITY

[Dated: September 8, 2015]

Participant:	Kerrie Reilly
Hearing Date:	Tuesday, August 25, 2015
Hearing Location:	Marin Housing Authority, 4020 Civic Center Drive, San Rafael, CA 94903
Attending:	Kerrie Reilly, Participant D'Jon Scott-Miller, MHA Assistant Program Manager, Section 8
Hearing Officer:	Danielle Winford

BACKGROUND:

Housing Choice Voucher participant, Kerrie Reilly requested an informal hearing regarding the decision made by Marin Housing Authority (MHA) to terminate her housing assistance effective August 15, 2015. In a termination notice sent 7/31/2015, MHA alleged that Ms. Reilly committed violations of the Code of Federal Regulations, the Housing Choice Voucher Family Obligations and the MHA Administrative Plan as follows:

24CFR 982.552 (c)

Authority to deny admission or terminate assistance – (1) Grounds for denial or termination of assistance. The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:

(i) If the family violates any family obligations under the program (see § 982.551). See § 982.553 concerning denial or termination of assistance for crime by family members.
(v) If the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.
(vi) If the family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
(vii) If the family breaches an agreement with PHA to pay amounts owed to PHA, or amounts paid to an owner by a PHA. (The PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.)

Family Obligations

H-3. Use and occupancy of units: The family must promptly notify the PHA if any family member no longer resides in the unit.

Marin County Housing Authority-HCV Administrative Plan
16-IV.B. REPAYMENT POLICY

Family Debts to MHA-MHA Policy:

Any amount due to MHA by an HCV participant must be repaid by the family. If the family is unable to repay the debt within 30 days, MHA will offer to enter into a repayment agreement in accordance with the policies below. If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, MHA will terminate the assistance upon notification to the family and pursue other modes of collection.

Non-Payment-MHA Policy:

If a full monthly payment is not received by the end of the month of the date due, and prior approval for the missed payment has not been given by MHA, MHA will consider the family agreement delinquent. Notice of missed payment will be given to the family, if the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement.

If a family misses 3 payments in a 12-month period, the repayment agreement will be considered in default, and MHA will terminate assistance upon written notification to the family and owner.

Specifically,

Ms. Reilly defaulted on her repayment agreement in February 2014 (originally signed 09/16/2009, latest

revision signed 02/16/2012). Ms. Reilly has not made any payments toward her outstanding debt from March 2014 to June 2015.

In a previous hearing decision dated 01/12/2011, the hearing officer stated that, "If Ms. Reilly fails to make any future payments; the family's housing assistance will be terminated."

SUMMARY OF EVIDENCE:

Marin Housing Authority (MHA)

MHA began the hearing with testimony and a summary of documents that pertained to the decision that was made. The following documents were received at the hearing

- A copy of the 09/16/2009 initial repayment agreement, signed by Ms. Reilly agreeing to owing MHA $16,011 for not reporting the change in family composition and to pay $486 a month for 33 months to pay off her debt.
- A copy of the signed agreement dated 09/25/2009 reducing Ms. Reilly's monthly payment from $486 for 33 months to $258 for 60 months to pay off debt.
- A copy of the signed agreement dated 10/24/2009 reducing Ms. Reilly's monthly payment from $258 for 60 months to $222 for 72 months to pay off debt.
- A copy of the Termination notice issued to Ms. Reilly dated 12/01/2010 for missing 3 consecutive payments as part of her repayment plan.

- A copy of the results from the informal hearing that Ms. Reilly was granted to dispute the termination notice from Compliance Officer, Kathleen Wyatt.
- A copy of the revised repayment schedule adding the missed 3 months to the end of her term.
- A copy of Ms. Reilly's request in writing requesting her payments of $222 be reduced.
- A copy of MHA notice denying Ms. Reilly's request for a reduction dated 03/01/2011.
- A copy of the letter from Ms. Reilly dated 03/24/2011, to the then Executive Director, Dan Nackerman, requesting a review and discussion of her case as well as a request for a reduction of her payments or alternative method to pay her debt to taxpayers.
- A copy of the letter from Compliance Officer, Kathleen Wyatt, responding to her appeal that was previously sent to Dan Nackerman, allowing her a "reasonable accommodation" and reducing her payment to $150 dated 03/28/2011.
- A copy of the amendment to the repayment agreement dated 03/29/2011, that Ms. Reilly signed reducing her payments to $150.
- A copy of a termination notice the Ms. Reilly was issued on 02/02/12 due to 3 consecutive missed payments of $150. Also a copy of the hearing date that Ms. Reilly and Ms. Rasmussen requested that was set for 02/29/2012.
- A copy of the email conversation beginning on 02/13/2012 between Ms. Reilly and Deputy Director, Kimberly Carroll, requesting that she be allowed to come current in her payments. Ms. Carroll agreed to allow Ms. Reilly to come

current with payments by paying $300 per month for February, March and April of 2012 and on 05/01/12, her payments would resume to $150 per month.

- A copy of the updated amended repayment agreement that Ms. Reilly signed on 02/16/2012 to pay the agreed upon $300 monthly payments for February, March and April of 2012 to catch up for the missed payments and to resume at $150 per month beginning 05/01/2012.
- A copy of the ledger showing all payments and non payments made toward the repayment agreement from Ms. Reilly beginning in 2010 to present; there were missed payments for 16 months, March 2014 to June 2015.
- A copy of the 06/25/2015 termination letter issued to Ms. Reilly for non-payment toward balance due to MHA from the signed repayment agreement.
- A copy of the hearing results dated 07/27/2015 overturning MHA's notice to terminate Ms. Reilly's voucher due to insufficient evidence on MHA part to support the claim of failure to report income.
- A copy of a revised termination letter issued to Ms. Reilly on 07/31/2015.
- A recording of the last hearing with Hearing Officer, James Butler from 07/22/2015.

Kerrie Reilly

Ms. Reilly addressed some of the evidence presented by MHA and gave her testimony along with the following

documents to be reviewed as evidence in her case after MHA concluded their summary:

- A copy of a 4 page narrative titled "Informal Hearing: Kerrie Reilly vs. MHA, August 25, 2015, Cover Letter" discussing her overall claim as to why she withheld information from MHA, her interactions with the staff at MHA, her being unaware and uninformed of Reasonable Accommodations and her and her daughters background.
- A copy of a 3 page narrative titled, "Financial Hardships=Health Hardships: Anxiety, Depression & Stress related Illnesses," which discussed the hardship this has caused her and her family.
- A copy of a 1 page narrative titled, "Exempt Income - In Home Support Services (IHSS)," discussing the laws she researched and discovered about how IHSS payments are to be calculated with a disabled family member in the home that is being cared for.
- A copy of a 2 page narrative titled, "Reasonable Accommodations," discussing the laws that she researched and discovered about reasonable accommodations and her experience with MHA in relation to reasonable accommodations.
- A copy of a side by side comparison titled, "Weighing the Difference of Truth & Consequences," comparing her experience vs. MHA's experience.
- A copy of a fax dated 01/18/1999, to Whisper Smith asking about her options in the future

when her daughter Rachel moved out and requesting that they stay where they were.

- A copy of and electronic CFR, Title 24; Subtitle B; Chapter IX; Part 966; Subpart A; Section 966.7(b) about PHA providing notice to tenants about reasonable accommodations.
- A copy of her Interim Re-exam form, letter to Cheryl Cross, MHA Eligibility Worker, requesting a change in her Income based on change in IRS laws with a copy of supporting documents to support her claim and her 2014 tax return.
- A printout of an article titled, "Study: Family caregivers provide $470B in unpaid services," with copies of receipts from prescriptions, therapy appointments and a copy of Patient Plan for 12/08/2014 for her daughter K.R.
- A printout of Reasonable Accommodation in Federally Assisted Housing p.1-31.
- A printout from Oakland Housing Authorities website on Reasonable Accommodation.
- A copy of the Reasonable Accommodation Packet for Section 8 Participants from the Housing Authority of the City of Long Beach.
- A copy of Ms. Reilly's HUD 52646, Section 8 Voucher form.
- A copy of Marin County Housing Authority HCV Administrative Plan, p.32, section 2-II.C. Request for an Accommodation.
- A copy of an electronic CFR, Title 24; Subtitle A; Part; Subpart F; section 5.609(c)(16).
- A printout from the State of California Department of Development Services IHSS definition.

- A copy of Verification of Income Exclusions.
- Copies of IHSS direct deposit statements.

Additional documents and/or correspondences received after the hearing from Ms. Reilly.

- Two faxes sent to D'Jon Scott Miller at MHA on 08/25/2015, with a memo discussing the attached pay stubs from IHSS showing her tax exempt status for July and August 2015 and a memo informing me that she studied the Lanterman Act as opposed to the American Disabilities Act (ADA) and why she was not familiar with Reasonable Accommodations.
- A fax sent directly to my place of business on 24 CFR § 982.555(e)(5) Evidence, 24 CFR § 982.555 Informal hearing for participant (e) Hearing procedures (2) Discovery (i) on 08/31/2015.
- 2 emails sent to me on 09/01/2015, 4 emails sent to me on 09/02/2015 as a result of requesting to speak directly to me.

FINDINGS OF FACT:

Based on a preponderance of all evidence presented and all discussions heard pertaining to the notice of termination sent by MHA, I make the following findings of fact:

- Ms. Reilly did not promptly notify MHA when her daughter Rachel moved out of the subsidized unit.
- On 09/16/2009 Ms. Reilly entered into a repayment agreement, and admitted to owing MHA $16,011 for not reporting the change in

family composition and agreed to pay $486 a month for 33 months to pay off her debt.

- At Ms. Reilly's request, MHA agreed to modify Ms. Reilly's repayment agreement on 4 occasions: 09/25/2009, 10/24/2009, 03/29/2011, and 02/16/2012.
- In 2010, Ms. Reilly breached her repayment agreement.
- Following her 2010 breach, a hearing was conducted and the hearing officer stated, "If Ms. Reilly fails to make any future payments; the family's housing assistance will be terminated."
- In 2012, Ms. Reilly breached her repayment agreement.
- In 2014 and 2015, Ms. Reilly breached her repayment agreement and missed payments for 16 months.

CONCLUSION

Based on all evidence presented and all discussions heard, it has been found that Marin Housing Authority had cause to and was justified in its action to terminate the voucher of Ms. Kerrie Reilly based on her conduct. Ms. Reilly did not present evidence to dispute the *NON-PAYMENT* of debt to MHA by the dates established in the repayment agreement signed most recently on 02/16/2012.

The case Ms. Reilly presented is based on factors not related to the actual cause of termination and therefore she failed to present sufficient evidence to justify why she fell short on making the payments that she agreed to after four reductions of the payment amounts. Ms. Reilly also admitted in my presence that she witheld

that her household composition had changed and therefore incurred this debt.

Based on the forgoing findings of fact, I conclude Ms. Reilly committed the following Violations:

24CFR 982.552 (c)

Authority to deny admission or terminate assistance – (1) Grounds for denial or termination of assistance. The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:

(vii) If the family breaches an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA. (The PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to o PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.)

Marin County Housing Authority- HCV Administrative Plan
16-IV.B. REPAYMENT POLICY

Family Debts to MHA-MHA Policy

Any amount due to MHA by an HCV participant must be repaid by the family. If the family is unable to repay the debt within 30 days, MHA will offer to enter into a repayment agreement in accordance with the policies below. If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, MHA will terminate the assistance upon

notification to the family and pursue other modes of collection.

Non-Payment
MHA Policy
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If a family misses 3 payments in a 12-month period, the repayment agreement will be considered in default, and MHA will terminate assistance upon written notification to the family and owner.

Family Obligations

H-3. Use and occupancy of unit: The family must promptly notify the PHA if any family member no longer resides in the unit

ORDER

MHA's termination of Kerrie Reilly's Housing Choice Voucher is upheld.

Signed: /s/ Danielle Winford
Danielle Winford, Hearing Officer

Date: 9/8/15

Cc: Kim Ventresca, Project Manager, MHA
D'Jon Scott-Miller, Assistant Program Manager, MHA
Kerrie Reilly, MHA Participant

[*Proof of Service omitted for purposes of this Appendix]*

APPENDIX F

October 7, 2015 [*Marin Housing Logo Redacted*]

Kerrie Reilly
[*Address Redacted*]

Re: Request for Rehearing, Further Hearing, or Appeal

Dear Kerrie Reilly:

Marin Housing Authority ("MHA") received your request for a rehearing, further hearing, or appeal (Appeal) on September 22, 2015. The Executive Director, Lewis Jordan, designated me to serve as the Appellate Officer.

A brief description of the issues you raised include:

1) There was a violation of the informal hearing procedures, because you allege that the Hearing Officer failed to state the reason for her decision, and provide a summary of the evidence, and

2) You allege that the findings are not supported by the evidence, because you claim IHSS income/payments, and requests for reasonable accommodations were not considered.

An independent third party conducted an informal hearing on August 25, 2015, and upheld the termination of your Housing Choice Voucher.

Per MHA's Administrative Plan.

"The only grounds on which an appeal will be granted are:

1) There was a violation of the informal hearing process;
2) The decision is not supported by the findings; or
3) The findings are not supported by the evidence."

Your request does not demonstrate cause, supported by specific references to the Hearing Officer's decision and why the request should be granted.

First, there was no violation of the hearing process. The Hearing Officer's findings include but are not limited to the following: you did not object to the basis for the housing authority's decision to terminate the household's participation in the program; you did not dispute your non-payment of debt to the housing authority; and defaulted on the signed agreement on at least three occasions. I find that the Hearing Officer stated the reason for her conclusion, provided an adequate summary of the evidence, including testimony, and complied with the hearing process.

[*Marin Housing Logo Redacted*]

Second, the Hearing Officer issued a written decision to the household and MHA. It included a summary of the evidence, identifying a bullet list of 21 documents, and written and spoken testimony produced at the hearing. The Hearing Officer's decision contains numerous references to your spoken testimony, such as "discussing her overall claim, discussed the hardship, discussing the laws she researched, comparing her

experience, asking about her options, requesting a change in her income," etc.

I find that the Hearing Officer's decision is supported by the findings due to the violations of the Housing Choice Voucher Administrative Plan.

Finally, the Hearing Officer's findings are supported based on the preponderance of the evidence-the Hearing Officers findings were derived from documentation and testimony.

Based on the foregoing, your request for a rehearing, further hearing, or appeal is denied.

Please keep in mind that there are other legal remedies available to you, such as initiating a civil action, and this denial docs not in any way preclude you from proceeding with any other legal remedies that may be open to you.

Thank you,

/s/ Bernadette Stuart
Bernadette Stuart

CC: Lewis Jordan, Executive Director
Tenant File

APPENDIX G

1. 42 U.S.C. 1437a provides:

Rental Payments

(b) Definition of terms under this Act.

(4) The term "income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary; in consultation with the Secretary of Agriculture, except that any amounts not actually received by the family and any amounts which would be eligible for exclusion under section 1613(a)(7) of the Social Security Act (42 U.S.C. 1382b(a)(7)) or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts may not be considered as income under this paragraph.

(5) Adjusted income. The term "adjusted income" means, with respect to a family, the amount (as determined by the public housing agency) of the income of the members of the family residing in a dwelling unit or the persons on a lease, after any income exclusions as follows:

(A) Mandatory exclusions. In determining adjusted income, a public housing agency shall exclude from the annual income of a family the following amounts:

(i) Elderly and disabled families. $400 for any elderly or disabled family.

(ii) Medical expenses. The amount by which 3 percent of the annual family income is exceeded by the sum of—

> **(I)** unreimbursed medical expenses of any elderly family or disabled family;
> **(II)** unreimbursed medical expenses of any family that is not covered under Subclause (I), except that this subclause shall apply only to the extent approved in appropriation Acts; and
> **(III)** unreimbursed reasonable attendant care and auxiliary apparatus expenses for each handicapped member of the family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed.

(iii) Child care expenses. Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(iv) Minors, students, and persons with disabilities. $480 for each member of the family residing in the household (other than the head of the household or his or her spouse) who is less than 18 years of age or is attending school or vocational training on a full-time basis, or who is 18 years of age or older and is a person with disabilities.

* * * * *

2. 42 U.S.C. 1437f provides:

Low-income housing assistance

(a) Authorization for assistance payments.

For the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing housing in accordance with the provisions of this section.

(b) Other existing housing programs.

(1) In general. The Secretary is authorized to enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make assistance payments to owners of existing dwelling units in accordance with this section.

* * * * *

(c) Contents and purposes of contracts for assistance payments; amount and scope of monthly assistance payments.

> **(3)** The amount of the monthly assistance payment with respect to any dwelling unit shall be the difference between the maximum monthly rent which the contract provides that the owner is to receive for the unit and the rent the family is required to pay under section 3(a) of this Act [42 USCS § 1437a(a)]. Reviews of family income shall be made no less frequently than annually.

* * * * *

(o) Voucher program.

(1) Authority.

(A) In general. The Secretary may provide assistance to public housing agencies for tenant-based assistance using a payment standard established in accordance with subparagraph (B). The payment standard shall be used to determine the monthly assistance that may be paid for any family, as provided in paragraph (2).

* * * * *

(2) Amount of monthly assistance payment. Subject to the requirement under section 3(a)(3) [42 USCS § 1437a(a)(3)] (relating to minimum rental amount), the monthly assistance payment for a family receiving assistance under this subsection shall be determined as follows:

(A) Tenant-based assistance; rent not exceeding payment standard. For a family receiving tenant-based assistance, if the rent for the family (including the amount allowed for tenant-paid utilities) does not exceed the applicable payment standard established under paragraph (1), the monthly assistance payment for the family shall be equal to the amount by which the rent (including the amount allowed for tenant-paid utilities) exceeds the greatest of the following amounts, rounded to the nearest dollar:

(i) 30 percent of the monthly adjusted income of the family.

(ii) 10 percent of the monthly income of the family.

(iii) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the actual housing costs of the family, is specifically designated by that agency to meet the housing costs of the family, the portion of those payments that is so designated.

(B) Tenant-based assistance; rent exceeding payment standard. For a family receiving tenant-based assistance, if the rent for the family (including the amount allowed for tenant-paid utilities) exceeds the applicable payment standard established under paragraph (1), the monthly assistance payment for the family shall be equal to the amount by which the applicable payment standard exceeds the greatest of amounts under clauses (i), (ii), and (iii) of subparagraph (A).

* * * * *

3. 42 U.S.C. 1396n provides:

Compliance with State plan and payment provisions

(c) Waiver respecting medical assistance requirement in State plan; scope, etc.

> **(1)** The Secretary may by waiver provide that a State plan approved under this title [42 USCS §§ 1396 et seq.] may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan.

* * * * *

4. 24 C.F.R. 5.609 provides in full text:

Annual income.

(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.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An

allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $ 5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31; and

(B) Are not otherwise excluded under paragraph (c) of this section.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section).

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition and any other required

fees and charges, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) 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);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in § 5.403;

(6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)

(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $ 200 per month) 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. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing

board. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of $ 480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $ 480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred

Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) 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; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(d) Annualization of income. If it is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.

5. 24 C.F.R. 982.201 provides:

Eligibility and targeting.

(a) When applicant is eligible: General. The PHA may admit only eligible families to the program. To be eligible, an applicant must be a "family;" must be income-eligible in accordance with paragraph (b) of this section and 24 CFR part 5, subpart F; and must be a citizen or a noncitizen who has eligible immigration status as determined in accordance with 24 CFR part 5, subpart E. If the applicant is a victim of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

(b) Income. (1) Income-eligibility. To be income-eligible, the applicant must be a family in any of the following categories:

(i) A "very low income" family;

(ii) A low-income family that is "continuously assisted" under the 1937 Housing Act;

(iii) A low-income family that meets additional eligibility criteria specified in the PHA administrative plan. Such additional PHA criteria must be consistent with the PHA plan and with the consolidated plans for local governments in the PHA jurisdiction;

(iv) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a HOPE 1 (HOPE for public housing homeownership) or HOPE 2 (HOPE for homeownership of multifamily units) project. (Section 8(o)(4)(D) of the 1937 Act (42 U.S.C. 1437f(o)(4)(D));

(v) A low-income or moderate-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing as defined in § 248.101 of this title;
(vi) A low-income family that qualifies for voucher assistance as a non-purchasing family residing in a project subject to a resident homeownership program under § 248.173 of this title.

* * * * *

6. Cal. Welf. & Inst. Code § 12001 provides in full text:

Legislative intent

It is the intent of this chapter to implement a state supplementation program pursuant to Title XVI of the Social Security Act and a program for state services to the aged, blind or disabled.

7. Cal. Welf. & Inst. Code § 12002 provides in full text:

Purpose of chapter

It is the object and purpose of this chapter to provide persons whose need results from age, blindness or disability with assistance and services which will encourage them to make greater efforts to achieve self–care and self–maintenance, whenever feasible, and to enlarge their opportunities for independence.

8. Cal. Welf. & Inst. Code § 12300 provides:

Purpose of article; Supportive services

(a) The purpose of this article is to provide in every county in a manner consistent with this chapter and the annual Budget Act those supportive services identified in this section to aged, blind, or disabled persons, as defined under this chapter, who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided.

(b) Supportive services shall include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health–related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

(c) Personal care services shall mean all of the following:

(1) Assistance with ambulation.
(2) Bathing, oral hygiene, and grooming.
(3) Dressing.
(4) Care and assistance with prosthetic devices.
(5) Bowel, bladder, and menstrual care.
(6) Repositioning, skin care, range of motion exercises, and transfers.
(7) Feeding and assurance of adequate fluid intake.

(8) Respiration.
(9) Assistance with self–administration of medications.

* * * * *

(e) Where supportive services are provided by a person having the legal duty pursuant to the Family Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full–time employment or is prevented from obtaining full–time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care.

These providers shall be paid only for the following:

(1) Services related to domestic services.
(2) Personal care services.
(3) Accompaniment by a provider when needed during necessary travel to health–related appointments or to alternative resource sites.
(4) Protective supervision only as needed because of the functional limitations of the child.
(5) Paramedical services.

(f) To encourage maximum voluntary services, so as to reduce governmental costs, respite care shall also be provided. Respite care is temporary or periodic service for eligible recipients to relieve persons who are providing care without compensation.

(g) A person who is eligible to receive a service or services under an approved federal waiver authorized

pursuant to Section 14132.951, or a person who is eligible to receive a service or services authorized pursuant to Section 14132.95, shall not be eligible to receive the same service or services pursuant to this article. In the event that the waiver authorized pursuant to Section 14132.951, as approved by the federal government, does not extend eligibility to all persons otherwise eligible for services under this article, or does not cover a service or particular services, or does not cover the scope of a service that a person would otherwise be eligible to receive under this article, those persons who are not eligible for services, or for a particular service under the waiver or Section 14132.95 shall be eligible for services under this article.

(h)

(1) All services provided pursuant to this article shall be equal in amount, scope, and duration to the same services provided pursuant to Section 14132.95, including any adjustments that may be made to those services pursuant to subdivision (e) of Section 14132.95.

(2) Notwithstanding any other provision of this article, the rate of reimbursement for in–home supportive services provided through any mode of service shall not exceed the rate of reimbursement established under subdivision (j) of Section 14132.95 for the same mode of service unless otherwise provided in the annual Budget Act.

(3) The maximum number of hours available under Section 14132.95, Section 14132.951, and this section, combined, shall be 283 hours per month. Any

recipient of services under this article shall receive no more than the applicable maximum specified in Section 12303.4.

9. Cal. Welf. & Inst. Code § 14132.951 provides:

(a) It is the intent of the Legislature that the State Department of Health Services seek approval of a Medicaid waiver under the federal Social Security Act in order that the services available under Article 7 (commencing with Section 12300) of Chapter 3, known as the In-Home Supportive Services program, may be provided as a Medi-Cal benefit under this chapter, to the extent federal financial participation is available. The waiver shall be known as the "IHSS Plus waiver."

(b) To the extent feasible, the IHSS Plus waiver described in subdivision (a) shall incorporate the eligibility requirements, benefits, and operational requirements of the In-Home Supportive Services program. The director shall have discretion to modify eligibility requirements, benefits, and operational requirements as needed to secure approval of the Medicaid waiver.

(c) Upon implementation of the IHSS Plus waiver, and to the extent federal financial participation is available, the services available through the In-Home Supportive Services program shall be furnished as benefits of the Medi-Cal program through the IHSS Plus waiver to persons who meet the eligibility requirements of the IHSS Plus waiver. The benefits shall be limited by the terms and conditions of the IHSS Plus waiver and by the availability of federal financial participation.

(d) Upon implementation of the IHSS Plus waiver:

(1) A person who is eligible for the IHSS Plus waiver shall no longer be eligible to receive services under the In-Home Supportive Services program to the extent those services are available through the IHSS Plus waiver.

(2) A person shall not be eligible to receive services pursuant to the IHSS Plus waiver to the extent those services are available pursuant to Section 14132.95.

(e) Services provided pursuant to this section shall be rendered, under the administrative direction of the State Department of Social Services, in the manner authorized in Article 7 (commencing with Section 12300) of Chapter 3, for the In-Home Supportive Services program.

* * * * *

APPENDIX H

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S249593

[Filed: April 15, 2019]

KERRIE REILLY,	)
	)
Petitioner-Appellant,	)
	)
v.	)
	)
MARIN HOUSING AUTHORITY,	)
	)
Respondent-Appellee.	)
	)

After the Decision of the First Appellate District, Division Two, Case No. A149918

Affirming the Judgment of the Superior Court for the State of California, County of Marin (Hon. Paul M. Haakenson), Case No. CIV 1503896

BRIEF OF THE UNITED STATES AS AMICUS CURIAE SUPPORTING MARIN HOUSING AUTHORITY

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[*Table of Contents and Table of Authorities have been omitted for purposes of this Appendix*]

We respectfully submit this brief in response to the Court's order inviting the views of the United States. Petitioner Kerrie Reilly receives a rental assistance voucher under Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f(o). For all Section 8 voucher recipients, the amount of the voucher is calculated by reference to the recipient's annual income. *See* 24 C.F.R. § 5.628. Annual income is defined as "all amounts, monetary or not," that an individual receives during the year, unless "specifically excluded" by the regulation. *Id.* § 5.609(a). One such exclusion is for "[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." *Id.* § 5.609(c)(16). As we explain below, the Superior Court and the Court of Appeal both correctly held that payments made directly to Reilly under California's In-Home Supportive Services program to compensate her for time spent caring for her disabled daughter do not qualify for this exclusion, and thus are properly included in calculating Reilly's annual income.

STATEMENT

A. Section 8 of the United States Housing Act of 1937 authorizes the U.S. Department of Housing and Urban Development (HUD) to provide rental assistance "[f]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing." 42 U.S.C. § 1437f(a). In general, there are two types of Section 8 assistance: "project-based" assistance and "tenant-based"

assistance. 24 C.F.R. § 982.1(b)(1). Project-based assistance is tied to specific housing units. *Id.*; *see also id.* § 886.309. Owners of such units enter into long-term contracts with public housing authorities or HUD, under which they agree to rent the units to low-income families who meet Section 8 eligibility requirements in exchange for rental assistance payments from the government. *See* 24 C.F.R. § 886.311; 42 U.S.C. § 1437f(b), (f)(6). Tenant-based assistance is tenant-specific and travels with the tenant if the tenant moves. 24 C.F.R. § 982.1(b)(1)-(2); *see also* 42 U.S.C. § 1437f(f)(7), (o). In the tenant-based program, HUD provides funding to local public housing authorities that administer the program and provide vouchers which eligible tenants can use to pay the rent at the unit of their choosing. *See* 24 C.F.R. § 982.1(b); 42 U.S.C. § 1437f(f)(7). The tenant-based Section 8 program is known as the "Housing Choice Voucher" program. 24 C.F.R. § 982.1(a). Section 8 is not an entitlement program; Congress appropriates only a fixed sum for vouchers under both programs each year, and not every otherwise qualified family receives a voucher.

Under both the project-based and tenant-based voucher programs, tenants are required to pay a statutorily prescribed portion of the rent, typically equal to thirty percent of the tenant family's "adjusted income" or ten percent of their gross income, whichever is greater. 42 U.S.C. § 1437f(o)(2); *see also id.* § 1437a(a)(1); 24 C.F.R. § 5.628(a). The federal government pays the balance of the rent, up to a statutorily capped amount (known as the "payment

standard" under the Housing Choice Voucher program). *See* 42 U.S.C. § 1437f(c), (o)(1)-(2).

HUD regulations define "[a]nnual income" broadly as "all amounts, monetary or not," which a family member receives unless "specifically excluded" by regulation. 24 C.F.R. § 5.609(a); *see id.* § 5.609(b) (providing illustrative list of amounts counted as "annual income"). One of the exclusions removes from annual 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." *Id.* § 5.609(c)(16).

B. California's In-Home Supportive Services program (IHSS), Cal. Welf. & Inst. Code § 12300 *et seq.*, "provides supportive services to aged, blind, or disabled persons" to help those individuals "avoid institutionalization." *Basden v. Wagner*, 181 Cal. App. 4th 929, 931 (2010). IHSS operates in part under the auspices of the Medicaid program, a cooperative program between the federal government and the States that provides medical assistance to certain persons "whose income and resources are insufficient to meet the costs of necessary medical services." 42 U.S.C. § 1396-1. States that choose to participate in Medicaid must develop a "plan for medical assistance" for approval by the Secretary of the U.S. Department of Health and Human Services. *Id.* § 1396a. As part of this plan, States may develop home- and community-based care programs for individuals with disabilities and receive partial federal reimbursement

for the cost of care. *See* 42 U.S.C. § 1396n(c); *Sanchez v. Johnson*, 416 F.3d 1051, 1054 (9th Cir. 2005).

Under the IHSS program, supportive services may be provided by a variety of entities, including by employees of a county, nonprofit consortiums, public authorities, voluntary nonprofit or proprietary agencies, or individuals. *See* Cal. Welf. & Inst. Code §§ 12301.6, 12302. The IHSS program also provides that parents may be compensated as supportive services providers in certain circumstances. Specifically, when a parent is the provider, the parent "shall receive remuneration for those services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care." *Id.* § 12300(e). Parent providers are also compensated only for specific types of services. *Id.* § 12300(e)(1)-(5).

C. Petitioner Kerrie Reilly provides full-time care for her developmentally disabled adult daughter. *Reilly v. Marin Hous. Auth.*, 23 Cal. App. 5th 425, 428 (2018). Reilly receives payments from the IHSS program for this care. *Id.* Since 1998, Reilly has also received a rental assistance voucher through the Housing Choice Voucher Program. *Id.* at 429. Reilly originally received a voucher for renting a three-bedroom unit to accommodate herself and two daughters. *Id.* One daughter moved out in 2004, but Reilly did not inform the Marin Housing Authority (MHA), which administers Reilly's voucher, of her daughter's

departure until 2009. *Id.* As a result, MHA determined that Reilly was required to repay $16,011 in voucher funds, and Reilly entered into a payment agreement with MHA. *Id.* After Reilly breached the agreement, MHA sought to terminate Reilly's voucher. *Id.* Reilly contested the termination, arguing that MHA had miscalculated her voucher because the payments she received from IHSS should have been excluded from her income as "[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).

Both the Superior Court and the Court of Appeal rejected Reilly's argument. As the Court of Appeal explained, a payment to "offset the cost of services" must be payments to offset "costs that the family itself incurs." *Reilly*, 23 Cal. App. 5th at 434. And the term "cost" is naturally read to mean "the amount or equivalent paid or charged for something; price." *Id.* at 435 (quoting *Merriam-Webster's Collegiate Dictionary* 262 (10th ed. 2001)). Because Reilly provides care herself instead of employing another person to do so, "the cost of services that Reilly provides her daughter is, to Reilly, zero." *Id.* This understanding also "treats comparably two families with a developmentally disabled family member" by treating the IHSS payments as a "substitute in the family's budget for the money the parent would have earned outside the home" if the parent had opted to pay an outside provider for care. *Id.* at 437.

ARGUMENT

IHSS PAYMENTS TO MS. REILLY WERE PROPERLY TREATED AS INCOME BECAUSE THEY DO NOT "OFFSET THE COST OF SERVICES AND EQUIPMENT"

A. HUD regulations exclude from 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." 24 C.F.R. § 5.609(c)(16). As the Superior Court and Court of Appeal correctly concluded, the natural reading of this regulation excludes payments made directly to Reilly for the care of her own daughter. Such payments do not "offset the cost of services" that Reilly provides; they compensate her for those services.

This understanding of the regulation flows from the usual meaning of its terms. Generally, the "cost" of something is its price in monetary terms. *See, e.g.*, *Oxford English Dictionary* 988 (2d ed. 1989) (defining "cost" as "[t]hat which must be given or surrendered in order to acquire, produce, accomplish, or maintain something; the price paid for a thing); *Webster's Third New International Dictionary* 514 (1967) (defining "cost" as "the amount or equivalent paid or given or charged or engaged to be paid or given for anything bought or taken in barter or for service rendered; charge, price"). Similarly, to "offset" something is "[t]o set off as an equivalent against something else or part of something else; to balance by something on the other side or of contrary nature." *Oxford English Dictionary* 738 (2d ed. 1989); *see Webster's Third New*

International Dictionary 1566 (1967) ("to place over against: balance: counterbalance, compensate"). As this definition implies—and as the Court of Appeal correctly observed—a payment made to "offset" a "cost" "must go to the same entity that incurs the cost." *Reilly v. Marin Hous. Auth.*, 23 Cal. App. 5th 425, 434 (2018). In the context of § 5.609(c)(16), that entity is the "family" that incurs the monetary cost of "services and equipment" in caring for a developmentally disabled family member.

This straightforward understanding of the terms of the regulation resolves Reilly's case. Reilly is compensated by IHSS for the time she spends caring for her daughter. Reilly thus incurs no "cost of services and equipment" that could be "offset," because she pays no monetary price for the care that her daughter receives; "the cost of services that Reilly provides her daughter is, to Reilly, zero." *Reilly*, 23 Cal. App. 5th at 435. Amounts Reilly receives from IHSS therefore are not excluded from her income when calculating her housing voucher.

Although this plain-meaning understanding is sufficient, this interpretation also accords with the basic policy objectives of the regulation. *See People v. Shabazz*, 38 Cal. 4th 55, 68 (2006) ("[I]f a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed."). As HUD explained in promulgating § 5.609(c)(16), the exclusion exists because "families that strive to avoid institutionalization should be encouraged, and not punished." *Combined Income & Rent*, 60 Fed. Reg. 17,388, 17,389 (Apr. 5, 1995). The

regulation pursues this goal in part by ensuring that families that choose different means of keeping the developmentally disabled family member at home are treated evenhandedly. As the Court of Appeal explained, the plain-meaning understanding of the regulation treats identically "two families with a developmentally disabled family member: one family in which a third party cares for the disabled person, and the other in which a parent does." *Reilly*, 23 Cal. App. 5th at 437. If a family relies on third-party care, the family's costs for services and equipment to provide that care are excluded from income when calculating the amount of the housing voucher. In that scenario, any money that the family earns from working outside the home while the third party provides care is treated as income. Reilly, however, is compensated directly for the care that she provides to her daughter, without any corresponding outlay. That compensation substitutes for income Reilly could otherwise earn for working outside the home, and is therefore treated as income under the regulation. *See id.* at 438; *see also* Cal. Welf. & Inst. Code § 12300(e) (providing that a parent provider of care receives payment from IHSS "only when the provider leaves full-time employment or is prevented from obtaining full-time employment").

This interpretation also accords with the only other case addressing the meaning of § 5.609(c)(16). In *Anthony v. Poteet Housing Authority*, the Fifth Circuit addressed the situation of a mother (Anthony) whose son received services through STAR+PLUS, Texas's equivalent of the IHSS program. 306 F. App'x 98, 99 (2009). Anthony was hired by a private attendant services company that delivered STAR+PLUS services

on the State's behalf, and was assigned to care for her own son. *Id.* at 100. Anthony asserted that the income she received for caring for her son should be excluded from the calculation of her income under § 5.609(c)(16). *Id.* at 101. The Fifth Circuit rejected that argument, holding that "the regulation is clear" that "[o]ne must incur costs before they can be offset," and that Anthony had "incurred no costs which must be offset with state funds." *Id.* Although the payments to Anthony "coincide[d] with state funds that are set aside for her son's care," that fact did "not make that income a form of reimbursement." *Id.* at 101-02. And while Anthony contended that the services provided "have a cost," the Fifth Circuit observed that the services were "free" from Anthony's perspective: "[s]he has no out-of-pocket expenses—'costs'—that must be reimbursed or 'offset' by the state." *Id.* at 102.

B. Reilly argues (Br. 14-16) that the term "cost" in § 5.609(c)(16) does not have its usual meaning of a monetary "price," but instead refers to the broader set of "sacrifice[s]" of "time, freedom, and energy" that families with developmentally disabled members make on a daily basis. HUD recognizes the considerable challenges that families like Reilly's face. But Reilly identifies no textual reason to displace the "more common and concrete" meaning of "cost" as referring to the monetary price paid for something. *Reilly*, 23 Cal. App. 5th at 435. And in the context of § 5.609(c)(16), reading "cost" to refer to a monetary price paid is further reinforced by the fact that the regulation also refers to the "cost . . . of equipment," which is generally understood to have a monetary cost. For the same reasons, the Court of Appeal correctly rejected the

suggestion that § 5.609(c)(16) excludes from income the "opportunity cost" Reilly incurs by offsetting Reilly's "loss of income in staying home to care for her daughter." *Reilly*, 23 Cal. App. 5th at 434-35. The regulation excludes from income amounts paid "to offset the cost *of services and equipment*"—in other words, the actual outlay by the family—not the opportunity cost of providing services.

Reilly looks for textual support by comparing § 5.609(c)(16) to other exclusions in the same regulation, contending that other provisions contain language limiting their "coverage to reimbursement for . . . out-of-pocket expenses." Br. 17; *see* Br. 20-21; Reply 6-7. To be sure, other exclusions from income use the phrase "specifically for or in reimbursement of" certain expenses or costs. *See* 24 C.F.R. § 5.609(c)(4) (excluding "[a]mounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member"); *id.* § 5.609(c)(8)(iii) (excluding "[a]mounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred . . . and which are made solely to allow participation in a specific program"). But a drafter need not employ precisely the same language to accomplish the same ends; just as "[d]ifferent bills, drafted by different authors, passed at different times, might well use different language to convey the same basic rule," *United Riggers & Erectors, Inc. v. Coast Iron & Steel Co.*, 4 Cal. 5th 1082, 1093 (2018), exclusions from income promulgated over time may use different formulations to reach the same result. And nothing in either § 5.609(c)(4) or § 5.609(c)(8)(iii)—both of which

predated HUD's addition of § 5.609(c)(16)—changes the ordinary meaning of "cost" in § 5.609(c)(16), much less what it means to "offset the cost of services and equipment."

Reilly also suggests that § 5.609(c)(16) must be read broadly because of the public policy goals the exclusions from income serve. Br. 22-24. But § 5.609(c)(16) does not categorically exclude from income all "amounts" that a family receives through IHSS and similar programs; it limits the exclusion to amounts paid "to offset the cost of services and equipment." Although the exclusion is designed to encourage families to provide care for developmentally disabled family members at home, it does not pursue that goal by ignoring the material differences between families with members who use state support to work outside the home and those who receive the same support in the form of compensation for work performed in the home. *See CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2185 (2014) (observing that no provision "pursues its purposes at all costs" (quotation marks omitted)); *Sonic-Calabasas A, Inc. v. Moreno*, 57 Cal. 4th 1109, 1167 (2013) (same). To the extent that Reilly believes that the IHSS program itself should be operated in a more generous fashion, *see* Br. 31-33, those concerns are not a reason to disregard the plain meaning of § 5.609(c)(16).

Reilly's suggestion that the regulation treats similarly situated families equally because no family would ever see its rent increase when it receives IHSS payments, Br. 30, disregards the differences among families that the regulation is designed to respect. If

Reilly is correct that many families do not use IHSS funds to enable a family member to work (Br. 32), then it is all the more anomalous that a family that receives IHSS payments as compensation for a parent performing in-home care should have those payments excluded from income in voucher calculations. Families, like Reilly's, that receive IHSS funds as compensation would be able to spend those funds on household expenses without devoting any greater amount to rent. But families that rely on third parties for care, and do not earn other income by working outside the home, would have no comparable source of funds for household expenses, while receiving a voucher identical to Reilly's. Section 5.609(c)(16) prevents this sort of inequity by distinguishing between costs actually incurred and paid by the family and amounts paid to the family as compensation.

Finally, Reilly suggests that the federal tax treatment of IHSS payments is relevant to the interpretation of § 5.609(c)(16). Br. 33. But HUD's regulations governing income look broadly to "all amounts" a family receives, regardless of their particular tax treatment. 24 C.F.R. § 5.609(a); *see, e.g.*, *id.* § 5.609(b)(1) (including in income "[t]he full amount, before any payroll deductions, of wages and salaries"). That IHSS payments may be "excludable from gross income" in calculating federal income tax, Br. 33, does not affect whether they qualify as income for purposes of calculating the amount of a recipient's housing voucher, nor does it determine whether they are payments made "to offset the cost of services and equipment" for purposes of § 5.609(c)(16).

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeal should be affirmed.

Respectfully submitted,

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