

# IHSS FOR CHILDREN In-Home Supportive Services – Frequently Asked Questions

Source: <http://www.disabilityrightsca.org/pubs/547001-Ch-03.pdf>

## 1. Which IHSS Services May Children Receive?

- a) Personal care services (bathing, toileting, dressing, feeding, assistance with ambulation, etc.).
- b) Related services (meal preparation, planning and cleanup, laundry, food shopping).
- c) Paramedical services if prescribed by a doctor (injections, catheters, tube feeding, suctioning).
- d) Protective Supervision (24-hour monitoring and supervision to prevent injury). See Chapter 5 for further information.
  - Not routine child care or supervision.
  - Must show difference between disabled child and other children of same age.
- e) Assistance with travel.

MPP 30-763.454

Theoretically, if the parents are not IHSS providers, they can be authorized at least 8 hours per week of respite when parents are shopping, doing errands, or doing other things for the family.

## 2. When May Children Receive IHSS?

- a) When disabled and low-income (receipt of SSI means automatic eligibility)
- b) If income too high for SSI, may qualify with share of cost
- c) If parents are out of the house working, school, training
- d) If parents are unable to provide care due to disability or illness.
- e) If parents are sleeping or caring for other family members.

MPP 30-763.44

## 3(a) When Can a Parent be Paid as an IHSS provider?

- a) If the parent quit a full-time job or can't get a full-time job because he or she must care for the disabled child,  
**AND**
- b) b. If no other suitable care provider is available (willing and able), **AND**
- c) c. If services are not received, the child will be at risk of out-of-home placement or inadequate care.

MPP 30-763.451

## 3(b) What about Parent Providers with Two Parent Households?

IHSS regulations impose additional requirements on parent providers for minors when there are two parents in the household. MPP 30-763.453. Under the regulations, a parent may receive a payment for as an IHSS provider under a two parent household only when all of the following conditions are met:

- f) the parent provider leaves, or is prevented from obtaining, full-time employment because no other suitable provider is available and the inability of the parent provider to provide services may result in inappropriate placement or inadequate care,
- g) the non-provider parent is unable to provide the services because he/she is absent because of employment or in order to secure education, or is physically or mentally unable to provide the services, **AND**

- h) If the non-provider parent is unable to provide the services due to employment or educational purposes, payment shall be made to the parent provider only for services which are normally provided during the periods of the non-provider parent's absence as indicated above.

There have been reported cases where this regulation has been ruled invalid because it exceeds the scope of the statute, which only requires that rule (1) above be met. The cases reason that if the legislature intended to deny payment for services to a child to a parent in a two-parent family, the legislature would have inserted language so providing.

#### **4. I was told that my Child does not Qualify for IHSS Services Because He is Too Young. Is this True?**

No. Age cannot be a controlling factor in determining whether a particular personal care or related service should be authorized. The sole IHSS service limited in this respect is protective supervision, where it is authorized "only as needed because of the functional limitations of the child." Cal. Welf. & Inst. Code § 12300(d)(4). Had the Legislature sought to extend this limitation to personal care and related services for children, it would have included this limiting language as part of those services' descriptions under the statute.

"The starting point for interpretation of a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." Kaiser Aluminum & Chemical Corp. v. Bonjorno, 494 U.S. 827, 835 (1990). Therefore, children are entitled to be evaluated for personal care and related services just like any other applicant, irrespective of age, under MPP § 30-756.1. 5.

#### **I was Told that My Child does not Qualify for Related Services. Is this True?**

No. The only limitations regarding IHSS provision for individuals under 18 years old are found at MPP § 30-763.454. While this regulation does, indeed, omit domestic services, it specifically includes provision of related services at subsection (a). Perhaps the county is confusing its actual term "services related to domestic services" under the statute (Cal. Welf. & Inst. Code § 12300(e)(1)) outright with "domestic services" itself.

#### **6. I was Told that My Child does not Qualify for Services Because it is My Responsibility as a Parent to Provide these Services to my Child. Is this True?**

Only if your circumstances fall within the description of what the legislature defined as the expected parental responsibility towards the care of a child with IHSS needs. That definition requires parents to care for their children unless the parent provider leaves, or is prevented from obtaining, full-time employment because no other suitable provider is available and the inability of the parent provider to provide services may result in inappropriate placement or inadequate care. Cal. Welf & Inst. Code § 12300(e).

#### **7. Will the Payments A Parent Receives for Providing IHSS Affect the Child's SSI or the Family's Medi-Cal?**

No. Payments will not affect a child's SSI because this is considered exempt income under SSI rules. POMS SI 01320.175. When IHSS rules changed to allow Medi-Cal funding for parent providers under the IPW, these payments became income and property exempt under all of the State's Medi-Cal programs for IHSS provided to children under 21. (ACWDL 05-29, 06-04, 06-19). However, receiving these payments still may affect the family's welfare grant.

#### **8. Can I Get IHSS and Still Get Respite From the Regional Center?**

Yes. Respite services from the regional center are different from IHSS. You should be able to receive IHSS, including protective supervision, without losing any respite hours. Call DISABILITY RIGHTS CALIFORNIA if the regional center tries to cut your respite because you receive IHSS.