

DHS Lawsuit FAQ

What services are involved?

Personal support workers and agencies provide attendant care to people with intellectual or developmental disabilities (I/DD). This support is critical in helping people with I/DD live safely in their homes and fully access their communities. These are Medicaid-funded services that are commonly called the K Plan in Oregon.

Who is affected?

Roughly 3,000 children and 8,000 adults use in-home supports through Oregon's I/DD system. All of these people are assessed annually using a computerized assessment tool. In late 2016, the Office of Developmental Disabilities Services (ODDS) introduced a new version of this assessment tool. The new version was designed to strip away roughly 30% of everyone's service hours regardless of whether an individual's needs have increased, decreased, or stayed the same.

All individuals eligible for in-home services have needs significant enough to make them eligible for more intensive residential services like group homes or foster homes. These residential placements are both more restrictive and more expensive than in-home services.

The lawsuit only addresses claims for people with I/DD who get services through ODDS. People who get in-home care services through APD or for other disabilities are not directly affected by this lawsuit, though they may wish to contact DRO.

What are the legal claims?

The plaintiffs have alleged 7 distinct legal claims under the U.S. Constitution and 3 federal statutes.

Due Process

The Due Process Clause of the 14th Amendment requires that government agencies must use a fair and transparent process when reducing important benefits like in-home services. The complaint alleges that ODDS violated individuals' due process rights in four ways:

1. ODDS does not give people meaningful, individualized notice of reasons why their services are being reduced,
2. ODDS uses a secret computerized formula to determine individuals' hours and individuals have no meaningful way to understand how ODDS calculates their hours,
3. The process that ODDS uses for considering exceptions (extra hours beyond those allotted by the assessment tool) is secretive and arbitrary, and

4. The administrative appeal process is not fair because individuals have no meaningful way to challenge the hours allotted to them by the assessment tool.

ADA and Rehabilitation Act

The Americans with Disabilities Act (ADA) and the Rehabilitation Act require that government agencies provide services in the most integrated settings appropriate for the individual. When a reduction in support hours puts a person at risk of moving into a more restrictive setting or limits that person's access to their community, the government agency violates these federal civil rights laws.

Medicaid

Federal Medicaid law requires that ODDS provide attendant care services to eligible individuals "as needed." ODDS must provide all support hours that individuals need to remain safe, healthy, and in their communities.

What is a class action?

A class action is a type lawsuit that allows a large group of people with similar grievances to bring their case collectively. The court must decide whether it will allow the plaintiffs in this case to go forward on behalf of the whole class. In this case, the class would be all people whose ODDS in-home services have been reduced since September 1, 2016. If the court agrees to allow the case to go forward as a class action, it could help as many as 11,000 people all at once, rather than requiring each of those people to file separate lawsuits.

What is a preliminary injunction?

A preliminary injunction is a court order issued early in a case that requires a party to continue or stop a particular action while the case moves forward. In this case, the plaintiffs have asked the court to direct the state to restore in-home support hours because of the notice problems while the case goes forward. On April 19, 2017, the court granted a preliminary injunction. Read more about the injunction [here](#).

What are the next steps?

Class action lawsuits can take a long time – sometimes years. DHS has agreed to a preliminary injunction, an order that will restore services temporarily while the case moves forward. DHS is also working with the plaintiffs and other stakeholders to improve the system for determining in-home support hours. This process is just beginning. We will provide more information as the process moves forward.

Do I need to do anything?

You don't have to "sign up" to be part of the case, though you are still free to contact DRO's office in the interim. Everyone whose in-home supports have been cut because of the new version of the assessment tool (ANA-D or CAN-D) will benefit from the preliminary injunction.

If the court agrees to let DRO represent the whole class of people affected, we will try to protect all of the 10,000-plus people affected by the service cuts. If the court grants that motion, anyone in the class will benefit from the resolution of the case, whether your name is listed on the complaint or not. We are trying to make broad changes in DHS policy that will benefit everyone.

If you are fighting service cuts on your own, you can file an exception request and appeal the outcome of any denial in the exceptions process as well as the initial service cut. If your hours were sharply cut, you may also want to ask for a re-evaluation by ReBAR or another agency specializing in the needs assessment. DHS will soon begin restoring hours temporarily in accordance with the preliminary injunction.