

# **FAMILY SUBSIDY ACT: EXPAND ELIGIBILITY**

**House Bill 4753 as passed by the House  
Second Analysis (9-29-97)**

**Sponsor: Rep. Laura Baird  
Committee: Mental Health**

## ***THE APPARENT PROBLEM:***

Public Act 249 of 1983 created the Family Support Subsidy program to encourage home care, rather than institutionalization or other out-of-home placement, of severely disabled children. Families providing home care for eligible children receive a monthly subsidy of \$222.11 which can be used to offset the added expenses of caring for the child at home. To be eligible for the subsidy, a family must be caring for a child under 18 years of age who is, according to special education rules, severely mentally impaired, severely multiply impaired (a cognitive disability occurring along with physical disabilities), or autistic impaired (the child must be receiving special education services designed for the autistic impaired), and have a taxable income under \$60,000.

Currently, approximately 4,800-4,900 families in Michigan receive the subsidy for a qualifying child. The program's flexibility gives families the discretion to choose how to spend the monthly subsidy. Reportedly, the subsidy is often used to provide respite care, additional educational or therapy services, specialized equipment, or for needed medications.

Though applauded for reducing out-of-home placements, the program has long been criticized for what is seen as arbitrary eligibility criteria. For instance, autistic children enrolled in special education classes for the autistic impaired are eligible for the subsidy, but autistic children who have been mainstreamed into traditional classes are excluded, even though the costs of caring for the child at home may be the same. Another inequity cited by parents and advocates is the exclusion of children with severe physical disabilities or a chronic medical condition (but no cognitive disability) and children with severe emotional disturbances.

In the spring of 1991, the Michigan Developmental Disabilities Council published a "Draft Definition of Eligible Population for Proposed Expansion of Michigan's Family Support Subsidy" and commissioned a study of the validity and impact of proposed eligibility definitions for the Family Support Subsidy Program. The executive summary of the report, jointly submitted

to the Michigan Developmental Disabilities Council by the Developmental Disabilities Institute at Wayne State University and the Autism Society of Michigan in August 1993, recommended that the eligibility criteria of the Michigan Family Support Subsidy be expanded to include children with severe emotional impairments, children with physical or health impairments who also are hearing or visually impaired or using technology such as wheelchairs, ventilators, suctioning, and nasal-gastric feeding, and autistic children who are in inclusive educational settings. House Bill 5419 of the 1993-1994 legislative session, which attempted to address the eligibility question, was passed by the House (see the House Legislative Analysis Section's analysis of HB 5419 dated 10-25-94).

Adding impetus to redefining the eligibility criteria is the state's continued move away from institutionalized care and toward community and home-based services, closures of state residential facilities, reduced funding to many social service agencies that provide support services, and recent changes to the federal Children's Supplemental Security Income program (SSI) that will terminate payments to many families on July 1, 1997.

As of that date, to qualify for SSI benefits a child must have a medically proven physical or mental condition that results in "marked and severe functional limitations" of substantial duration. According to the Bazelon Center for Mental Health Law, the largest group affected by the SSI eligibility changes that eliminated the Individualized Functional Assessment, which allowed for a state to do a case by case assessment, will be children with serious mental, emotional, and behavioral disorders. The center estimates that 263,000 of the one million children nationwide receiving SSI benefits will be affected by the new eligibility criteria. An added concern is that many of the children could also lose Medicaid coverage, putting an even greater burden on families caring for their children at home. In Michigan, mental health advocates estimate that up to 30 percent of children receiving SSI benefits will lose them under the new eligibility definitions.

**House Bill 4753 (9-29-97)**

In light of these concerns and the recommendations previously published by the Michigan Developmental Disabilities Council, legislation has been proposed to expand the eligibility criteria for the Family Support Subsidy.

**THE CONTENT OF THE BILL:**

Public Act 249 of 1983, known as the Family Support Subsidy Act, amended the Mental Health Code to establish a family support subsidy program in order to keep families together and to reduce the number of children being institutionalized in state facilities by defraying some of the special costs of caring for a developmentally disabled or multiply impaired child at home. [Note: Parts of the act were later repealed or amended and incorporated into the recodification of the Mental Health Code by Public Act 290 of 1995 (MCL 330.1100 et al.).] To be eligible for a monthly Family Support Subsidy, a family must meet income requirements and have a child under the age of 18 years of age who is classified under special education law as being severely mentally impaired, severely multiply impaired (which indicates a cognitive disability occurring in addition to physical disabilities), or autistic impaired (the child must be receiving special education services designed for the autistic impaired). House Bill 4753 would amend the Mental Health Code to expand the definition of eligible minor to include children under 18 with severe emotional disturbances and children with severe physical disabilities or chronic medical conditions but no cognitive disability. The bill would also change the criteria for autistic impaired children by deleting the requirement that a child be in a program designed for the autistic impaired under special education rules or in a program designed for the severely mentally impaired or severely multiply impaired, and requiring instead that the child be autistic impaired and receiving special education services.

To be eligible, the child would have to meet the following conditions:

Emotionally impaired. The child would have to be documented by a multidisciplinary team and recommended by an individualized educational planning and placement committee as eligible for special education services for emotionally impaired children (under special education rules promulgated by the Department of Education), and meet the following criteria:

--The child's school documented that the emotional impairment had continued or would be likely to continue for a period of at least one year.

--The school record documented five or more of the following within the previous three years:

- \* An identified learning problem;
- \* Results of a professionally conducted behavioral assessment that documented significant problems with the student's functioning;
- \* Results of a professionally conducted personality assessment that documented significant problems with the student's functioning;
- \* Repeated aggressive behavior toward individuals at home;
- \* Repeated aggressive behavior toward individuals at school;
- \* Repeated self-injury at home;
- \* Repeated self-injury at school;
- \* Repeated property destruction at home; or
- \* Repeated property destruction at school.

Physically or otherwise health impaired (a minor who had been diagnosed as having attention deficit disorder would be excluded). In addition to the impairment, the child under 18 years of age would have to be one of the following:

- Hearing impaired.
- Visually impaired.
- Using one or more of the following technologies as documented by the multidisciplinary team:
  - \* Wheelchair or comparable technology;
  - \* Ventilator or comparable technology;
  - \* Gastrostomy or comparable technology;
  - \* Suctioning or postural drainage procedures or comparable technology; or
  - \* Parenteral or nasal-gastric feeding or comparable technology.

Further, the bill would specify that the Department of Community Health, as a result of the bill's provisions, could not reduce the amount of a subsidy to a minor who

was eligible for a Family Support Subsidy under eligibility criteria that was in effect on September 1, 1995.

MCL 330.1100a and 330.1160

### **FISCAL IMPLICATIONS:**

The House Fiscal Agency estimates that changing the eligibility standards for the Family Support Subsidy program could result in approximately 3,300 to 4,700 new participants in the program. An additional \$8.8 million to \$12.5 million in general fund dollars would be needed for the new participants in the program if the current subsidy payment of \$222.11 a month were maintained and federal Temporary Assistance for Needy Families (TANF) funds were not used to support the program (as recommended by the governor for the 1997-98 fiscal year appropriation bill for Department of Community Health). (7-22-97)

The Department of Community Health estimates the additional costs to the state as being \$13 million. (5-13-97)

### **ARGUMENTS:**

#### **For:**

The bill would go a long way in restoring equity in eligibility criteria for the Family Support Subsidy. It is well documented that the costs associated with caring for children with severe physical disabilities but no mental impairments can equal costs for caring for those children with mental impairments. Often specialized equipment, some medications, tubing, diapers, and so on that are necessary to the child's care are not reimbursed by insurance. Child care is always a problem, as parents must find sitters capable of handling the equipment and techniques required for feeding, communicating, and caring properly for the child. Also, children who are severely emotionally impaired require extra services that can drain a family's resources. One advocacy organization reported that a family caring for their emotionally impaired child at home documented over \$7,500 in annual expenses for such things as phone bills, medication, therapy, respite care, home repairs (for damage caused by the child), home adaptation expenses, transportation, and special evaluations. In addition, the parent was passed over for a \$25 a week raise due to frequent absences associated with the child's behavior problems.

Added to the above concerns is the continued reduction in funding to social service agencies, resulting in cutbacks in services, and continued closures by the state of the remaining residential children's facilities. Where the subsidy was originally created to save taxpayer

dollars by giving financial support to encourage families to care for their disabled children at home, now most families have no choice since there are few residential facilities or out-of-placement options left. It is not fair to grant a subsidy to some children with disabilities and exclude others whose disabilities require similar expenditures for their care.

Further, with an estimated 30 percent of the children in the state who receive SSI benefits facing the loss of those benefits (primarily children with severe emotional impairments), an additional burden will be put on families who are already coping with severe financial, physical, and emotional burdens. Virtually all of the state's in-patient facilities for children have been closed, with Pheasant Ridge Center in Kalamazoo scheduled to close this year. Parents are caught in a vicious cycle as community mental health programs are encouraged to keep treatments community-based, as opposed to referring patients for in-patient services. Psychiatric hospitals, in turn, have decreasing numbers of people being referred, and are then scheduled for closure. Community mental health programs then have fewer options for referring people (and children) for in-patient treatment, and must provide more care in the community. And then more hospitals close, and so it goes. If the state is going to continue to shut the door to in-patient treatment options, especially for severely emotionally impaired children, then the state has the responsibility to use the dollars "saved" by these hospital closures to provide some relief to the families caring for their emotionally impaired children at home.

#### **Response:**

Though the bill has received enthusiastic support from advocates for persons with disabilities, many have voiced concern over the possible interpretation of language pertaining to children with a POHI designation which may exclude a child diagnosed with attention deficit disorder (ADD) from eligibility even if the child were designated POHI and were visually or hearing impaired or using one or more of the specified technical supports. It has been pointed out by advocates and school administrators that the bill's requirement that a child be hearing or visually impaired or using a specified support such as a wheelchair or suctioning device in addition to the POHI designation would already exclude a child designated POHI solely on the basis of a medical diagnosis of ADD. However, since the House floor amendment that added the exclusion for children diagnosed with ADD would not specifically limit the exclusion to a child whose diagnosis of ADD was the primary (or sole) basis for a POHI designation, there is a concern that even ADD as a secondary diagnosis could be interpreted as excluding a child with other qualifying conditions from eligibility for the subsidy. Further, some school officials have reported that the information contained in special education files does not necessarily classify specific medical diagnoses

as being a primary or secondary basis for POHI designation. It would be unfair to exclude a child who would otherwise meet the eligibility criteria if, in addition to several medical conditions, the child also happened to have ADD. The language should be removed as many feel it is unnecessary, or at the least be amended to clarify that only ADD as a sole basis for POHI designation should be excluded from eligibility.

**Rebuttal:**

According to the sponsor of the amendment, the intent of the amendment was to clarify that a child would not become eligible for the subsidy based on a primary diagnosis of ADD. However, a child who was designated as POHI for a condition other than ADD, and who fit the restriction of being hearing or visually impaired or using one of the listed technological supports, would meet the eligibility requirements regardless of a diagnosis of ADD. Further, though a child could not qualify for the subsidy solely on the basis of having ADD, the family of a child who did meet the eligibility criteria and who also had ADD could use the subsidy for any services that the child needed, including services for the ADD. Children with severe ADD would likely still qualify for the subsidy, but under the criteria for emotionally impaired (EI) children rather than POHI. In a nutshell, the restrictive language would allow those families facing the greatest costs in providing care and services for their children to be identified and yet minimize the costs associated with expanding the program.

**For:**

Eligibility for the existing program for autistic children shouldn't be tied to the child's placement in a specific kind of classroom. When the act originally was written, the concept of mainstreaming children in school classrooms wasn't as widely accepted and implemented as it has become today. As a result, more autistic children reportedly are being placed, completely or for part of the day, in regular classrooms, much to the benefit of all of the children. And yet, the way the act is written, if an otherwise eligible autistic child isn't placed in a specific kind of special education classroom, he or she becomes ineligible for the program. This clearly works to the detriment of the families of these children, when the program is intended to help them. As the 1993 report to the Michigan Developmental Disabilities Council concluded, "the class[room] placement criteria associated with eligibility for the subsidy for families of children identified as Autistic Impaired should be removed, since it was an arbitrary distinction and created a substantial barrier to inclusive education." Further, it is estimated that expanding the eligibility to all autistic children receiving special education services, but not necessarily placed in a class for autistic or severely impaired children, would only

add about 100 (or fewer) children to the subsidy program.

**Against:**

Reportedly, it is estimated that about 3,300 to 4,700 additional children would qualify under the bill's expanded eligibility criteria at an additional cost to the state of between \$8.8 million and \$13 million. As desirable as expanding the program to include more families may be, there currently has been no funding allocated for such an expansion. The bottom line is that the cost of expanding the program is prohibitive at this time.

**Response:**

Again, in light of the closures of inpatient facilities for children; the inability of private hospitals to provide adequate long-term care or affordable short-term care; reduced services by social service agencies; and the increased costs of medical equipment, therapy, medication, respite care, and other expenses associated with the care of physically or emotionally impaired children, families need some assistance if they are to continue to bear the main burden for caring for a disabled child at home. Further, many advocates in the mental health field believe that the actual number of children that would qualify for the subsidy under the new eligibility criteria is significantly lower than what the Department of Community Health estimates. The stringent eligibility criteria would expand eligibility to only those families who face the greatest costs in caring for a child with a disability. Besides, a subsidy of \$222.11 a month is a drop in the bucket compared with the associated costs to taxpayers if a family's resources became drained to the point of qualifying for other public assistance programs such as Medicaid and welfare, or of abandoning the children to the state for placement in the foster-care system. Families currently receiving the subsidy report that the emotional encouragement and financial help it provides enables them to carry the lion's share of caring for their children. It is wrong to arbitrarily draw definitional lines that qualify some children but exclude others whose expenses equal or exceed those currently receiving the subsidy.

**POSITIONS:**

Michigan Protection and Advocacy supports the bill provided that the language related to the restrictions on ADD is removed. (9-29-97)

The Alliance for Children's Mental Health (ACMH) supports the bill. (9-29-97)

The Michigan Developmental Disabilities Council supports the bill; however, the council does not wish to

see persons with the diagnoses of ADD excluded when they also meet the other established criteria. (9-23-97)

The ARC Michigan supports the bill, but believes it needs to be clarified so that those who are otherwise qualified under the bill but who additionally have ADD may still receive the support subsidy. (9-25-97)

The Association for Community Advocacy supports the bill, but has expressed deep concern over the wording of the provision pertaining to POHI eligibility and the exclusion for ADD. (9-24-97)

The Autism Society of Michigan supports the bill, but has concerns with the language in the provision pertaining to POHI eligibility and the exclusion for ADD. (9-24-97)

The Department of Community Health opposes the bill. (9-23-97)

Analyst: S. Stutzky

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.