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# State's top court OKs \$57 million for home-care workers

By GENE JOHNSON, Associated Press | Published: Apr 3, 2014 at 12:55 PM PDT (2014-04-3T19:55:34Z) | Last Updated: Apr 3, 2014 at 3:34 PM PDT (2014-04-3T22:34:55Z)



SEATTLE (AP) - Washington's Supreme Court on Thursday narrowly upheld a \$57 million verdict against the state in a case brought by workers who care for severely disabled people. But the justices declined to give the workers pre-judgment interest - throwing out an additional \$39 million awarded by a lower-court judge.

The 22,000 workers claimed they were shortchanged by a 2003 rule from the Department of Social and Health Services that automatically cut their pay by 15 percent. The rule was based on the rationale that because the caregivers lived with their charges, then some of the work performed - cooking, for example - also benefited the caregiver, who shouldn't be paid for it.

The high court struck down the rule in 2007 as inconsistent with federal Medicaid requirements, and the workers sued to get the money they said they were owed. After tortuous litigation that included a detour into federal court, a Thurston County Superior Court jury sided with the workers in 2011 and awarded \$57 million. The state appealed, but the high court sided with the workers 5-4 Thursday.

"It's a major victory for the home health-care workers who were shortchanged by DSHS," said John White Jr., a lawyer for the caregivers. "They had a reasonable expectation that they were going to get paid for all the hours they worked."

The amount each worker is due will be calculated later, but White said he expected them to receive roughly \$3,000 apiece.

The court said the plaintiffs were not entitled to pre-judgment interest on their back pay because that can only be awarded when the damages can be calculated specifically, rather

than estimated as they were in this case. Nevertheless, they are entitled to interest that has been accruing since the verdict, which amounts to \$570,000 per month, White said.

Bill Moss, assistant secretary with the department's Aging and Long-Term Support Administration, called the ruling a partial win for the state.

"There is no doubt that providers do an outstanding job of serving our vulnerable population," he said in a department news release. "But when dealing with limited funds, it is critical to do everything possible to stretch and leverage funds to sustain services and to care for the greatest number of folks with personal care needs."

The state relies on in-home caregivers as a cheaper, more humane alternative to institutionalized care for poor, disabled people. While the disabled people themselves are considered the employers of the caregivers for legal reasons, the state writes the contract for the caregivers, letting them know how many hours of care the disabled people are entitled to under Medicaid.

In this case, the workers agreed to the contract only to later learn that their hours would be cut by 15 percent. The majority, in an opinion written by Justice Susan Owens, said the state had breached a duty of fair dealing it owed the workers.

Justice Debra Stephens wrote the dissent. She said the state owed no such duty to the workers.

One justice, Charles Johnson, issued a partial dissent in which he said he would have upheld not only the verdict, but the award of pre-judgment interest as well.