

**LETTER OPINION  
2003-L-61**

December 22, 2003

The Honorable Richard Brown  
State Senator  
5418 11th St S  
Fargo, ND 58104-6452

Dear Senator Brown:

Thank you for asking my opinion concerning sliding fee schedules adopted by the North Dakota Department of Human Services (DHS) regarding the Service Payments for Elderly and Disabled (SPED) program. The SPED program, a state funded program, provides payments for home and community based services to sustain individuals in their homes and community and delay or prevent institutional care. N.D.C.C. §§ 50-06.2-01(3), 50-06.2-03(5), N.D.A.C. §75-03-23-01(16). There is a copayment for SPED services which varies by a percentage amount. The copayment amount is based on monthly income and family size.

The 2003 Legislative Assembly amended the eligibility and copayment requirements for the SPED program in Senate Bill No. 2083. See 2003 N.D. Sess. Laws ch. 410, §§ 3, 4, & 5. Two categories for copayments relating to liquid assets were created where one previously existed, that is, individuals with liquid assets of \$0 to \$25,000 and individuals with liquid assets of \$25,000 to \$50,000. The Legislature expressed its intent that DHS fashion a new monthly rate schedule covering the two categories. See Id. at §§ 3 and 4. The Legislature specified that DHS “reduce the income limit levels used for determining copayments for recipients of services under the SPED program as of April 1, 2003, by one hundred dollars for each monthly income level for recipients with liquid assets not exceeding twenty-five thousand dollars and that the department disregard a portion of income relating to verified prescription drug costs of the recipient for the biennium beginning July 1, 2003, and ending June 30, 2005.” Id. at §3. (Emphasis added.) Likewise, the Legislature specified that income limit levels for the SPED program be reduced “by two hundred fifty dollars for each monthly income level for recipients with liquid assets exceeding twenty-five thousand dollars but which do not exceed fifty thousand dollars and that the department disregard a portion of income relating to verified prescription drug costs of the recipient for the biennium beginning July 1, 2003, and ending June 30, 2005.” Id. at § 4. (Emphasis added.)

On July 14, 2003, DHS issued its revised SPED Program Sliding Fee Schedules. You point out that DHS reduced the copayment levels of individuals with assets not exceeding \$25,000 by \$300 and reduced the copayment levels for recipients with assets from \$25,000 to \$50,000 by \$450. You ask whether the DHS SPED Program Sliding Fee Schedules comply with state law.

A member of my staff checked with DHS and was advised that the income levels were reduced by \$100 for recipients with liquid assets of zero to \$25,000 plus an additional reduction of \$200. Likewise the reduction of \$250 specified by the Legislature was supplemented by a similar reduction of an additional \$200 for the rate schedule for recipients with liquid assets from \$25,000 to \$50,000. DHS asserted that the additional reductions of \$200 had been shown on a chart to the House Appropriations Committee during a hearing on S.B. 2083. See Hearing on S.B. 2083 Before the House Appropriations Committee, 2003 N.D. Leg. (Apr. 2). DHS further asserts that this \$200 represents an average prescription drug cost for SPED recipients.

“Generally, the law is what the Legislature says, not what is unsaid.” Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993). Where the statutory language is not ambiguous, it is improper to delve further. Public Service Commission v. Wimbledon Grain Co., 663 N.W.2d 186, 195 (N.D. 2003); Douville v. Pembina County Water Resource District, 612 N.W.2d 270, 274, (N.D. 2000).

The Legislature must be presumed to have meant what it has plainly expressed. It must be presumed, also, that it made no mistake in expressing its purpose and intent. Where the language of a statute is plain and unambiguous, the “court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it.”

City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940) (citations omitted). Further, “[i]t is a general principle of statutory interpretation that mention of one thing implies exclusion of another.” In re Township 143 North, Range 55 West, in Cass County, 183 N.W.2d 520, 529 (N.D. 1971).

The legislative history of 2003 S.B. 2083 shows some discussion and includes a chart indicating the changes made to it by sections 3 and 4 as well as a further reduction of \$200 representing an average prescription drug cost, as stated by DHS. However, 2003 S.B. 2083 was not amended to reflect such an additional \$200 reduction of the income limit levels for recipients. Instead, sections 3 and 4 of 2003 S.B. 2083 require the DHS to make certain specific changes to the pre-existing schedule for determining copayments under the SPED program. Where those changes are specified in terms of particular dollar

LETTER OPINION 2003-L-61  
December 22, 2003  
Page 3

figures, it is those dollar figures that are to be used and not a different dollar figure. N.D.A.G. 2001-L-20 (legislative statements of intent are to be applied when interpreting laws).

Further, sections 3 and 4 of 2003 S.B. 2083 each state that DHS must “disregard” a portion of income relating to the recipient’s verified prescription drug costs. “Disregard” means to pay no attention or heed to, or to ignore. The American Heritage Dictionary 408 (2d coll. ed. 1991). Thus, an individual’s verified prescription drug costs are to be disregarded or subtracted from his or her income when the individual is placed in the appropriate SPED program sliding fee schedule. The practical effect of DHS’s lowering the income limit levels by an amount representing an average SPED recipient’s prescription drug costs is to largely eliminate any benefit to SPED recipients from the Legislature’s direction to disregard the amount of the recipient’s verified prescription drug costs from the recipient’s income when applying the sliding fee schedule. That result would contradict the clear and unambiguous directions the Legislature gave to DHS in 2003 S.B. 2083.

Therefore, it is my opinion that the SPED program sliding fee schedules DHS issued effective August 1, 2003, are not in conformity with 2003 S.B. 2083, and that the income limit levels on the schedules must each be increased by \$200 in order to comply with the law.

Sincerely,

Wayne Stenehjem  
Attorney General

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