



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES M. CONDON  
ATTORNEY GENERAL

September 17, 1998

The Honorable Joe Wilson  
Senator, District No. 23  
P.O. Box 5709  
West Columbia, South Carolina 29171

**Re: Informal Opinion**

Dear Senator Wilson:

Your opinion request has been forwarded to me for reply. You have asked, on behalf of one of your constituents, for an interpretation of Section 44-38-370 of the South Carolina Code of Laws, which establishes eligibility criteria for case management services through the Department of Disabilities and Special Needs (hereinafter the "Department"), Head and Spinal Cord Injury Division. You have asked a question concerning the Department's interpretation of the phrase "similar disability" when determining whether an individual is eligible for services under the statute.

By way of background, there is established within the Department of Disabilities and Special Needs the South Carolina Head and Spinal Cord Injury Service Delivery System. The system is a division of the Department to be known as the Head and Spinal Cord Injury Division. The Department is obligated under the statute to develop, coordinate, and enhance the delivery of services to persons with head and spinal injuries. S.C. Code Ann. § 44-38-310.

Section 44-38-340 sets forth the duties of the Department under the statute. This Section provides, among other things, that the Department shall determine a person's eligibility for case management services based on criteria provided in Section 44-38-370, conduct an assessment of services needed, and provide appropriate case management based

*Request Letter*

The Honorable Joe Wilson  
Page 2  
September 17, 1998

on an individualized treatment plan designed to meet the specific needs of the person.<sup>1</sup>  
The eligibility criteria found in Section 44-38-370 is, in part, as follows:

A person is eligible for case management services under this article when at the time of determining eligibility the person has a severe chronic limitation that:

(1) is attributed to a physical impairment, including head injury, spinal cord injury, or both, or a similar disability, regardless of the age of onset but not associated with the process of a progressive degenerative illness or disease, dementia, or a neurological disorder related to aging (emphasis added);

In regards to an agency's interpretation of a statute, so long as the administrative interpretation is reasonable, courts will defer to that construction even if it is not the only reasonable one or the one the court could have adopted in the first instance. Op. Atty. Gen. dated March 12, 1997. The construction given to a statute by the agency charged with its administration will be accorded most respectful consideration and will not be overturned absent compelling reasons. Laurens Co. School Districts 55 and 56 v. Cox, 308 S.C. 171, 417 S.E.2d 560 (1992); Jasper Co. Tax Assessor v. Westvaco, 305 S.C. 346, 409 S.E.2d 333 (1991).

Here, the Department is the agency responsible for the administration of the statute. The Department is charged with determining a person's eligibility for case management services based on the criteria set forth in the statute. The law also provides that the director of the Department or his designee has the final authority over applicant eligibility, determination, or services and admission order, subject to the policies adopted by the commission. Due to the Department's role in this matter, its interpretation of the phrase "similar disability" would be entitled to most respectful consideration by the courts and this Office and would not be overturned absent compelling reasons. Further, as long as the Department's interpretation is reasonable, the courts and this Office will defer to that construction.

---

<sup>1</sup> The law also provides that the director of the Department or his designee has the final authority over applicant eligibility, determination, or services and admission order, subject to policies adopted by the commission. S.C. Code Ann. § 44-20-430.

The Honorable Joe Wilson  
Page 3  
September 17, 1998

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General