

Parents of autistic infants win B.C. court battle

HEALTH | Victory is third in a row for parents in legal fight with Victoria to win full funding for specialized treatment of autistic children

BY NEAL HALL
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Parents of autistic children have won a third round in a court battle with the provincial government, which was ordered Friday to pay for the treatment of another 23 infant children with autism.

"I'm elated," said Sabrina Freeman, executive director of Families for Early Autism Treatment (FEAT), which has been asking the government for years to fund Lovaas treatment, an intensive early intervention program that requires 40 hours a week of one-on-one therapy that costs up to \$60,000 a year.

B.C. Supreme Court Justice Ian Pitfield, in his written decision Friday, found the Crown had violated the rights of 23 infant peti-

tioners under Section 15(1) of the Charter of Rights and Freedoms.

The judge ordered the government to fund Lovaas treatment for each of the 23 infants retroactive to July 26, 2000, the date of the first court ruling against the government.

The judge also awarded court costs to the families of autistic children involved in the legal action against the government. It is the third legal proceeding the government has lost on the issue.

But Freeman said families with autistic children shouldn't have to continue going to court to force the government to pay the full cost of Lovaas treatment.

The latest court judgment is a message for the provincial government to do the right thing and pay for treatment for all autistic children in B.C., she said.

"It's a real abuse of these families," said Freeman, the mother of an autistic child involved in the original ground-breaking court case three years ago, in which B.C. Supreme Court Justice Marion Allan found the government had violated the Charter rights of four representative autistic children.

The judge ruled the government had discriminated against the autistic kids by denying them funding for Lovaas early intervention treatment.

"The petitioners are the victims of the government's failure to accommodate them by failing to provide treatment to ameliorate their mental disability," Allan concluded.

The judge found that autism, a neuro-behavioural syndrome caused by a dysfunction in the

central nervous system, "is a medical disability just as cancer is and ... both require treatment."

The B.C. Court of Appeal later upheld the ruling, which was cited in Friday's judgment.

Freeman said parents of autistic children thought the government, after losing the first round of the court battle, would uphold its election promise to fund treatment for all autistic children.

Initially, 30 parents of autistic children sought to have the legal action, known as *Auton*, certified as a class-action lawsuit.

But the government's lawyer at the time, Harvey Groberman, now a B.C. Supreme Court judge, convinced the parents that a class action was not necessary, since a court ruling would affect all autistic children seeking to recover the

cost of Lovaas therapy.

Parents felt betrayed when the New Democratic Party government, after losing the *Auton* case, would not pay the full cost of treatment for the other kids.

Premier Gordon Campbell also broke his election promise to fully fund the cost of early autism treatment, Freeman said.

The government did agree, she said, to provide up to \$20,000 a year to fund Lovaas treatment funding for each autistic child under the age of six.

"Imagine giving a child who needs cancer treatment only one-third of the cost," Freeman said.

She said the government's failure to provide full funding has caused a steady exodus of parents of autistic children to Alberta, which covers the full cost of Lovaas treatment.

"I know of more than 10 families who have moved to Alberta," Freeman said.

The provincial government is appealing the original decision, known as *Auton*, to the nation's highest court in Ottawa. The appeal is set for next March 22.

"I'm very confident the Supreme Court of Canada will not forsake these children," Freeman said.

Lovaas treatment — named after the American doctor who pioneered the intensive therapy — was designed to permit very young autistic children to catch up with their normal peers by Grade 1.

Parents of the children involved in Lovaas treatment report dramatic improvements and substantial progress in communication and language skills.