



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

██████ ██████  
██████████████████  
██████████████████

DECISION

FOS/145483

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 20, 2012, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision in regard to petitioner’s Foster Care rate, a telephonic hearing was held on January 07, 2013, at Appleton, Wisconsin. At the request of the parties, the record was held open for the parties to submit consecutive briefs to the Division of Hearings and Appeals (DHA) and to each other. Both parties timely submitted their briefs to DHA which are received into the hearing record.

The issue for determination is whether the county agency met its burden of proof to establish that it correctly and properly reduced the petitioner’s treatment foster care rate from \$1,400 to \$863 for the period of November 1, 2012 to February 25, 2013 (when child turned 18 years of age).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████ ██████  
██████████████████  
██████████████████

Representative:

██████████████████ administrative coordinator  
██████████████████  
██████████████████  
██████████████████

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Lindsay Campbell, juvenile supervisor  
Waushara County Human Services  
P.O. Box 1230  
Wautoma, WI 54982

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is currently a resident of Outagamie County, but the foster care rate reduction at issue in this appeal occurred during the period petitioner resided in Waushara County.
2. On or about February 6, 2012, the Waushara county agency made a referral to the private licensing and child placement agency, [REDACTED], for the treatment foster care placement of [REDACTED] (PJ). [REDACTED] turned 18 years of age on February 25, 2013 and then was no longer eligible for foster care.
3. The county agency completed its CANS assessment and Uniform Rate Setting form prior to the placement of [REDACTED] with [REDACTED] and [REDACTED] [REDACTED] (petitioner). The county agency offered a basic, supplemental, and exceptional foster care monthly payment rate of \$1,400 in large part because the county was unable to locate another foster home willing to accept placement of a child with such serious sexual perpetration issues, and to be placed in the least restrictive setting.
4. On March 7, 2012, [REDACTED] and [REDACTED] [REDACTED] accepted placement of [REDACTED] on March 7, 2012 at the monthly foster care rate of \$1,400.
5. [REDACTED]'s status as a registered sex offender resulted from his history of criminal sexual activity and felony charges. See Attachment G.
6. [REDACTED]'s criminal convictions resulted in very strict supervision conditions based upon Waushara County Circuit Court Judge Dutcher's Orders in Case No. [REDACTED]. See Attachment D. In that Order, Judge Dutcher issued 25 clear, detailed guidelines for [REDACTED]'s strict supervision.
7. The Waushara county agency determined that [REDACTED] and [REDACTED] [REDACTED] were eligible for the foster care monthly rate of \$1,400 (which included the exceptional care rate payment of \$726) due to the intense supervision requirement and liability concerns of a registered sex offender.
8. In an October 29, 2012 hearing regarding possible change of placement, Judge Dutcher ordered that there would be no change of placement and [REDACTED] must remain with the [REDACTED] until his 18<sup>th</sup> birthday on February 25, 2013 in order to continue the strict level of supervision needed. See Attachment H.
9. On November 16, 2012, the county agency contacted Family Works that the petitioner's treatment foster care rate would be reduced from \$1,400 to \$863, due to the completion of the six month CANS re-assessment.
10. The Family Works agency strongly disagreed with the correctness of the county agency's intention to reduce the petitioner's foster care rate, and informed the county agency of such disagreement. See petitioner's brief.
11. The county agency was unable to establish with any reliable evidence that [REDACTED]'s behaviors had improved or that changes in his supervision needs justified such a severe reduction in petitioner's foster care rate.
12. There is reliable evidence in the hearing record during the period in question that [REDACTED]'s behavior became more challenging and there has been a general lack of progress in his "sexual offense cycle." See Attachment B, neuro-psychological evaluation by Dr. David Leicht and Attachment C from [REDACTED]'s therapist, [REDACTED] [REDACTED].
13. The county agency was unable to provide any copy of any adequate and timely written notice to the petitioner to inform her that her foster care rate would be reduced from \$1,400 to \$863 as of November 1, 2012.

## DISCUSSION

All foster parents receive at least a basic rate monthly payment for children in their care. The basic rate is set by state statute. In addition, they may be awarded enhanced monthly payments for foster children with unusual care needs. The methodology for determining the extent of the enhanced payments, which are characterized as supplemental or exceptional, is found at Wis. Admin. Code §DHS 56.11. Supplemental payments are provided on the basis of points assessed for emotional, behavioral, and physical care needs, based on need categories of "not applicable," "minimal," "moderate," or "intensive." Exceptional payment can be made when necessary to maintain a child in foster care rather than in an institution. See also, Wis. Stat. §48.62(4).

The Department is required by code to re-assess a foster child's need for supplemental payments only once every six months. Wis. Admin. Code §DHS 56.11(2)(b). In this case, the county agency completed re-assessment of PJ during March, 2012 and again during October, 2012. More importantly, Judge Dutcher's reviewed PJ's placement and ordered that PJ remain with the [REDACTED] until his February 25, 2013 (date of his 18<sup>th</sup> birthday) and set 25 specific guidelines for that supervision. See Findings of Fact #6 and #8 above. The county agency was unable to provide any reliable evidence to refute that the Court had carefully reviewed PJ's case and specifically set detailed orders for his continued strict level of supervision. See Finding of Fact #8.

During the hearing and in its detailed exhibits, the petitioner's representative, Family Works social worker [REDACTED] presented a comprehensive and convincing case that the county agency incorrectly and improperly reduced the petitioner's foster care rate for the period of November 1, 2012 to February 25, 2013. In her testimony and in her written brief, Ms. [REDACTED] convincingly established that Waushara county agency failed to provide proper notice to the petitioner, and was incorrect in its decision to reduce the petitioner's foster care rate as of November 1<sup>st</sup>. See Finding of Fact #10. The petitioner and Ms. [REDACTED] established in their testimony and exhibits that PJ's behavior had not improved, that he is still the same sexual threat to others, and requires the same very high level of strict supervision. See Findings of Fact #11 and #12. During the hearing, the two county supervisors (Lindsay Campbell and Dawn Buchholz) were very argumentative, and indicated they "disagreed" with the placement decision and guidelines set by Circuit Court Judge Dutcher. See Findings of Fact #6 and #8. Despite such insistence, the county representative was unable to establish any persuasive and reliable evidence that the petitioner should not remain eligible for the exceptional rate during the November 1, 2012 to February 25, 2013 period.

In any reduction of benefits, the county agency has the **burden of proof** to establish that it correctly reduced the recipient's foster care benefits. The county agency has failed to present reliable, non-hearsay evidence or testimony to support the correctness of the county's action to significantly reduce the petitioner's foster care rate from \$1,400 to \$863 for the period of November 1, 2012 to February 25, 2013. Accordingly, I conclude that the county failed to meet its burden of proof to establish that it correctly reduced the petitioner's treatment foster care rate during that period.

However, even if the county agency had met its burden of proof, the county agency had a legal responsibility to provide adequate and timely notice to the petitioner prior to the November 1, 2012 reduction of her foster care rate payment. As stated in Finding of Fact #13, the county agency was unable to provide any copy of any adequate and timely written notice to the petitioner informing her that her foster care rate would be reduced from \$1,400 to \$863 as of November 1, 2012.

Before reducing or discontinuing a person's ongoing foster care benefits, the Department or the county agency must issue **timely advance, adequate written notice** of the reduction or discontinuance. 42 C.F.R. 435.919(a) and 42 C.F.R. 431.210; Goldberg v. Kelly, 397 U.S. 254 (1970). In general, before a negative action is taken by a county agency, the agency must mail an adequate notice of the action at least ten days

before the effective date of the action. 42 C.F.R. § 431.211; Income Maintenance Manual, II-G-2.2.0. It is the responsibility of the county agency to provide a copy of this notice to demonstrate that such notice was, in fact, issued by the agency within the requisite timeframe. In addition, it is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in Hanson stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs.

In the instant case, the county agency has failed to meet its burden of proof to establish that it provided any adequate prior or timely written notice to the petitioner of the November 1, 2012 reduction in her foster care rate. The county agency argued that it sent an e mail to Family Works regarding the intended reduction of petitioner's foster care rate. However, such e mail communication to Family Works did not remove the county agency's legal responsibility to timely provide adequate notice to the petitioner in writing with appeal rights that it intended to reduce her foster care rate as of a specific effective date. Therefore, the county agency improperly reduced the petitioner's foster care rate as of November 1, 2012, due to inadequate and defective notice. The county representative was unable to refute the testimony of petitioner or Ms. [REDACTED], or to undermine their credibility. As a result, the county did not meet its burden of proof to establish that it correctly and properly reduced the petitioner's foster care rate. Accordingly, I conclude that the county agency failed to meet its burden of proof to establish that it correctly reduced the petitioner's treatment foster care rate from \$1,400 to \$863 for the period of November 1, 2012 to February 25, 2013, and the county also failed to provide adequate and timely notice to the petitioner of her foster care rate reduction.

### **CONCLUSIONS OF LAW**

The county agency failed to meet its burden of proof to establish that it correctly and properly reduced the petitioner's treatment foster care rate from \$1,400 to \$863 for the period of November 1, 2012 to February 25, 2013.

**THEREFORE, it is**

**ORDERED**

The matter is remanded to the county agency with instructions to restore to the petitioner her full foster care rate of \$1,400 for the period of November 1, 2012 to February 25, 2013, within 10 days of the date of this Decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 22nd day of April, 2013

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\sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 22, 2013.

Foster Care



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 2, 2013.

Waushara County Human Services