



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOS/165604

PRELIMINARY RECITALS

Pursuant to a petition filed April 21, 2015, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Waukesha County Health and Human Services in regard to Foster Care, a hearing was held on May 28, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly set and paid an appropriate foster care rate to the petitioner for a 16-year old boy placed with the foster family through a delinquency order.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Todd McDonell, Foster Care Worker
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Waukesha County.
2. Prior to the child's foster placement with the petitioner, the child was living with relatives and attending [REDACTED].

3. The child was charged with a felony drug delinquency related to his behavior at [REDACTED]. The child's relatives were no longer willing to allow the child to remain in their home.
4. The child was placed on a delinquency order, and placed with the petitioner as a foster care placement. Initially this was a temporary placement, but has since become a more permanent placement. The child was 16 at the time of placement. Because the child had been expelled from [REDACTED], other high schools in the State were not willing to take the child. The plan in the beginning was for the child to attend [REDACTED] or some type of boot camp program. Ultimately, the petitioner was able to locate a school system in the state that would allow the child to attend virtual school. The petitioner has had to offer this child significant help with virtual school. The child is of average intelligence, and as the petitioner describes he is more of a hands on learner. This petitioner has worked with the child, which by all accounts has allowed him to be successful in the virtual education setting.
5. Effective January 1, 2015 the petitioner received \$887.00 per month for this child. This amount consisted of the base rate of \$499.00 plus the supplemental rate of \$336.00, and an exceptional rate of \$52.00.
6. Effective May 1, 2015 the petitioner receives \$607.00 per month for this child. This amount consists of the base rate of \$499.00 plus the supplemental rate of \$56.00, and an exceptional rate of \$52.00.
7. On April 23, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing. Attached to her request is an e-mail exchange with the agency. On February 17, 2015 the petitioner sent the first e-mail to the agency. The petitioner states, "I went back and forth in the summer on this topic and felt frustrated by the process and decided to let it go. However, after reviewing the CANS and knowing what we have all done for this child I have more questions that just don't seem to make sense to me."

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 §DCF 56.23. 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." *Id.* 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).

In this case the petitioner did not question the supplemental payment at the hearing. At the hearing the agency testified that the petitioner received \$875.00. The record was left open, and the documents submitted after the hearing show that effective May 1, 2015 the foster care payment was reduced to \$607.00. This reduction was due to a decrease in the supplemental rate. I have reviewed the assessments, and heard the testimony. There was no testimony that this child's needs decreased effective May 1, 2015. The hearing was held on May 28, 2015. In fact, the testimony at the hearing was that the petitioner received an \$875.00 total payment. In reviewing the CANS with the testimony, I believe that the assessment done effective January 1, 2015 is correct with regard to the assessment of the supplemental payments. That amount is \$306, and is in addition to the base rate and exceptional rate.

Following the hearing, the petitioner reviewed the assessments with the agency. The petitioner submitted a letter with a form. The form stated, "an exceptional rate payment may be provided on behalf of a foster child only if at least one of the following situations exists." The form goes on to list a category titled, "the

payment will enable the child to be placed or remain in a foster home instead of being placed or remaining in a more restrictive setting.” The form directs the agency to consider “specialized activities to support the needs of the child [including] increased frequency and interaction with the school (weekly or more).” The petitioner highlights that they were interacting with the child’s school on a daily basis.

At the hearing the testimony was that the petitioner was living with relatives when he was found to have given drugs to another student at [REDACTED]. These actions resulted in an adjudication, and delinquency order. The relatives were unwilling to have the child remain in their home. The child was placed on a delinquency order, and placed with the petitioner as a foster care placement. Initially this was a temporary placement, but has since become a more permanent placement. The child was 16 at the time of placement. Because the child had been expelled from [REDACTED], other high schools in the State were not willing to take the child. The plan in the beginning was for the child to attend [REDACTED] or some type of boot camp program. Ultimately, the petitioner was able to locate a school system in the state that would allow the child to attend virtual school. The petitioner has had to offer this child significant help with virtual school. The child is of average intelligence, and as the petitioner describes he is more of a hands on learner. This petitioner has worked with the child, which by all accounts has allowed him to be successful in the virtual education setting.

I agree with the petitioner that some exceptional rate is warranted. Foster placement is difficult for a 16 year old who is placed in foster care through a delinquency, rather than a Child in Need of Protection and Services (CHIPS) order. The child is being placed in foster care due the child’s actions, rather than the parent’s actions. One may argue that it is the child’s fault, and people are often unwilling to take on such a child. This foster parent has taken this child in, and continues to work with the child. She testified that the child did not like to be alone, and that she took him with her to many work appointments. He waited in the car while she went into the appointments. All of these factors show that this is a child where an exceptional rate is warranted. This is a child who could very easily be placed in a group home until he ages out of the system. The agency has accounted for an exceptional rate of \$52. This is insufficient given this child’s needs.

It is my decision that the child meets the criteria as argued by the petitioner. I further believe that the foster care monthly payment should be a total of \$1000. This should consist of the base rate of \$499.00, plus the supplemental rate of \$336.00, and an exceptional rate of \$165.00. I am unclear why the supplemental rate decreased effective May 1, 2015. Those documents submitted during the open record period appear in conflict with the testimony at the hearing.

The last remaining issue is when this rate should be implemented. The child has been in the petitioner’s care since July 2014. However, the petitioner states in her February 2015 e-mail that she let this issue go until that e-mail. The first inquiry was in February. There were some discussions after that point, and ultimately after those discussions the petitioner appealed to the Division of Hearings and Appeals. This rate should go into effect the following month after her most recent inquiry. That is March 2015.

CONCLUSIONS OF LAW

The agency incorrectly set and paid an appropriate foster care rate to the petitioner for a 16-year old boy placed with the foster family through a delinquency order.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency to set the appropriate monthly foster care rate of \$1,000. This consists of the base rate of \$499.00, plus the supplemental rate of \$336.00, and an exceptional rate of \$165.00. The agency shall comply with this order within 10 days of the date of decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of June, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 17, 2015.

Waukesha County Health and Human Services
DCF - Foster Care