

### SUMMARY

Los Angeles County Department of Children & Family Services' (county or DCFS) denial of the claimant's request for the change of placement and the payment for her adopted daughter under the Adoption Assistance Program (AAP) at the Heritage Residential Treatment Center (RTC), is not upheld, as the facility meets the criteria under Welfare and Institutions Code section 16121(b) as a Title IV-E approved facility.

The county will be ordered to pay the appropriate level of funds for the temporary placement of this adopted child at the Heritage RTC not exceeding 18 months for each specific episode or condition beginning July 8, 2018. [929-1]

### PROCEDURAL HISTORY

On July 3, 2018, State Hearings released a decision (case number 2018135145) denying the claimant's request for the change of placement and the payment for her adopted daughter under AAP at the Heritage RTC.

On July 3, 2018, the claimant filed a request for rehearing, which was granted on November 13, 2018, on the basis that newly discovered evidence not available at the initial hearing was deemed to have an impact on the potential outcome of the case had it been introduced at hearing, pursuant to Welfare and Institutions Code, Section 10960, subdivision (b)(7).

The rehearing request was granted with the recommendation to hold a rehearing on the record pursuant to the Manual of Policies and Procedures (MPP), section 22-065.41, on the basis that facts were not in dispute requiring additional testimony. Neither party requested an oral hearing, and this decision is now issued on the administrative record.

### FACTUAL BACKGROUND

On April 26, 2018, Los Angeles County Department of Children and Family Services (DCFS) Post Adoption Services (PAS) sent the claimant a notice informing her that the request for a change of placement of her daughter AA from Storm Ridge Ranch to Heritage Residential Treatment Center was denied.

On May 2, 2018, claimant filed a request for a state hearing disputing the denial of a new out of home placement for her adoptive daughter under the AAP. The hearing was held on June 14, 2018. The claimant participated in the hearing with her authorized representative. The child's psychologist, Dr. TS, testified at the hearing. The claimant's authorized representative submitted a statement of position. The county hearing representative participated in the hearing and submitted a statement of position.

The notice of action stated that "your request for RTC placement was denied because facility is not eligible to be funding using Los Angeles County AAP funds."

The hearing representative had indicated in the statement of position that the county denied the request because the facility is not on the CDSS out-of-state list, is not Title 4E eligible, and the rate is not approved by the State.

However, at the hearing, the parties agreed that the issue in the case was the following:

1. Los Angeles County does not fund out-of-state facilities that are not Title IV-E eligible.

County's case

In the statement of position, the hearing representative stated that statute and regulations provide that AAP payments for temporary out-of-home placements for treatment are to be made in cases which have been approved for payment by the county department and where the amount of duration of such payments have been documented in an Adoption Assistance Agreement executed between the parties. She stated that there is no provision for payments to be made when individuals outside of the department, such as parents or caregivers, unilaterally decide that residential placement and treatment may be needed, no matter how compelling the reasons for that decision may be.

At the hearing, the hearing representative stated that the adoption of AA was finalized on April 21, 2002. She noted that the denial decision was a county decision. She indicated that the DCFS did not contact the other counties that had placed children at the Heritage RTC facility as an AAP placement.

Claimant's case

In her statement of position, the authorized representative stated that the minor has had four psychiatric hospitalizations, the most recent on June 15, 2017. At that time the psychiatrist would only release her to a residential treatment center. The claimant entered into an AAP agreement with the County of Los Angeles where the county agreed to pay for the RTC and the minor was taken to Storm Ridge Ranch Residential Treatment Center in Utah on June 22, 2017. The authorized representative stated that the minor has been struggling at the center due to the lack of appropriate psychotherapy and their online academic program. Recently it became apparent that Storm Ridge was not meeting her mental health and academic needs, and AA has been regressing in her behavior.

The minor was evaluated in March 2018 by Dr. TS. She determined the center was not meeting the child's mental health and academic needs, and recommended a change in placement to Heritage RTC, which has the appropriate psychological and psychiatric interventions and academic structure the minor needs in order to make progress sufficient to allow her to return home to her family. The minor had been accepted to Heritage beginning July 8, 2018.

The authorized representative stated the DCFS has denied the request based upon arbitrary county policy, not statute, requiring additional conditions that are not required by other counties. As to the issue in question, the authorized representative stated that the failure of the facility to receive Title IV-E funding is not relevant because the minor does not qualify for Title IV-E funding. She is funded through state-funding only. The authorized representative also stated that Heritage RTC has agreed to accept the same rate that the AAP is currently funding for Storm Ridge Ranch (\$10,410 per month).

The authorized representative noted All County Letter No. 15-50 provides that out of state placement does not have to be on the CDSS list and that the adoptive parent is legally and financially responsible for the support of their adoptive child's care and



supervision needs, which include out of home placements and that responsible public agency's role is to facility the AAP funding requested by the adoptive parent, confirm that the out of home placement or Wraparound services are necessary, and appropriately meets the child's need, and the rate classification is appropriate to meet the child's needs. She noted that the ACL provides that the approval for the AAP benefit is based on consultations with the adoptive parent and documentation provided by the adoptive parent.

The authorized representative stated the claimant has contacted all the facilities that are on the approval list. The claimant stated that the facilities contacted were either full, were for boys only, or would not meet the child's mental health and educational needs. The authorized representative stated Dr. TS assessed the child's needs and that the decision by the county should have been a joint decision by the county and the family. She argued that the county did not consider the minor's needs as depicted by the hospital discharge report and Dr. TS's report. The county policy does not apply to other counties in the state. She argued that the county policy was discriminatory.

At the hearing, Dr. TS testified that AA is treatable with therapy. She was only getting therapy at Storm Ridge one time per week and there was no integration. She stated Heritage offers individual and group therapy and is integrated. The minor needs to develop coping skills and is very influenced by other children. She noted AA is using therapy, and if she received therapy, daily she will mentally be where she should be. She tested the minor and stated that she does not get "kick-backs" for placement recommendations. She wants the minor to be ready for the real world.

The claimant testified she has been following the rules trying to get help for her daughter. Her daughter was not receiving family therapy. She requested family therapy when her daughter began regressing. She is now on her third therapist. Her daughter suffers from major depressive disorder and needs the right treatment. She telephoned hundreds of placements and none met the child's needs. She was told that Heritage had children from Los Angeles 15 years ago.

The authorized representative submitted a copy of the Eligibility Certification signed in 2014 indicating that the minor was eligible for AAP.

The June 15, 2017 psychiatry consult noted three previous psych hospitalizations and that the minor presented with ongoing impulsive, high risk behaviors, which the patient reports that she cannot control. She was discharged with transport service to the residential center in Utah.

The AAP agreement of June 30, 2017 indicated that the county authorized payment to Storm Ridge in the amount of \$10,410 from June 22, 2017 to June 21, 2018. The funding was AAP payments made directly to Storm Ridge. It noted that the minor is eligible for State AAP benefits. Number 13, indicating that the minor was eligible for Title IV-E (federal) AAP benefits, was not checked.

The March 21, 2018, psychological evaluation by Dr. TS noted that the minor has a pattern of defiant, aggressive and risky behavior consistent with her diagnosis of Major Depressive Disorder and Unspecified Anxiety Disorder. She noted that AA has stabilized and shown benefit from her time at Storm Ridge, but her treatment is not complete. She recommended a 24 hour therapeutic milieu to keep her safe. She

requires structure and immediate feedback and teacher led classrooms. Without treatment, she is at extreme risk of falling back into her old patterns and being a danger to herself.

The addendum report by Dr. TS noted that she had spoken to the therapist at Storm Ridge Ranch and was told that she sees AA one time per week and that she has had three family therapy sessions. She has group one time per week. Dr. TS stated that AA continues to need a structured, integrated, educational and therapeutic residential setting. She requires an environment where she receives immediate feedback, positive or negative, and where the therapist is an integral part of the treatment team. It was her professional opinion that AA was not ready to return home to an out-patient therapy and a day educational setting.

The letter from Heritage noted that AA was clinically approved for placement. Heritage provides 24 hours long term psychiatric residential treatment, and AA would attend school and receive individual, group and family therapy. She would be able to enroll on July 8, 2018. Heritage would provide AA with a scholarship that would bring down her monthly rate to \$10,400.

The May 31, 2018 email from Heritage staff to the authorized representative indicated that Heritage has had placement of children from nine separate California counties.

The record was left open for submission of additional documents.

The authorized representative submitted a June 19, 2018 declaration from MT, the director of Admissions and Family Services for Heritage Residential Treatment Center. She stated she oversees the admissions process and noted one funding mechanism is from AAP. Nine different counties have children at the facility funded by AAP. The Center accepts the amount paid by AAP as payment in full. Los Angeles County is the only county in California which has denied funding through AAP due to the Title IV-E requirement. The minor has been accepted for enrollment.

In her Supplemental Statement of Position, the authorized representative argued that it was irrelevant that the facility does not receive Title IV-E funding because the minor does not qualify for Title IV-E funds. She is funded by State Foster Care funds only. She noted W&IC section 16121(b) does not require that the facility be eligible to receive Title IV-E funding, but only requires that the county not pay Heritage more than the amount it pays for AFDC-Foster Care funded placements. She also stated Heritage has indicated by letter that it would accept the same AAP funding rate Storm Ridge received. The authorized representative attached CDSS web pages on the AAP and information from the NACAC regarding eligibility and benefits for Federal Adoption Assistance.

In response, the hearing representative argued the denial was specifically due to Heritage RTC is not Title IV-E. She cited W&IC 16121(b) and W&IC 11402 and stated out-of-home placements must be the same type of placement that may be paid with AFDC-Foster Care funds.

Following the Rehearing Analysis

The county had the burden of proof to establish that the Heritage RTC was not a Title IV-E eligible facility. The county submitted Case History notes of a CSW conversation with



an unnamed staff person from Heritage stating that they are not Title IV-E eligible. Although the county did not contact the other California counties alleged to pay AAP to Heritage, the direct statement that the facility was not Title IV-E eligible was sufficient for the county to deny payment.

The claimant stated in her rehearing request that she was been unable to get that proof prior to hearing, and now submits, as new evidence, the State of Utah confirmation that the placement is licensed as meeting Title IV-E criteria. The Heritage affidavit states the claimant attempted to get this information pre-hearing and the financial officer was not aware how to get the information, but that on further research, he obtained the information.

The evidence supplied to the rehearing unit establishes that the Heritage RTC meets the requirements provided in Section 16121 of the Welfare and Institutions Code, as the Heritage RTC meets safety standards set forth in the relevant California Health and Safety Code statutory sections, beginning at 1550, and is an approved Title IV-E facility.

### LAW

All the regulations cited herein are to the Manual of Policies and Procedures (MPP), unless otherwise stated.

Provisions of law relating to a public assistance program shall be fairly and equitably construed to affect the stated objects and purposes of the program. (Welf. & Inst. Code, §11000.)

In administrative state hearings, the party asserting the affirmative of the issue generally has the burden of proof. The party with a burden of proof must meet this burden by a preponderance of the evidence. (*Cornell v. Reilly* (1954) 127 Cal.App.2d 178, 273 P.2d 572; Evid. Code §§ 115, 550.)

#### AAP Out-of-Home Placements and Eligibility for Funds

Short-term residential therapeutic program, or residential care treatment facility if the department or county responsible for determining payment has confirmed that the placement is necessary for the temporary resolution of mental or emotional problems related to a condition that existed prior to the adoptive placement. **Out-of-home placements shall be in accordance with the applicable provisions of Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code and other applicable statutes and regulations governing eligibility for AFDC-FC payments for placements in in-state and out-of-state facilities.** The designation of the placement facility shall be made after consultation with the family by the department or county welfare agency responsible for determining the Adoption Assistance Program (AAP) eligibility and authorizing financial aid. Group home, short-term residential therapeutic program, or residential placement shall only be made as part of a plan for return of the child to the adoptive family, that shall actively participate in the plan. Adoption Assistance Program benefits may be authorized for payment for an eligible child's group home, short-term residential therapeutic program, or residential treatment facility placement if the placement is justified by a specific episode or condition and does not exceed an 18-month cumulative period of time. After an initial authorized group home, short-term residential therapeutic program, or residential treatment facility.



placement, subsequent authorizations for payment for a group home, short-term residential therapeutic program, or residential treatment facility placement may be based on an eligible child's subsequent specific episodes or conditions. (W&I Code § 16121 (b); Cal. Code Regs., Tit. 22, § 35334, subd. (a) (as amended by AB 404 effective January 1, 2018. (emphasis added).)

"Payment may be made on behalf of an otherwise eligible child in a state-approved group home, short-term residential therapeutic program, or residential care treatment facility if the department or county responsible for determining payment has confirmed that the placement is necessary for the temporary resolution of mental or emotional problems related to a condition that existed prior to the adoptive placement. **Out-of-home placements shall be in accordance with the applicable provisions of Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code and other applicable statutes and regulations governing eligibility for AFDC-FC payments for placements in in-state and out-of-state facilities.** The designation of the placement facility shall be made after consultation with the family by the department or county welfare agency responsible for determining the Adoption Assistance Program (AAP) eligibility and authorizing financial aid. Group home, short-term residential therapeutic program, or residential placement shall only be made as part of a plan for return of the child to the adoptive family, that shall actively participate in the plan. Adoption Assistance Program benefits may be authorized for payment for an eligible child's group home, short-term residential therapeutic program, or residential treatment facility placement if the placement is justified by a specific episode or condition and does not exceed an 18-month cumulative period of time. After an initial authorized group home, short-term residential therapeutic program, or residential treatment facility placement, subsequent authorizations for payment for a group home, short-term residential therapeutic program, or residential treatment facility placement may be based on an eligible child's subsequent specific episodes or conditions." (Welf. & Inst. Code, §16121, subd. b; emphasis added; see also tit. 22, Cal. Code Regs., §35334.)

"In order to be eligible for AFDC-FC, a child or nonminor dependent shall be placed in one of the following: (h) An out-of-state group home that meets the requirements of paragraph (2) of subdivision (c) of Section 11460, provided that the placement worker, in addition to complying with all other statutory requirements for placing a child or youth in an out-of-state group home, documents that the requirements of Section 7911.1 of the Family Code have been met." (Welf. & Inst. Code, §11402, subd. (h); Fam. Code, §7911.1 mandates the provisions of the Interstate Compact on the Placement of Children (ICPC) has been met.)

"(2) Reimbursement for the Aid to Families with Dependent Children-Foster Care rate to be paid to an out-of-state program described in subdivision (h) of Section 11402 shall only be paid to programs that have done all of the following:

(A) Submitted a rate application to the department, which shall include, but not be limited to, both of the following:

(i) Commencing January 1, 2017, unless granted an extension from the department pursuant to subdivision (d) of Section 11462.04, the equivalent of the mental health program approval required in Section 4096.5.

(ii) Commencing January 1, 2017, unless granted an extension from the department pursuant to subdivision (d) of Section 11462.04, the national accreditation required in paragraph (6) of subdivision (b) of Section 11462.

(B) Maintained a level of financial participation that shall not exceed any of the following:

(i) The current fiscal year's standard rate for rate classification level 14 for a group home.

(ii) Commencing January 1, 2017, the current fiscal year's rate for a short-term residential therapeutic program.

(iii) The rate determined by the ratesetting authority of the state in which the facility is located.

(C) Agreed to comply with information requests, and program and fiscal audits as determined necessary by the department. (Welf. & Inst. Code, §11460, subds. (c)(2)(A) through (c)(2)(B).)

### CONCLUSION

Supplemental evidence provided by the claimant establishes that the Heritage RTC meets the requirements provided in Section 16121 of the Welfare and Institutions Code, as the Heritage RTC meets safety standards set forth in the relevant California Health and Safety Code statutory sections, beginning at 1550, and is an approved Title IV-E facility.

Further, the county does not dispute that the facility was either granted an extension pursuant to Welfare and Institutions Code, Section 11462.04 or met the mental health standards set forth in Welfare and Institutions Code, Section 4096.5; was nationally accredited pursuant to Welfare and Institutions Code, Section 11462, subdivision (b)(6); and maintained, the requisite financial participation did not exceed that allowed for RCL 14 group homes or for a short-term residential therapeutic program as determined by the ratesetting authority of the State of Utah. Finally, the facility will comply with information requests and program/fiscal audits deemed necessary by the California Department of Social Services.

Based upon these conditions, the county will be ordered to pay the appropriate level of funds for the temporary placement of this adopted child at the Heritage RTC not exceeding 18 months for each specific episode or condition beginning July 8, 2018.

### ORDER

The claim is granted.

Los Angeles County Department of Children & Family Services is ordered to pay the appropriate level of funds for the temporary placement of this adopted child at the Heritage RTC not exceeding 18 months for each specific episode or condition beginning July 8, 2018.