

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)
)
X AND M K) OAH No. 17-1160-DHS
_____)

NOTICE TRANSMITTING FINAL DECISION

Attached is the administrative law judge's decision in this matter, which became the final agency decision on March 12, 2018 by operation of AS 44.64.060(f).

Judicial review of the decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the decision is mailed or otherwise distributed.

DATED March 14, 2018

By: Signed
Law Office Assistant
Office of Administrative Hearings

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DECISION

I. Introduction

M and X K are the great-aunt and great-uncle of “Luke,” a juvenile.¹ The Office of Children’s Services (OCS) placed Luke with the Ks for a short-term emergency placement that was originally supposed to only last for a day. That placement ended up lasting 72 days.

The Ks requested that OCS compensate them for their care of Luke. OCS denied that request. As discussed below, the specific facts of this case demonstrate that the Ks should be compensated for that care, despite them not having applied for either emergency or standard licensure as a foster home. The amount of that compensation, after giving appropriate credit for vouchers received from OCS, is \$2,027.98.

II. Facts²

Luke was in a foster home placement at the end of August 2016. There was a report that Luke had inappropriately touched a young child in that home and Luke was immediately removed from that home. As a result, OCS needed an immediate emergency placement for Luke.³

B X, a Protective Services Specialist with OCS, placed Luke with the Ks, Luke’s great-aunt and great-uncle. The parties dispute when that placement actually occurred. Mr. K steadfastly maintained that Luke began staying at their home on August 22, 2016.⁴ OCS’s timeline show placement beginning on August 25, 2016.⁵ However, Mr. X’s records of text messages show that he first mentioned placing Luke with the Ks on August 23, 2016.⁶ His

¹ “Luke” is a pseudonym used to protect the juvenile’s identity.

² The following facts were established by a preponderance of the evidence.

³ Administrative Record (AR) 93.

⁴ Mr. K’s testimony. *Also see* Mr. K’s correspondence with OCS dated November 31, 2016. AR 22.

⁵ AR 1.

⁶ August 23, 2016 test messages from 1:37 p.m. and 7:11 p.m. AR 46.

emails about placing Luke with the K's also begin on August 23, 2016.⁷ His emails dated August 24, 2016, provide that "[l]ooks like we are cancelling the TDM per that unit and will just have [Ms. K] pick him up today from the foster home,"⁸ and that the Ks "are going to get him later today"⁹ Accordingly, it is more likely true than not true that Luke was placed with the Ks on August 24, 2016, a Wednesday, rather than either the August 22 date or the August 25 date proffered respectively by the Ks and OCS.

Luke's placement with the Ks was supposed to be exceedingly short term. At 9:47 a.m. on August 30, 2016, a Tuesday, Ms. K texted Mr. X stating:

I thought I agreed to take care of [Luke] through the weekend then some how it got extended. I spoke to you about having my young grandson coming over and you said that wouldn't work. You also said you would be able to provide a regular foster home until the treatment facility was able to take him. Please let me know. Thank you M.¹⁰

On August 31, 2016, Mr. X emailed a Ms. W asking her to call Ms. K "since she may be close to her last tether with the child, having assumed I would remove him Monday."¹¹ On September 1, 2016, at 6:24 p.m., Mr. X texted Ms. K stating "I am trying hard to move him out of your home."¹² Ms. K's response, at 8:10 p.m. that evening was "[d]on't want to kick him out like tomorrow but when you are able to get it right."¹³ On September 2, 2016, Ms. W emailed Mr. X stating that she had spoken to Ms. K that morning. That emailed asked "is there another place you have in mind for [Luke] to stay since it seems he won't be with M for much longer?"¹⁴ Mr. X's email response contained the following: "I think as long as M believes we are working diligently on getting him to the best placement (a TFH) she may endure till the end."¹⁵

Luke continued to stay in the Ks' home. The Ks were in a very poor financial condition. Luke came to them with very little clothing and they did not have a bed for him. They could not afford to buy him clothing or a bed. They couldn't afford food.¹⁶ OCS was aware of their

⁷ AR 89.

⁸ August 24, 2016 11:25 a.m. email. AR 91.

⁹ August 24, 2016 2:07 p.m. email. AR 93.

¹⁰ AR 46.

¹¹ AR 99.

¹² AR 47.

¹³ AR 47 – 48.

¹⁴ AR 104.

¹⁵ AR 104.

¹⁶ Ms. K's testimony.

financial condition.¹⁷ OCS issued three separate vouchers which the Ks used to buy food (\$148.58), clothing for Luke (\$292.17), a bed and bedding (\$347.95) for Luke on September 18 and 19, 2016. These were not cash payments to the Ks. They were vouchers which were used at No Name Store.¹⁸

Mr. X testified that he placed Luke with the Ks on an emergency basis and that it was supposed to be a placement for only the weekend. OCS was trying to find a therapeutic foster home for Luke due to his history and needs. He was a difficult placement and OCS was not able to find a therapeutic foster home for him until November. Mr. X testified that he frequently offered to remove Luke from the K's home and that Ms. K kept declining the offer.

Mr. X also testified that he informed the Ks shortly after the initial placement that they could apply for licensure as a foster home on an expedited emergency basis, so that they could get paid as a foster home for Luke. He said he told them that it would only take a couple days, and that he repeatedly made that offer to the Ks. However, he testified that Ms. K declined licensure. He also testified that he let the Ks know that there were public assistance options open to them, such as Food Stamps and Temporary Assistance to Needy Families (TANF).¹⁹ The OCS record contains one email from Mr. X which references licensing. It is dated September 20, 2016, to a Mr. G, asking if the tribe has any food vouchers for the Ks and states "I also offered licensing but they refuse saying it will be weeks and weeks which is true."²⁰

The record shows that Luke was a difficult placement. There was the allegation of inappropriately touching a young child. There were concerns about stealing, and drug use.²¹

Ms. K strongly disagreed with Mr. X's testimony. She testified that he did not inform them about public assistance resources that were available to them. She further testified that she repeatedly asked Mr. X about when Luke was going to leave the home and kept being told just a couple more days. She acknowledged that Mr. X did offer to start the emergency licensure process for the home on more than one occasion, and that they declined because they kept thinking Luke would be leaving in a day or two.²²

¹⁷ Ms. K's testimony. Mr. X's testimony. AR 110.

¹⁸ AR 2 – 16.

¹⁹ Mr. X's testimony.

²⁰ AR 110.

²¹ AR 89.

²² Ms. K's testimony.

The Ks applied for Food Stamp benefits on October 20, 2016, when Luke was still living in their home. The Public Assistance interview casenote shows that they did not claim Luke as a member of their household, and instead stated that they were the applicants, and that while a son lived with them, he was a separate economic unit – not part of their Food Stamp household.²³ Ms. K testified they did not claim Luke as part of their household because they expected he would be leaving soon.²⁴ The Food Stamp application was denied.²⁵

Ms. K texted Mr. X on October 20, 2016. That text was in response to a question from Mr. X about when she could be available for a team meeting regarding Luke. Her response was “[e]arlier the better.”²⁶ On October 25, 2016, Ms. K texted Mr. X as follows: “[Luke] needs glasses for school. How is placement coming along? Need to move faster please. . . . SOA is going on two months now from the original weekend only.”²⁷ Later that day, Mr. X texted Ms. K saying, “I think the new foster home can take him Friday.”²⁸ That Friday would have been October 28, 2016. However, on October 27, 2016, Luke’s grandfather died, and Ms. K texted Mr. X on October 28, 2016, asking that Luke stay with them until after the funeral.²⁹ The funeral was November 3, 2016.³⁰ Luke was with the Ks until November 4, 2016.³¹

Ms. K and Mr. X both testified in person. Based upon an observation of their demeanors, Ms. K’s testimony was more credible than that of Mr. X. This is not a criticism of Mr. X. Ms. K only had this one situation to recall, whereas Mr. X, as a frontline OCS worker, has many placement cases. His heavy caseload, combined with the passage of time, could well have impacted his recollection. In addition, Ms. K was quite firm in her recollection.

As a result, the following facts were proven by a preponderance of the evidence:

- Luke was placed with the Ks on August 24, 2016 by OCS.
- The Ks believed it would be a very short-term placement.

²³ AR 28 – 29.

²⁴ Ms. K’s testimony.

²⁵ AR 19.

²⁶ AR 48 – 49.

²⁷ AR 49.

²⁸ AR 49.

²⁹ AR 53.

³⁰ AR 77 - 78.

³¹ AR 83.

- The Ks made repeated inquiries of Mr. X with OCS about when Luke would be placed in another home and were reassured each time that it would only be a couple more days.
- Mr. X was aware of the inconvenience to the Ks and their exceedingly poor financial condition.
- Mr. X did not advise the Ks that they could get public assistance benefits such as TANF.
- Although Mr. X told the Ks he could start the emergency licensure process, he did not tell them it was a quick and easy procedure – and as demonstrated by his email of September 20, 2016, it could “take weeks and weeks.”
- Luke left the Ks’ home on November 4, 2016.

III. Discussion

The Ks made multiple requests for reimbursement from OCS starting in November 2016. OCS denied those requests. It is undisputed that the Ks did not at any time apply for either emergency or emergency foster care licensing. It is also undisputed that Mr. X, OCS’s primary representative with the Ks, offered on several occasions to start the emergency licensing process.

OCS argued that because the Ks were not licensed as a foster home, it is precluded from making any payment to them by Alaska regulation 7 AAC 53.010: “[t]o be eligible for payments for foster care ... including payments to relatives ... a foster parent must be licensed to ... operate a foster home.” However, the facts of this case demonstrate that the Ks are entitled to receive payments, despite the explicit terms of the regulation, under the doctrine of equitable estoppel. In order to successfully invoke estoppel against a governmental agency, four elements must be established:

1. the assertion of a governmental position by either conduct or words;
2. an act which reasonably relied upon the governmental position;
3. resulting prejudice; and
4. “estoppel serves the interest of justice so as to limit public injury.”³²

The first element is met by Mr. X’s representation that Luke would be placed with the Ks for only the weekend, and by his continuing representations that Luke would be imminently

³² *Wassink v. Hawkins*, 763 P.3d 971, 975 (Alaska 1988).

removed from their home. In other words, the Ks were assured, on an ongoing basis, that Luke would only be in their home for a couple more days.

The second element of reasonable reliance is that based on Mr. X's assurances, the Ks did not apply for emergency licensure, a process that was not necessarily going to be either easy or quick. Mr. X's email stating that "I also offered licensing but they refuse saying it will be weeks and weeks which is true." supports this conclusion. The Ks reasonably felt that if Luke was going to leave their home in a few days, that licensure was not necessary.

The third element of resulting prejudice is met by the fact that Luke stayed with the Ks from August 24 to November 4, 2016, a period of 72 days, when his initial placement was only supposed to be over the weekend.

The fourth element of serving the interests of justice is also met. OCS took advantage of the Ks. OCS relied upon the good will of family that it knew to be in a poor financial situation, a family that would not cast off a family member, to hold a difficult to place child for over two months, when that family was told the placement would only be for over the weekend, and while continually reassuring them that placement in another home was imminent.

Because the Ks have established that they are entitled to payment from OCS under the doctrine of equitable estoppel, the next issue to be resolved is the amount of that payment. OCS standard payment for foster care for a child of Luke's age, in No Name City, is \$30.23 per day.³³ There is an additional payment of \$14.63 per day for difficult children.³⁴ However, that additional rate is only available if a variety of conditions have been met, which include the foster parents having "completed a specialized training program approved by" OCS.³⁵ Because there is no evidence showing that a specialized training program was completed by the Ks, despite the fact that Luke was difficult to place, the Ks are not eligible for this enhanced payment. Accordingly, the Ks are eligible for a payment at the standard rate of \$30.23 per day for 72 days, which comes to \$2,176.56.

The final issue is whether OCS is entitled to an offset from the \$2,176.56 amount for any of the vouchers it issued in September 2016. Two of those vouchers were for emergency clothing and for furnishings (bedding and bed). With regard to clothing, the evidence was that

³³ <http://dhss.alaska.gov/ocs/Documents/FosterCare/pdf/fostercarerates.pdf> (date accessed January 26, 2016).

³⁴ E Q's testimony.

³⁵ 7 AAC 53.060(a)(2).

Luke came to the K's with inadequate clothing. The applicable regulation states that OCS "will pay for adequate clothing . . . at the time of the initial placement" and further provides that once adequate clothing has been supplied, that "routine replacement of clothing is the responsibility of the out-of-home care provider."³⁶ In this case, providing adequate clothing at the time of placement was OCS's responsibility, and not the Ks. Accordingly, OCS is not entitled to an offset for the amount of the clothing voucher. Similarly, the cost of the voucher for the furnishings is not an offset available to OCS: it was a one-time payment "not included in out-of-home care payments."³⁷

However, food costs are included in the standard payments made to foster care families.³⁸ Accordingly, OCS is entitled to an offset from the \$2,176.56 in the amount of the food voucher - \$148.58. This reduces the amount due the Ks to \$2,027.98.

IV. Conclusion

The Ks' great nephew was placed with them by OCS on August 24, 2016. He stayed with them until November 4, 2016. Although the Ks were not licensed as a foster home, the specific facts of this case demonstrate that the Ks are entitled, under the doctrine of equitable estoppel, to payment from OCS in the amount of \$2,027.98.

DATED this 26th day of January, 2018.

By: Signed _____
Lawrence A. Pederson
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]

³⁶ 7 AAC 53.310(a) and (b).

³⁷ 7 AAC 53.330(a).

³⁸ 7 AAC 53.030 (a)(1).