STATE OF FLORIDA

DEPARTMENT OF JUVENILE JUSTICE

HILLSBOROUGH COUNTY,	)	
	)	
Petitioner,	)	
	)	
v.	)	**DJJ NO.: 09-0015**
	)	
DEPARTMENT OF JUVENILE JUSTICE,	)	DOAH NO.: 09-1396
	)	
Respondent.	)	
	)	

FINAL ORDER

This matter is now before the undersigned for issuance of final agency action resolving Hillsborough County's claim that it was assessed for secure juvenile detention care for the 2006-2007 fiscal year in a manner inconsistent with section 985.686, Florida Statutes (2006).

The underlying statutory scheme reflects the policy "that the state and the counties have a joint obligation . . . to contribute to the financial support of the detention care provided for juveniles." § 985.686(1), Fla. Stat. With exceptions not relevant to the instant proceeding, each county

is required to pay for its resident juveniles' detention stays "for the period of time prior to final court disposition." § 985.686(3), Fla. Stat. Detention stays after final court disposition are the responsibility of the state. At issue in the instant case is the responsibility for secure detention care when no final court disposition is available.

On June 30, 2009, Administrative Law Judge William F. Quattlebaum entered a Recommended Order rejecting Hillsborough County's (hereafter, the Petitioner's) claim that the Department should be responsible for the costs of detention for those cases in which no disposition date was available. With the exception of a small subset of these cases in which the address associated with the juvenile was an "office location" of the Department, the ALJ concluded that the absence of a disposition date established that the child was not committed to the Department, and thus, the child's detention stay must remain the responsibility of the Petitioner.

The Petitioner submitted exceptions to the Recommended Order. The Department did not file responses to the exceptions, nor did it file its own exceptions.

Findings of Fact

The Department adopts the "Findings of Fact" set out in paragraphs 1 through 8 of the Recommended Order.

Conclusions of Law

The Department generally accepts the "Conclusions of Law" set out in paragraphs 9 through 13 of the Recommended Order. There, the ALJ concluded that the absence of disposition dates for 9,258 days of secure detention that were charged to the Petitioner, suggested that these juveniles were not committed to the Department, and must remain the responsibility of the Petitioner. (RO ¶13).

The Department does not accept paragraph 14 of the Recommended Order, to the extent that it conflicts with section 985.686, Florida Statutes, and rule 63G-1.003(2), F.A.C. In paragraph 14, the ALJ concluded that the Department should be responsible for some unspecified subset of "no disposition date" cases in which the addresses of record "are facilities wherein the [Department] maintains offices."

The addresses at issue are found in Petitioner's Exhibit 4, which lists three offices of Community Based Care providers. These providers contract with the Florida Department of Children and Families (DCF) to provide services to dependent and foster care youth. This is consistent with the provision in rule 63G-1.003(2) that children in substitute care placements, such as foster care, are charged to the county where DCF or its contracted provider has an office. Only one of these DCF

addresses (4520 Oak Fair Boulevard) is similar to a Department office address (4510 and 4524 Oak Fair Boulevard). (Supp. Affidavit).

It is undisputed that all of the listed addresses are within Hillsborough County. According to section 985.686, Florida Statutes, the responsibility for any detention stays associated with these addresses depends entirely upon whether the stay is pre- or post-dispositional; the Department is only responsible for the latter. This is also consistent with the Recommended Order in this case and in Hillsborough County v. Dept. of Juvenile Justice, 30 F.A.L.R. 2156 (Fla. Dept. of Juvenile Justice 2008). Responsibility for these detention stays cannot depend upon whether the address properly assigned under rule 63G-1.003(2) happens to be next door to a Department office.

Although this portion of the Recommended Order is problematic, it is not dispositive. The paragraph only provides that the Department should be responsible for "addresses of record that are facilities wherein [it] maintains offices." In this regard, the ALJ's Recommendation cites "addresses of the Respondent's office locations." Since the Department does not maintain an office at 4520 Oak Fair Boulevard, nor at either of the two other listed addresses, the finding is a nullity.

Exceptions[1]

1. The Petitioner's first exception appears to be directed to the conclusion of law in paragraphs 12-13. There, the ALJ concluded that the absence of available records indicating disposition dates suggested that the juveniles were not committed to the Department's custody, so as to make the Department responsible for post-disposition secure detention care.

According to the Petitioner, the disposition dates "must be supplied by [the Department] in order to permit Petitioner to assure its taxpayers that the County's money is accounted for." (Petitioner's Exceptions, ¶3). The Petitioner complains that no evidence was presented demonstrating that the Department ever tried to find the disposition dates, and, absent such proof, the ALJ could not entertain the presumption that the absence of disposition dates indicated the juveniles were not committed to the Department.

The exception is denied. Competent substantial evidence established that the Department attempted to discern disposition

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[1] Section 120.57(1)(k), Florida Statutes, requires that exceptions "clearly identify the disputed portion of the recommended order by page number or paragraph," and an agency need not rule on exceptions that fail to do so. Although the Petitioners' exceptions are deficient in this regard, the undersigned has attempted to identify, where possible, the source of the exception.

dates in response to the Petitioner's challenges. (T. 51, 55-56). The Department's analyst responsible for determining detention utilization testified that if a youth were committed to the Department, there would be a final disposition entered into the system. In the absence of a disposition date, the youth could not have been committed to the Department, and any secure detention stay must be pre-dispositional, and the responsibility of the county. (T. 55-58).

The Petitioner's lone witness testified that the Department was only responsible for youth committed to the Department and awaiting placement. (T.47-48, 62-63). Anything prior to a commitment disposition would be pre-disposition, and the responsibility of the counties. (T.48). This testimony is entirely consistent with the ALJ's conclusion.

2. The Petitioner's remaining exception similarly addresses the following portion of the Recommended Order:

> 13. The Respondent presumes that the absence of a disposition date for a particular juvenile indicates that the juvenile was not committed to the care and supervision of the Respondent. It is reasonable to presume that the Respondent would have disposition information about juveniles who had been committed to the Respondent's custody, and it is likewise reasonable to believe that, absent such information, the juveniles were not committed to the Respondent's custody. The Respondent has no responsibility for the expenses of detention related to juveniles who were not committed to the Respondent's

> care and supervision. Nothing in the statute or the previous Final Orders indicates otherwise.

(RO ¶13). According to the Petitioner, the ALJ's finding is contrary to prior decisional law "and as a matter of policy provides an alarming disincentive to [the Department] to provide disposition dates at all." (Petitioner's Exceptions, ¶10).

The exception is denied. The prior decisional law referenced by the Petitioner, Hillsborough County v. Dept. of Juvenile Justice, 30 F.A.L.R. 2156 (Fla. Dept. of Juvenile Justice 2008), is consistent with, and not contrary to, the Recommended Order entered in the instant case. The prior case involved the Petitioner's challenge to detention assessments for an earlier year. Pertinent to the "no disposition date" issue, the Final Order found that "a child cannot be said to be in post-disposition detention care awaiting residential placement unless and until there has been a disposition." Id. at 2158. In sum, a child's detention stay cannot be the responsibility of the Department where there is no disposition committing him or her to residential placement. The presumption articulated by the ALJ in the instant case is consistent with this conclusion.

The Petitioner correctly notes that the prior case included a finding that there should be "meaningful input" from the county on the disputed "no disposition date" assessments. But the record in the instant case establishes that this was done.

(T. 54-55, 59). Department staff testified about the effort made to identify disposition dates in response to the Petitioner's disputes. In addition, correspondence between staff and the Petitioner evidenced the degree of input received from the Petitioner. (Petitioner's Exhibits 1, 2).

The Petitioner also objects to a policy that allows the Department to conclude that there is no disposition date. The argument suggests that there is always a final disposition marking the end of the Petitioner's payment of secure detention, and the beginning of the Department's responsibility for the youth. It also reflects the Petitioner's concern that the failure to identify a disposition date may be intentional on the part of the Department.

On the latter point, there was not a shred of evidence presented that the Department acted fraudulently or illegally. Nor was there any support for the suggestion that the Department's effort to accurately apportion pre- and post-disposition was accomplished half-heartedly. Testimony established that in the cases where no disposition date was found, the Department cross-checked the youth to the commitment list to determine whether he or she was in secure detention awaiting placement. (T.45, 51, 54-58). By this effort, the Department was able to identify 2,177 days of post-disposition care for which it became responsible. (T.55).

As to the Petitioner's assertion that there must always be a disposition date, the evidence was to the contrary. Department staff explained the distinction between the disposition of a charge, contempt or pick-up order, and the final disposition to commitment; only disposition in this latter sense was pertinent to responsibility for detention. (T.53-55). If the disposition did not commit the youth to the Department then there would be no disposition date to list. (T.55, 58).

Based upon the foregoing it is hereby **ORDERED:**

1. The ALJ's recommendation is adopted to the extent that cases lacking disposition dates were properly assigned to the Petitioner.

2. The annual reconciliation need not be amended, as there is no legal authority to assign responsibility for detention stays based upon proximity to a Department office location. Moreover, there are no cases reflecting addresses of the Department's office locations, and hence no need for an amendment to the reconciliation.

Notice of Right to Judicial Review

In accordance with the provisions of section 120.68, Florida Statutes, a party who is adversely affected by this Final Order is entitled to judicial review. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing a notice of appeal with the Agency Clerk, Office of the General Counsel, 2737 Centerview

Drive, Suite 3200, Tallahassee, Florida 32399-3100, and a copy, accompanied by filing fees prescribed by section 35.22, Florida Statutes, with the District Court of Appeal, First District, 301 Martin Luther King, Jr., Boulevard, Tallahassee, Florida 32399-1850, or with the District Court of Appeal in the appellate district where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.

Entered this 17 day of September, 2009, in Tallahassee, Florida.

FRANK PETERMAN JR., Secretary
Department of Juvenile Justice

Chakita Jenkins, Agency Clerk
Filed this 21st day of September, 2009

COPIES FURNISHED:

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