

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HILLSBOROUGH COUNTY,)
)
 Petitioner,)
)
 vs.) Case No. 09-1396
)
 DEPARTMENT OF JUVENILE JUSTICE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

On May 4, 2009, a formal administrative hearing was conducted in Tampa, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stephen M. Todd, Esquire
Hillsborough County Attorney's Office
Post Office Box 1110
Tampa, Florida 33601

For Respondent: Brian Berkowitz, Esquire
Department of Juvenile Justice
Knight Building, Room 312V
2737 Centerview Drive
Tallahassee, Florida 32399-3100

STATEMENT OF THE ISSUE

The issue in this case is whether the Department of Juvenile Justice (Respondent) properly calculated secure juvenile detention center expenses for which Hillsborough County (Petitioner) is responsible under state law.

PRELIMINARY STATEMENT

This issue in this case stems from state law that requires the State of Florida and the Petitioner to divide the costs of detaining juveniles in secure facilities. The Petitioner was prospectively assessed for a portion of juvenile detention costs. The Respondent subsequently conducted an annual reconciliation to determine whether the Petitioner's prospective assessment was sufficient to cover the Petitioner's share. Based on the annual reconciliation, each affected county either receives a credit or pays an additional assessment.

In this case, the Petitioner disputed the results of the Respondent's reconciliation. On March 12, 2009, the Petitioner filed an "Initiation of Proceedings Pursuant to 28-106.201, F.A.C.," asserting that the Respondent had improperly calculated the allocation of costs and requesting a formal administrative hearing. The Respondent forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

The Petitioner presented the testimony of one witness and had four exhibits admitted into evidence. The Respondent presented the testimony of two witnesses and had one exhibit admitted into evidence.

A Transcript of the hearing was filed on May 8, 2009. On May 15, 2009, the Respondent filed a Notice of Supplemental

Affidavit and attachment, to which there was no objection. Both parties filed Proposed Recommended Orders on May 18, 2009, that have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. As required by law, the Respondent prospectively assessed the Petitioner for juvenile detention costs for the 2006-2007 fiscal year.

2. The Petitioner timely filed objections to the Respondent's assessment. The Respondent generally denied the objections, although the evidence indicated that representatives of both parties attempted to address objections through the exchange of relevant information, a practice that was continuing immediately prior to commencement of the administrative hearing. According to the testimony presented at the hearing, the parties remained in disagreement regarding 9,258 instances where "disposition dates" were unavailable (the "no date" cases).

3. The relevant statute requires that the Petitioner bear the costs of detention prior to "final court disposition," a phrase which is otherwise undefined by the statute. Although the parties agreed that Final Orders issued by the Respondent based upon prior litigation between the parties identified a definition of "final court disposition," the parties apparently disagreed on the application of the definition.

4. At the hearing, the Respondent offered testimony that the agency's records would identify disposition dates for juveniles transferred to the care and supervision of the Respondent. The Respondent's records were reviewed to confirm that there were no disposition dates identified therein for the "no date" cases. The Petitioner presented no evidence to establish that such disposition dates were available.

5. The Petitioner's witness essentially asserted that any court order in a juvenile detention case is a dispositional order upon which the Respondent becomes responsible for the expenses related to detaining the juvenile. The Respondent asserted that unless and until a juvenile is committed to the care and supervision of the Respondent, such expenses remain the responsibility of the Petitioner.

6. Neither the statute nor the previous Final Orders suggest that fiscal responsibility for a juvenile is transferred to the Respondent upon the issuance of any court order, regardless of whether the order assigns responsibility for care and supervision of the juvenile to the Respondent.

7. The Petitioner also asserted that some of the "no date" cases listed addresses for the juveniles that were the Respondent's offices, indicating that the Respondent had assumed responsibility for care and supervision (and costs) for such juveniles at some point.

8. After the hearing, and without objection by the Petitioner, the Respondent submitted a notarized affidavit from an individual identified as Norman Campbell, chief probation officer for Hillsborough County, wherein the affiant stated that the facilities at the identified addresses were offices of providers providing contract services to juveniles through the Department of Children and Family Services, and further stated that the Respondent has offices within some of the facilities.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2008).

10. Section 985.686, Florida Statutes (2006), provides in relevant part as follows:

985.686 Shared county and state responsibility for juvenile detention.--

(1) It is the policy of this state that the state and the counties have a joint obligation, as provided in this section, to contribute to the financial support of the detention care provided for juveniles.

(2) As used in this section, the term:

(a) "Detention care" means secure detention.

* * *

(3) Each county shall pay the costs of providing detention care, exclusive of the costs of any preadjudicatory nonmedical

educational or therapeutic services, for juveniles for the period of time prior to final court disposition. The department shall develop an accounts payable system to allocate costs that are payable by the counties.

* * *

(5) Each county shall incorporate into its annual county budget sufficient funds to pay its costs of detention care for juveniles who reside in that county for the period of time prior to final court disposition. This amount shall be based upon the prior use of secure detention for juveniles who are residents of that county, as calculated by the department. Each county shall pay the estimated costs at the beginning of each month. Any difference between the estimated costs and actual costs shall be reconciled at the end of the state fiscal year.

(6) Each county shall pay to the department for deposit into the Juvenile Justice Grants and Donations Trust Fund its share of the county's total costs for juvenile detention, based upon calculations published by the department with input from the counties.

(7) The Department of Juvenile Justice shall determine each quarter whether the counties of this state are remitting to the department their share of the costs of detention as required by this section.

(8) The Department of Revenue and the counties shall provide technical assistance as necessary to the Department of Juvenile Justice in order to develop the most cost-effective means of collection.

* * *

(10) The department may adopt rules to administer this section. (Emphasis added)

11. The Respondent has the burden of establishing that the annual reconciliation is supported by a preponderance of the evidence. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981). A "preponderance" of the evidence means the greater weight of the evidence. See Fireman's Fund Indemnity Co. v. Perry, 5 So. 2d 862 (Fla. 1942).

12. As set forth herein, this dispute involves instances where the available records fail to indicate disposition dates, the "no date" cases. Within that group, there are instances where the juvenile's address of record is a location where the Respondent has offices. Although the parties, apparently in reliance on the previous Final Orders, further divided cases into sub-categories, it is unnecessary for the purposes of this dispute to address the individual cases in further detail.

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.

14. As to the instances where the Respondent's records do not include disposition dates but identify addresses of record that are facilities wherein the Respondent maintains offices, the Respondent has not met the burden of establishing that such juveniles were not committed to the care and supervision of the Respondent.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Respondent issue a final order amending the annual reconciliation as follows:

1. Responsibility for disputed cases which lack disposition dates but include addresses of the Respondent's office locations are assigned to the Respondent; and
2. Responsibility for disputed cases which lack disposition dates and do not include addresses of the Respondent's office locations are assigned to the Petitioner.

DONE AND ENTERED this 30th day of June, 2009, in
Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of June, 2009.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.