

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

HILLSBOROUGH COUNTY, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 09-3546  
 )  
 DEPARTMENT OF JUVENILE JUSTICE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

On September 17, 2009, an administrative hearing in this case was held in Tampa, Florida, before Lawrence P. Stevenson, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent assessed Petitioner for secure juvenile detention care for the 2007-2008 fiscal year in a manner that implements Section 985.686, Florida Statutes, <sup>1</sup> and Florida Administrative Code Chapter 63G-1.

PRELIMINARY STATEMENT

By way of a petition styled "Initiation of Proceedings Pursuant to 28-106.201, F.A.C." (Petition), Petitioner Hillsborough County seeks to contest alleged per diem rate increases and increased assessments imposed by Respondent Department of Juvenile Justice (the Department) pursuant to Section 985.686, Florida Statutes, and Florida Administrative Code Chapter 63G-1.

The Petition alleges that the Department, in a letter dated June 5, 2009, unilaterally and without authority in statute or rule increased the counties' per diem rate for detention care from \$212 per day to \$237 per day. Hillsborough County alleges that the injustice of this arbitrary and capricious action is compounded by the fact that the state's per diem rate for virtually the same services has decreased.

At the hearing, Hillsborough County raised the additional issue of whether the Department properly used the final reconciliation from fiscal year 2005-2006 as the basis for its estimate of utilization days at the outset of the 2007-2008 fiscal year.

The hearing was scheduled for and held on September 17, 2009. At the hearing, Hillsborough County presented the testimony of Beth Davis, the Department's Director of Program Accountability, and of Jan MacLeod, Hillsborough County's

criminal justice liaison. Hillsborough County's Exhibits P-1 through P-10 were admitted into evidence. The Department called Beth Davis as its witness. The Department's Exhibits R-1 through R-5 were admitted into evidence.

The one-volume Transcript of the hearing was filed at the Division of Administrative Hearings on November 2, 2009. By order dated November 24, 2009, the Department's unopposed motion to extend the time for filing proposed recommended orders was granted, and the parties were given until November 25, 2009, to file proposed recommended orders. The parties timely filed their Proposed Recommended Orders on November 25, 2009.

#### FINDINGS OF FACT

1. The Department is the state agency responsible for administering the cost-sharing requirements of Section 985.686, Florida Statutes, regarding detention care provided for juveniles. Hillsborough County is not a "fiscally constrained county" as that term is defined in Section 985.686(2)(b), Florida Statutes. For the balance of this Recommended Order, the term "county" or "counties" will refer to counties that are not fiscally constrained.

2. Section 985.686(1), Florida Statutes, provides that the "state and counties have a joint obligation, as provided in this section, to contribute to the financial support of the detention care provided for juveniles."

3. Section 985.686(2)(a), Florida Statutes, defines "detention care," for purposes of this section, to mean "secure detention."<sup>2/</sup> Section 985.03(18)(a), Florida Statutes, defines "secure detention" to mean "temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement."

4. Section 985.686(3), Florida Statutes, provides in relevant part that each county "shall pay the costs of providing detention care . . . 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. In summary, Section 985.686, Florida Statutes, requires each non-fiscally restrained county to pay the costs associated with secure detention during predisposition care, and the Department to pay the costs of secure detention during post-disposition care.<sup>3/</sup>

6. Each year, the Legislature determines the total amount of the appropriation for juvenile detention care and assigns a portion of the total to be paid by the counties through a trust fund, and a portion to be paid by the Department through general revenue. Section 985.686(5), Florida Statutes, sets forth the general mechanism for this allocation process:

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.<sup>4/</sup>

7. In 2007, Hillsborough County filed with the Department a petition that would be referred to the Division of Administrative Hearings and assigned Case No. 07-4398. In that petition, Hillsborough County complained that the Department was improperly calculating the counties' share of secure detention costs. The Department was arriving at a per diem rate by dividing the total detention budget (both the state's general revenue share and the counties' trust fund share) by the total number of predisposition and post-disposition days. Thus, the calculated per diem rate for the Department and the counties was the same. Hillsborough County argued that this methodology was inconsistent with both Section 985.686, Florida Statutes, and Florida Administrative Code Chapter 63G-1, because those provisions require that only the counties' share of the budget and detention days be used in calculating the counties' costs.

8. Administrative Law Judge Daniel Manry agreed with Hillsborough County that the Department's methodology conflicted with Florida Administrative Code Rule 63G-1.004, and recommended that the Department calculate the costs of predisposition care in Hillsborough County using the methodology prescribed by rule. Hillsborough County v. Department of Juvenile Justice, Case No. 07-4398 (DOAH March 7, 2008). In a Final Order entered on June 4, 2008, the Department adopted Judge Manry's recommendation in all significant respects.

9. In his Recommended Order, Judge Manry compared the actual calculation performed by the Department, which employed the total appropriation of \$125,327,667.00, to the calculation required by Florida Administrative Code Rule 63G-1.004, which would have employed the amount appropriated for the counties' trust fund, \$101,628,064.00. Hillsborough County was allocated 47,714 utilization days out of a total of 579,409 utilization days allocated to all counties, or 8.234 percent of the total. Multiplying the counties' trust fund total by the percentage of days allocated to Hillsborough County, in accordance with the rule, would have derived a gross assessment of \$8,368,054.79.

10. The Department deviated from the rule by defining the cost of detention to include the total appropriation, including the amount allocable to fiscally constrained counties and to the Department for post-disposition detention care, and dividing

that number by the total number of utilization days (predisposition and post-disposition) to derive a per diem rate of \$176.70 for all detention care. The Department then multiplied the per diem rate times the 47,714 days allocated to Hillsborough County to derive a gross assessment of \$8,400,165.73 for Hillsborough County.

11. Judge Manry recommended that the Department follow the rule and impose the "authorized" gross assessment of \$8,368,054.79, rather than the higher number derived by deviating from the rule. The Department accepted Judge Manry's recommendation in its Final Order, albeit with a correction in rounding method that resulted in an estimated assessment of \$8,369,013.00 for the 2007-2008 fiscal year.

12. In light of the decision in Case No. 07-4398,<sup>5/</sup> the Department followed the procedure set forth in Florida Administrative Code Chapter 63G-1 to arrive at a final reconciled assessment for the 2007-2008 fiscal year of \$7,971,227.00, issued on January 30, 2009. Because Hillsborough County had paid estimated assessments of \$8,431,267.00, the county was due a credit of \$460,039.83.<sup>6/</sup> The Department ceased the calculation of a per diem rate and confined its calculation to the predisposition costs and predisposition utilization days, i.e., those costs and days attributable solely to the counties.

13. In the instant case, Hillsborough County argues that

the Department should not be allowed to adjust the per diem rate that it established at the outset of the 2007-2008 fiscal year. The per diem rate of \$176.70 should be applied to the actual number of predisposition days attributed to Hillsborough County, 37,528 as of January 30, 2009, for a final assessment of \$6,631,197.60.<sup>7/</sup> In contrast, Hillsborough County's actual year end cost of \$7,971,227.00, divided by 37,528 days, would derive a per diem rate of \$212.41. Hillsborough County argues that there is no merit or equity in this sharp rise in its per diem rate, despite its having more than 13,000 fewer actual utilization days than was estimated at the beginning of the year. Hillsborough County also argues that there is no merit in the drastically reduced per diem rate enjoyed by the Department due to its mid-year adjustment in the method of calculating costs.

14. Hillsborough County's argument ignores the fact that the Department's mid-year adjustment in methodology was prompted by Hillsborough County's own successful attack on the methodology that derived the \$176.70 per diem in the first place. As Hillsborough County itself successfully argued, the \$176.70 per diem rate was in derogation of Florida Administrative Code Rule 63G-1.004, because it included costs not attributable to the counties. Hillsborough County could have had no reasonable expectation that the Department would



continue to apply that rate after the result of DOAH Case No. 07-4398.

15. Hillsborough County successfully argued that the counties' expenses should be calculated separately from the Department's expenses. It should therefore come as no surprise to the county that a separate calculation will derive different per diem rates for the counties and the Department.

16. More importantly, the "per diem rate" is not the driver of the formula for calculating the costs of either the counties or the Department. Beth Davis, the Department's director of program accountability, testified that "the per diem rate is simply a mathematical calculation of estimated and/or final costs divided by utilization." The \$176.70 per diem rate was an estimate calculated by the Department prior to the 2007-2008 fiscal year, and would always have been subject to change once the actual utilization data and costs were known at the end of the year. When the actual number of predisposition days turns out to be smaller than the number estimated at the start of the fiscal year, the actual per diem rate will naturally be higher than the estimated per diem rate, absent a proportionate reduction in the legislatively appropriated costs.

17. Hillsborough County did not dispute the actual utilization and cost data employed by the Department, and pointed to no rule or statute binding the Department to its

first estimate of the per diem rate. In fact, the evidence established that the Department's final calculation was performed in accordance with Florida Administrative Code Chapter 63G-1 and in conformance to the Final Order in DOAH Case No. 07-4398.<sup>8/</sup>

18. At the hearing, Hillsborough County also contested the Department's use of the final reconciliation from fiscal year 2005-2006 as the basis for its estimate of utilization days at the outset of the 2007-2008 fiscal year. Hillsborough County argues that Florida Administrative Code Rule 63G-1.004(1) requires that each county's share of predisposition detention costs be "based upon usage during the previous fiscal year. . ." Thus, the estimate for the 2007-2008 fiscal year should have been based on usage from the 2006-2007 fiscal year, not that for the 2005-2006 fiscal year.

19. The Department explained that the Legislature meets and passes the budget for the next fiscal year in the spring, well before the end of the current fiscal year. The Department, therefore, is required to make its estimate of utilization days for the next fiscal year prior to the conclusion of the current fiscal year. The calculation for the estimated costs to the counties for fiscal year 2007-2008 was made early in 2007, while the fiscal year 2006-2007 was still underway. The most recent fiscal year with complete and reconciled data was the 2005-2006

fiscal year. The Department used the data from the 2005-2006 fiscal year to estimate the utilization days for the 2007-2008 fiscal year. At the time of the estimate, 2005-2006 was "the previous fiscal year." Under the circumstances, the Department's use of data from the 2005-2006 fiscal year did not violate Florida Administrative Code Rule 63G-1.004(1).

#### CONCLUSIONS OF LAW

20. 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.

21. The burden of proof is on the party asserting the affirmative of an issue. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). The proposed agency action is to assess Hillsborough County for predisposition care within its jurisdiction. The Department asserts the affirmative of that issue and must prove by a preponderance of the evidence that the proposed assessment should become final agency action.

22. The record evidence established that, in light of the decision in DOAH Case No. 07-4398, the Department ceased its practice of deviating from the requirements of Florida Administrative Code Chapter 63G-1 by lumping together the counties' and the Department's utilization days and costs in the

calculation of a single "per diem rate" for all providers of juvenile detention care.

23. In response to DOAH Case No. 07-4398, the Department ceased to perform even the mathematical calculation of a per diem rate. The Department confined its calculation to the predisposition costs and predisposition utilization days, i.e., those costs and days attributable solely to the counties, and based the final calculation of Hillsborough County's costs on the county's percentage of the total predisposition utilization days for all counties.

24. The Department did no more and no less than to follow its own rules. The Department has met its burden of proof and demonstrated through the record evidence that the final reconciled costs for Hillsborough County's predisposition juvenile detention for the 2007-2008 fiscal year were assessed in accordance with Section 985.686, Florida Statutes, and Florida Administrative Code Chapter 63G-1.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Juvenile Justice enter a final order denying Hillsborough County's Petition, and making its proposed assessment final.

DONE AND ENTERED this 26th day of February, 2010, in  
Tallahassee, Leon County, Florida.

*Lawrence P. Stevenson*

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th day of February, 2010.

ENDNOTES

<sup>1/</sup> Unless otherwise noted, all statutory references are to the 2009 edition of the Florida Statutes. Section 985.686, Florida Statutes, has not been amended in a manner of significance to this proceeding since its enactment in 2004. It was originally numbered Section 985.2155, but was renumbered in 2006. See § 95, Chapter 2006-120, Laws of Florida.

<sup>2/</sup> The term "detention care" is thus narrower for purposes of Section 985.686 than it is elsewhere in Chapter 985, Florida Statutes. Section 985.03, Florida Statutes, which sets forth the definitions of terms for purposes of Chapter 985, defines the term as follows:

(18) "Detention care" means the temporary care of a child in secure, nonsecure, or home detention, pending a court adjudication or disposition or execution of a court order. There are three types of detention care, as follows:

(a) "Secure detention" means temporary custody of the child while the child is under the physical restriction of a detention center or facility pending adjudication, disposition, or placement.

(b) "Non-secure detention" means temporary custody of the child while the child is in a residential home in the community in a physically nonrestrictive environment under the supervision of the Department of Juvenile Justice pending adjudication, disposition, or placement.

(c) "Home detention" means temporary custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication, disposition, or placement.

<sup>3/</sup> The definition of "detention center or facility" at Section 985.03(19), Florida Statutes, provides that such a facility may be used only pending court adjudication or pending the disposition or execution of a court order. A facility used for the commitment of adjudicated delinquents cannot be considered a "detention center or facility." Thus, the post-disposition care provided by the Department under Section 985.686, Florida Statutes, is limited to care in a "detention center or facility" after adjudication or disposition but prior to the final residential placement ordered by the court. See Section 985.433, Florida Statutes, for the detailed procedures regarding disposition hearings in delinquency cases. See also Hillsborough County v. Department of Juvenile Justice, Case No. 07-4398 (DOAH March 7, 2008), at ¶¶ 2-8 for a detailed discussion of the statutory distinction between predisposition and post-disposition care.

<sup>4/</sup> Florida Administrative Code Rule 63G-1.004, adopted on July 16, 2006, provides the detailed method by which the county is to estimate costs:

(1) Each county's share of predisposition detention costs is based upon usage during the previous fiscal year, with the first year's estimates based upon usage during

fiscal year 2004-05. Estimates will be calculated as follows:

(a) All youth served in secure detention during the relevant fiscal year as reflected in the Juvenile Justice Information System will be identified;

(b) Each placement record will be matched to the appropriate referral based upon the referral identification code. Placements associated with administrative handling, such as pick-up orders and violations of probation, will be matched to a disposition date for their corresponding statutory charge;

(c) The number of service days in secure detention is computed by including all days up to and including the date of final disposition for the subject referral.

(2) Each county will receive a percentage computed by dividing the number of days used during the previous year by the total number of days used by all counties. The resulting percentage, when multiplied by the cost of detention care as fixed by the legislature, constitutes the county's estimated annual cost.

(3) The estimated cost will be billed to the counties in monthly installments.

(4) Invoices are to be mailed on the first day of the month prior to the service period, so that an invoice for the August service period will be mailed on July 1.

Florida Administrative Code Rule 63G-1.008 provides the method by which the Department is to reconcile the estimated payments with the actual costs of predisposition secure detention:

(1) On or before January 31 of each year, the Department shall provide a reconciliation statement to each paying county. The statement shall reflect the

difference between the estimated costs paid by the county during the past fiscal year and the actual cost of the county's usage during that period.

(2) If a county's actual usage is found to have exceeded the amount paid during the fiscal year, the county will be invoiced for the excess usage. The invoice will accompany the reconciliation statement, and shall be payable on or before April 1.

(3) If a county's actual usage was less than the estimated amounts paid during the fiscal year, the county will be credited for its excess payments. Credit will be reflected in the April billing, which is mailed on March 1, and will carry forward as necessary.

<sup>5/</sup> Judge Manry also authored the Recommended Order in a companion case, Hillsborough County v. Department of Juvenile Justice, Case No. 07-4432 (DOAH March 10, 2008), that dealt with the allocation of utilization days. That issue is not directly germane to this Recommended Order.

<sup>6/</sup> The Department issued at least two subsequent "adjusted" reconciliation statements reducing Hillsborough County's credit. In Hillsborough County, Florida v. Department of Juvenile Justice, Case No. 09-4340 (DOAH December 18, 2009), Administrative Law Judge William Quattlebaum agreed with Hillsborough County's position and held that the January 30, 2009, assessment was the only annual reconciliation statement authorized by statute or rule. In a Final Order issued on January 20, 2010, the Department adopted Judge Quattlebaum's Recommended Order and ordered the subsequent reconciliation statements "disregarded and expunged."

<sup>7/</sup> In its own calculations, Hillsborough County employed the lesser number of 34,163 days found in the Department's final adjusted reconciliation of June 4, 2009. However, the Department has since "disregarded and expunged" all reconciliation statements subsequent to January 30, 2009, in respect of Hillsborough County's successful challenge. See endnote 6, supra.

<sup>8/</sup> Hillsborough County also contended that the Department's current methodology requires the counties to bear a



disproportionate share of the costs for secure juvenile detention, because the counties' per diem rate for predisposition detention is much greater than the Department's per diem rate for post-disposition detention, even though the actual costs of a day of detention are the same whether it is predisposition or post-disposition. As found above, the "per diem rate" is merely the result of a mathematical calculation; it is not a number that drives the calculation. The Department's methodology is consistent with the relevant statute and rules. Hillsborough County's equity arguments are more properly directed to the Legislature than to this tribunal.

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.