

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

HILLSBOROUGH COUNTY, FLORIDA,        )  
  )  
          Petitioner,                            )  
  )  
vs.    )     Case No. 09-4340  
  )  
DEPARTMENT OF JUVENILE JUSTICE,        )  
  )  
          Respondent.                         )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER

On October 15, 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 assessed secure juvenile detention center costs charged to Hillsborough County, Florida

(Petitioner), pursuant to Section 985.686, Florida Statutes (2009).

PRELIMINARY STATEMENT

On March 17, 2009, the Petitioner filed an "Initiation of Proceedings Pursuant to 28-106.201, F.A.C." with the Division of Administrative Hearings (DOAH), asserting that the Respondent improperly calculated utilization days for the 2007-2008 fiscal year. DOAH issued an Initial Order in the case and assigned the matter to the undersigned Administrative Law Judge. The parties responded to the Initial Order, and the dispute was scheduled for hearing.

At the hearing, the Petitioner presented the testimony of two witnesses and had four exhibits admitted into evidence. The Respondent presented no testimony or exhibits.

A Transcript of the hearing was filed on November 2, 2009. On November 23, 2009, the Respondent filed an Unopposed Motion for Extension of Time to File Proposed Recommended Order, which was granted in an Order issued on November 24, 2009. Both parties filed Proposed Recommended Orders on November 25, 2009, that have been considered in the preparation of this Recommended Order.

The Joint Pre-hearing Stipulation filed on October 7, 2009, contained a statement of admitted facts that have been incorporated in this Recommended Order.

Although the case initially focused on the resolution of the Petitioner's objections to the Respondent's allocation of detention costs, neither party presented evidence at the hearing related to the specific objections. It was apparent, based on argument presented at the hearing and as set forth in the Proposed Recommended Orders, that the disputed issue for resolution in this case was the Respondent's issuance of multiple annual reconciliation statements and that the Petitioner had no objection to the annual reconciliation statement dated January 30, 2009.

#### FINDINGS OF FACT

1. This dispute involves costs charged to the Petitioner for juveniles residing in Hillsborough County and detained in centers operated by the Respondent during the 2007-2008 fiscal year.

2. The Petitioner is required by statute to pay the cost of "pre-disposition" secure detention for such juveniles. The Respondent is required by statute to pay the cost of "post-disposition" secure detention for such juveniles. The significance of "disposition" is not relevant to this proceeding.

3. The Respondent also pays the cost for secure detention for juveniles residing in "fiscally constrained counties" and

for juveniles with residence addresses outside the State of Florida.

4. Responsible counties are prospectively assessed for projected costs in advance of each fiscal year, based on actual experience in the preceding fiscal year.

5. By statute, the Respondent is required to determine on a quarterly basis whether the funds being remitted by counties are sufficient to meet their obligations under the statute. Counties may raise objections to the quarterly report, but the statute prohibits any adjustments on the basis of the quarterly report.

6. The Respondent is also required by statute to reconcile differences between estimated costs and actual costs at the end of the state fiscal year. The statute provides that adjustments cannot be made until the annual reconciliation occurs.

7. By administrative rule, an annual reconciliation statement must be issued on or before January 31 of each year reflecting the estimated and actual costs applicable for the preceding fiscal year.

8. On January 30, 2009, the Respondent issued an annual reconciliation to the Petitioner that assigned 37,528 pre-disposition utilization days to the Petitioner and stated that the Petitioner was due a credit of \$460,039.83. The Respondent issued an invoice reflecting the stated credit.

9. On February 24, 2009, the Respondent issued a second annual reconciliation to the Petitioner that increased the Petitioner's assigned pre-disposition utilization days to 37,549 and decreased the credit to \$455,579.28. The Respondent issued an invoice reflecting the revised credit.

10. On March 18, 2009, the Petitioner directed a letter to the Respondent requesting that the two reconciliations be clarified. The Respondent did not respond to the request.

11. On May 1, 2009, the Petitioner directed a letter to the Respondent disputing a portion of the assigned utilization days. The Respondent did not respond at that time, but on May 14, 2009, the Respondent issued a third annual reconciliation to the Petitioner that increased the Petitioner's assigned pre-disposition utilization days to 37,661 and decreased the credit to \$431,789.64.

12. On June 4, 2009, the Respondent issued a fourth annual reconciliation to the Petitioner that decreased the Petitioner's assigned pre-disposition utilization days to 34,163 and decreased the credit to \$321,677.91.

13. On July 17, 2009, the Respondent replied to the Petitioner's letter of May 1, 2009 (wherein the Petitioner disputed a portion of the assigned utilization days), by advising the Petitioner to file an administrative challenge to the allocation.

14. On August 7, 2009, the Petitioner issued a letter to the Respondent objecting to the assigned pre-disposition utilization days, as well as the calculation of the per diem rate. The Respondent did not respond to the letter.

15. Neither party offered evidence at the hearing related to the accuracy of allocated utilization days or the per diem rate.

#### CONCLUSIONS OF LAW

16. As set forth herein, the Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding.

17. 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).

18. Section 985.686, Florida Statutes (2009), 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.

(b) "Fiscally constrained county" means a county within a rural area of critical economic concern as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1.

(3) Each county shall pay the costs of providing detention care, exclusive of the costs of any preadjudicatory nonmedical educational or therapeutic services and \$2.5 million provided for additional medical and mental health care at the detention centers, 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.

\* \* \*

(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.

\* \* \*

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

19. By rule, the Respondent has implemented a system of quarterly reports and annual reconciliation statements to assess costs attributable to responsible counties.

20. Florida Administrative Code Rule 63G-1.009, that sets forth a quarterly reporting and dispute resolution system, provides as follows:

Dispute Resolution and Collection.

(1) The quarterly reporting marks the point at which a county may take issue with the charges referenced in the report, but it cannot be the basis for withholding payment. Adjustments, including those necessitated by dispute resolution, cannot be made until the annual reconciliation.

(2) Disputes based upon a quarterly report, such as those relating to the residence of served youth or the number of chargeable service days, must be brought within 90 days of receipt of the quarterly report to which the dispute pertains.

(3) General objections, such as those seeking confirmation of a youth's county of residence, will be summarily denied. Disputes involving a detained youth's county of residence must include one or more of the following indicia of specificity:



(a) An alternative address asserted to be correct;

(b) Supporting documentation, and;

(c) An explanation of the basis for the dispute on form 63G-1-1.

(4) Disputes must be raised by means of form 63G-1-1, and sent by certified mail to the Department's Bureau of Finance and Accounting at 2737 Centerview Drive, Suite 212, Tallahassee, Florida 32399-3100. Accompanying documentation in support of the county's position may be included.

(5) Form 63G-1-1 (May 2006), "Notice of Disputed Detention Charge," is incorporated by reference and is available from the Bureau of Finance and Accounting in Tallahassee.

(6) The Department's response constitutes final agency action and may be challenged through the process available in Chapter 120, F.S. (Emphasis supplied)

21. Essentially the rule requires that a county file its objections to a quarterly report within 90 days of receipt of the report, that the Respondent respond to the objections, and that any challenge to the response proceed through the filing of a request for hearing under the Administrative Procedures Act.

22. The annual reconciliation process is established at Florida Administrative Code Rule 63G-1.008, which provides as follows:

Annual Reconciliation.

(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. (Emphasis supplied)

23. Neither the statute nor the rule provides a definition for "annual." The Merriam Webster's Dictionary defines "annual" as "occurring or happening every year or once a year."

24. There is no authority in either statute or rule that provides the Respondent with the authority to issue multiple annual reconciliation statements to a county. The Respondent is required by Florida Administrative Code Rule 63G-1.008 to issue an annual reconciliation statement on or before January 31 of each year. The rule clearly requires that March bills (payable in April) reflect any excess payment credit due to a county and that any additional assessment related to excess usage must be paid by a county on or before the following April 1.

25. Absent any evidence to the contrary, the annual reconciliation statement issued pursuant to the rule is final unless successfully challenged in an administrative proceeding. While Florida Administrative Code Rule 63G-1.008 does not specifically reference an opportunity to challenge the annual reconciliation, Section 120.569, Florida Statutes (2009), is generally applicable in all proceedings where the substantial interests of a party are determined by an agency and provides for the filing of a petition for hearing with the agency. Subsection 120.569(2)(a), Florida Statutes (2009), provides as follows:

Except for any proceeding conducted as prescribed in s. 120.56, a petition or request for a hearing under this section shall be filed with the agency. If the agency requests an administrative law judge from the division, it shall so notify the division within 15 days after receipt of the petition or request. A request for a hearing shall be granted or denied within 15 days after receipt. On the request of any agency, the division shall assign an administrative law judge with due regard to the expertise required for the particular matter. The referring agency shall take no further action with respect to a proceeding under s. 120.57(1), except as a party litigant, as long as the division has jurisdiction over the proceeding under s. 120.57(1). Any party may request the disqualification of the administrative law judge by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

26. In this case, the Petitioner's request for hearing should have been filed with the Respondent. The Respondent should have determined whether there were material facts in dispute, and, if so, forwarded the request to DOAH for a hearing under the provisions of Subsection 120.57(1), Florida Statutes (2009). If there were no material facts in dispute, the dispute should have proceeded to a hearing under Subsection 120.57(2), Florida Statutes (2009), or the parties should have explicitly waived the provisions of Subsection 120.57(2), Florida Statutes (2009), and thereafter forwarded the case to DOAH. See § 120.569(1), Fla. Stat. (2009).

27. Despite the provisions of Section 120.569, Florida Statutes (2009), the Petitioner filed the challenge directly with DOAH on March 17, 2009. DOAH issued an Initial Order and assigned the matter to an Administrative Law Judge. The parties responded to the Initial Order, and the dispute was scheduled for hearing, with neither party noting the non-compliance with Section 120.569, Florida Statutes (2009). Accordingly, DOAH conducted a formal hearing in the case and has issued this Recommended Order.

28. At the hearing, the parties suggested that the issuance of multiple annual reconciliation statements is the result of the resolution of objections filed by counties in response to the annual reconciliation statement. The resolution

of such objections can result in additional costs allocated to another county. There was no evidence that counties potentially affected by resolution of another county's objections receive any notice of the objections or the potential resolution. The county whose allocated costs increase through the resolution of another county's objections apparently receives no notice until the Respondent issues another annual reconciliation statement for the same fiscal period as a previous reconciliation statement.

29. Piecemeal dispute resolution that affects the substantial interests of counties not participating in the resolution appears to be contrary to Section 120.569, Florida Statutes (2009). The practice delays the realization of finality in the cost allocation process as each county, affected in turn by the resolution of another county's objections, files objections of its own, and so on.

30. Perhaps the most efficient resolution of the situation would be for the Respondent to require, as set forth at Section 120.569, Florida Statutes (2009), that protests to quarterly reports and annual reconciliations be filed with the agency. Such protests could be forwarded, where appropriate, to DOAH. Related protests could be consolidated pursuant to Florida Administrative Code Rule 28-106.108. Where the resolution of the proceedings could affect the interests of a

county not a party to the proceeding, the county could be provided an opportunity to participate in the proceeding (and be precluded from later objection) pursuant to Florida Administrative Code Rule 28-106.109.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Respondent issue a final order adopting the annual reconciliation dated January 30, 2009.

DONE AND ENTERED this 18th day of December, 2009, in Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

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Filed with the Clerk of the  
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this 18th day of December, 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.