

REPORT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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1095836
(22 p.)

JAMES NORMAN, PAULETTE)
PATTERSON, WANDA HILLIARD,)
JOANN MITCHELL, on their own)
behalf and on behalf of all)
others similarly situated,)
)
Plaintiffs,)
)
v.)
)
JESS MCDONALD, Director,)
Illinois Department of)
Children and Family Services,)
)
Defendant.)

No. 89 C. 1624

MAILED
FEB

CONSENT ORDER

Plaintiffs in this action seek declaratory and injunctive relief on their own behalf and on behalf of all others similarly situated against alleged policies and practices of the defendant under which plaintiffs alleged they had lost, were at risk of losing, or would in the future lose custody of their children to the defendant or, having lost custody, could not regain it from the defendant, because they are unable to provide what defendant accepts as adequate living circumstances for their children. Prior to a ruling on class certification, in an Order dated May 18, 1990, this court entered a preliminary injunction on behalf of certain named plaintiffs, affirming the recommended decision of the Magistrate and adopting the Magistrate's findings of fact on the motion by certain named plaintiffs for a preliminary injunction.

Defendant moved to dismiss plaintiff's Complaint and denies

all of the allegations of plaintiffs' Complaint and First Amended and Supplemental Complaint particularly all legal contentions that any alleged policies or practices have violated any state or federal law, has contested certification of a class in this case, and has appealed the May 18 Preliminary Injunction Order, which appeal is currently pending, No. 90-2337 (7th Cir.).

In an effort to avoid the burden, costs and inherent risks of further litigation, plaintiffs and defendant have determined that it is in the interests of the putative class and the public interest to settle this action with the entry of this Consent Decree, including certification of a class for purposes of this Decree only and an agreement by defendant to withdraw the appeal in No. 90-2337 (7th Cir.).

Having carefully reviewed this Consent Order, the parties being in agreement hereto, and the court fully advised in the premises, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

DEFINITIONS

1. As used herein, the following terms have the following meanings:

"Class members" and "DCFS clients: means all members of the class certified and defined in paragraph 3(b) of this Consent Order.

"Department of Children and Family Services" or "DCFS" or "defendant" means the defendant and his agents and includes all successor Directors of DCFS and their agents.

"Parent" means the natural and adoptive parent of a child or, unless otherwise specified, the guardian of a child. "Parent" does not include foster parents.

"Guardian" means persons other than DCFS or its designees or agents who have actual or legal custody of a child.

"Living circumstances" means income, shelter, utility services, food, clothing, furniture, other subsistence needs, or any other feature of the physical environment that DCFS deems relevant to the issue of whether a child should be retained in or returned to the custody of a parent.

"Return of the children is otherwise appropriate" means that, ignoring the family's living circumstances, DCFS could return the children to the custody of their parents subject to approval of the juvenile court where necessary.

"Temporary custody" includes all children residing in DCFS custody for whom DCFS does not have guardianship. As used here, "temporary custody" includes "protective custody."

"DPA" refers to the Illinois Department of Public Aid.

"Case plan" or "service plan" means the plan required by 42 U.S.C. § 675(1), Ill. Rev. Stat. ch. 23 } 2058.2 and [insert DCFS regulation cite].

"ACR" or "administrative case review" refers to the case review procedure specified under 42 U.S.C. § 675(5), Ill. Rev. Stat. ch. 23, } 5006a and [insert DCFS regulation cite].

"Indicated case" refers to reports of abuse of neglect for which DCFS has made a determination that the report is "an indicated report," as specified under the Abused and Neglected Child Reporting Act ("ANCRA"), Ill. Rev. Stat. ch. 23, }} 2051, et seq.

"Hard services" refers to provision of, or assistance in obtaining cash, shelter, utility services, food, clothing, furniture, or other goods or services to meet subsistence needs or other needs relating to features of the physical environment that DCFS deems relevant to the issue of whether a child should be retained in or returned to the custody of their parents.

"Allegations" refers to the DCFS system for classification of categories of reports of abuse and neglect. [insert any relevant DCFS regulations cites].

"Risk assessment" is the process by which DCFS determines whether children can safely remain in or return to the custody of their parents.

DISCLAIMER

2. By agreeing to this Consent Order neither party

makes any express or implied admission of fact or law for any purpose.

CLASS CERTIFICATION

3. (a) The parties have stipulated, solely for the purposes of this settlement and by way of compromise, and the court finds that the class defined herein is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the named plaintiffs are typical of those of the class; the named plaintiffs will fairly and adequately protect the interests of the class; and the defendant has acted and refused to act on grounds generally applicable to the class, thereby making injunctive and declaratory relief appropriate for the class as a whole.

(b) Solely for purposes of settlement and by way of compromise, the parties have agreed that this court shall certify a plaintiff class defined as:

All parents and guardians on or after the date of entry of this Consent Order: (a) whose children are in the temporary custody or under the legal guardianship of the Illinois Department of Children and Family Services ("DCFS"), and upon whom, during such custody or guardianship, DCFS has imposed, in a service plan or otherwise, a condition that such parents obtain for themselves or their children such shelter, utility services, food, clothing, or income as DCFS deems necessary or appropriate for the return of their children; or (b) for whom there is an "indicated report" or pending report pursuant to Ill. Rev. Stat. ch. 23 } } 2051 et seq., that is or should have been designated as an allegation of "inadequate shelter", "inadequate food", "inadequate clothing", "environmental neglect", or any successor allegations that cover these categories of reports, and DCFS

has taken or could take protective custody of the children pursuant to Ill. Rev. Stat. ch. 23, } 2055, because of that allegation.

(c) At any time prior to the completion of the monitor's report for the quarter ending April 1, 1995, class members may seek a modification of the class definition on the basis that there are parents or guardians with an indicated or pending report designated as an allegation of other than "inadequate shelter," "inadequate food," "inadequate clothing", "environmental neglect," or any other successor allegations, who nonetheless have had their children removed from their custody by DCFS because of their failure or inability to provide adequate living circumstances for their children. Plaintiffs and defendant shall first attempt to negotiate any modification of the class definition, with the assistance of the monitor, if necessary. If the parties are unable to resolve this issue, plaintiffs may petition the court for a modification of the class definition.

GENERAL POLICIES

4. Upon entry of this Consent Order, defendant shall comply with the following policies:

(a) DCFS shall not remove any child from a parent or continue the removal by another person authorized to take custody under state law because of the living circumstances of the family, or lack of provision for the child's subsistence needs, unless there is reason to believe that the circumstances or conditions of the child are such that continuing in his place of residence or in the care and custody of the person responsible for

the child's welfare presents an imminent danger to the child's life or health (in accordance with Ill. Rev. Stat. ch. 23, § 2055), and unless defendant has made reasonable efforts to prevent or eliminate the need for removal of the child, or unless such reasonable efforts, if provided, would not prevent or eliminate the need for removal. "Reasonable efforts" includes, for example, provision of hard services such as assistance in locating and securing housing, temporary shelter, cash assistance (directly paid by defendant or otherwise provided), in-kind services including food or clothing, child care, emergency caretakers, or advocacy with public and community agencies providing such services.

(b) DCFS shall not remove any child from or prevent any child's return to a parent or guardian because the parent or guardian resides in a shelter, with friends or relatives, in housing with building-code violations, or in housing that is considered too small for the family size, unless there is reason to believe that the circumstances or conditions of the child are such that continuing in his place of residence or in the care and custody of the person responsible for the child's welfare presents an imminent danger to the child's life or health. Before returning a child to such living situations, defendant shall ascertain that the child will be allowed to reside there and that a bed is provided for the child.

(c) Rather than removing children from a parent's custody based upon the failure of the parent to protect the children from the perpetrator of domestic violence, DCFS shall make

reasonable efforts to keep the children in the parent's custody, unless there is reason to believe that the circumstances or conditions of the child are such that continuing in his place of residence or in the care and custody of the person responsible for the child's welfare presents an imminent danger to the child's life or health (in accordance with Ill. Rev. Stat. ch. 23, § 2055), and unless such reasonable efforts, if provided, would not prevent or eliminate the need for removal. In this context, "reasonable efforts" includes not only the efforts listed in paragraph 4 (a) of this order, but also, for example, referring the parent for services to obtain an order of protection, exploring possible alternative housing with, e.g., relatives, and locating and transporting the family to a shelter for battered women. DCFS shall not remove children from the custody of a parent on the ground that the parent resides in such a shelter, and DCFS shall return children to the custody of a parent who resides in such a shelter, if the return of the children to the parent is otherwise appropriate.

CASH ASSISTANCE AND INTERACTION WITH DPA

5. (a) Not later than July 1, 1991, defendant shall begin operation of a cash assistance program for class members that shall provide up to \$800 to a family in any calendar year, if such assistance would prevent the imminent removal by DCFS of children from class members or allow the immediate return of children who are in placement, for the purpose of paying initial rent, security deposit, utility connection charges, utility

deposits, furniture, and other items necessary to retain or regain custody of the children. This cash assistance program shall not be a replacement for or result in any action by DCFS to eliminate any source of cash assistance for class members to which DCFS has access on the date of entry of this decree, including "exceptions to policy". DCFS shall administer this cash assistance program in such a way as to maximize federal reimbursement for DCFS's expenditures.

(b) DCFS shall maintain records of every grant made, including the needs it was intended to meet, the amount paid, the other sources of assistance used to meet the needs, the amount, if any, above the \$800 maximum that was needed, any exceptions to the maximum that DCFS has granted, and the outcome of the case as to the family's retaining or regaining custody of the children.

(c) If DCFS' best efforts to obtain the interagency agreement described in Paragraph 6 are unsuccessful by July 1, 1991, defendant and plaintiffs shall meet and confer as to whether the amount of cash assistance available to class members under this Paragraph is adequate and, if not, the amount of increase in such benefits that may be warranted.

6. (a) Effective not later than July 1, 1991, DCFS shall enter into an interagency agreement with DPA that provides that:

(i)(A) DPA will maintain AFDC eligibility for a family at least 90 days during a period of DCFS protective or temporary custody of a child or children. If permitted by federal law and federally reimbursable,

such AFDC benefits will be paid at the same rate as the family was entitled to prior to such custody. This eligibility and benefit amount may be extended for up to 30 additional days, if the protective or temporary custody is not expected to last beyond the 30 additional days;

(B) If federal law does not permit payment of AFDC at the full family rate or if such payment is not federally reimbursable (and IDPA is unable to secure a federal waiver permitting such payment to be federally reimburseable), DCFS shall make best efforts to obtain an interagency agreement with IDPA to increase emergency or special assistance to such families to avoid the loss of housing and other basic subsistence needs during the period of temporary custody.

(ii) DPA will accept applications for AFDC benefits at any time from parents whose children are in the custody or under the guardianship of DCFS or are threatened with removal of their children by DCFS, and DPA will commence eligibility for AFDC benefits for such families so that the first payment is received 30 days prior to any firm date on which the child will be returned home, and further, the monthly AFDC payment amount will include the child's portion unless the child is otherwise ineligible for it (for example, due to receipt in the concurrent time period of benefits under Title IV-E of the Social Security Act); and

(iii) DPA will provide liaisons to DCFS to facilitate the provision of services by DPA to class members and will streamline its application processes for class members, including, for example, whenever possible, the elimination of the need for current AFDC recipients who are DCFS clients to apply in person for DPA's Emergency Assistance Program, allowing the DCFS worker to handle the entire transaction with DPA.

(b) DCFS shall take those steps necessary within the Department to maximize payment of DPA-administered benefits to eligible families as outlined in paragraph 6(a) above, including but not limited to making efforts to obtain firm "return home" dates from juvenile courts; establishing working liaisons with DPA; and regularly training DCFS workers on DPA program requirements.

HOUSING SERVICES

7. (a) Not later than October 1, 1991, defendant shall establish a housing advocacy program to provide the following services to class members, as appropriate: Assisting class members to locate and secure shelter and housing assisting class members who are domestic violence victims to locate and secure housing or shelter and providing transportation to such housing or shelter, assisting class members to apply and qualify for low-income housing and utility services, assisting class members to secure funds needed to meet initial or ongoing rental obligations, compiling and providing class members with up-to-date information about available

housing in the communities in which DCFS clients seek to reside, and advocating with private and public providers of housing and utility services that such services be provided to class members who meet eligibility requirements for such services.

(b) Defendant shall made good-faith efforts to secure interagency agreements with the Chicago Housing Authority and other public housing authorities and human services agencies throughout the state to secure housing, preferences for housing, and subsidies for class members. Defendant shall report on his efforts and shall provide any interagency agreements he secures to plaintiffs' counsel every six months.

(c) DCFS shall develop and implement a plan for identifying all federal funds available to assist class members in obtaining hard services, and either will take any steps necessary to obtain those funds or will coordinate with any appropriate state or local agency to make those funds available to class members.

REFERRAL SERVICES

8. Not later than July 1, 1991, defendant shall develop for each DCFS office in the state a localized referral manual containing up-to-date community resources for payments, goods, and services related to living circumstances that may be relevant in DCFS cases. Defendant shall revise the manual at least annually and shall insure that each DCFS employee in a client-contact position has immediate access to such manual. Not later than December 1, 1991 defendant shall issue instructions concerning the use of this manual to all DCFS employees in client-contact

positions, and shall insure that all new employees in such positions receive instructions on the use of this manual. All employees shall receive at least annual instruction on the content and use of the manual.

OTHER POLICIES AND PROCEDURES

9. Effective not later than July 1, 1991, defendant shall promulgate rules, policies, and procedures concerning the following:

(a) DCFS shall specifically incorporate the requirements of this Consent Order into the responsibilities of DCFS personnel who perform administrative case reviews for class members whose children are in the custody of DCFS and shall ensure that timely ACRs are provided on an ongoing basis for class members whose children are in the custody of DCFS.

(b) Together with the monitor, DCFS shall develop and implement on or before July 1, 1991 a means of capturing and documenting in each case file and centrally (to the extent deemed necessary by DCFS specific information regarding:

(i) contemporaneous with the taking of custody, the specific reasons the DCFS worker relies upon to determine that there is imminent danger warranting the taking of custody; and

(ii) the reasonable efforts undertaken to remedy the problems with living circumstances that are a factor in retaining or regaining the custody of children including such information as the event or condition

leading to DCFS involvement, the services needed to eliminate the imminent danger, alternatives considered to avoid removal, the hard and soft services provided, why services were not offered or were ineffective, services currently required and steps the agency will take to procure or provide them;

(c) DCFS shall establish reasonable time guidelines within which DCFS workers should ordinarily return children home or initiate court action to do so for use in cases where problems with living circumstances are preventing family reunification.

(d) DCFS shall establish risk assessment methods dealing with issues of living circumstances that are consistent with the provisions of this Consent Order.

(e) DCFS shall establish a protocol for locating absent parents and instructions for its use and shall make the use of this protocol mandatory upon DCFS workers in the risk assessment process and whenever the absence of a parent from the home is an issue in whether DCFS will take or retain custody of the child.

(f) In cases where court action is necessary to return children home or to further reunification, it shall be the duty of the caseworker to initiate such court proceedings promptly.

NOTICE AND APPEAL RIGHTS

10. Not later than July 1, 1991, defendant shall provide the following notice and appeal rights to class members:

(a) On the following occasions, defendant shall provide a written notice of the policies set forth in paragraph 4

of this Consent Order, a listing of the hard services available from the defendant or upon referral, and a description of the right to request such services and to appeal from the delay, denial, or reduction of any such service as well as the right to appeal and how to make an appeal:

(i) upon the removal of a child from the custody of the class member or upon the class member's first contact with DCFS worker thereafter;

(ii) during the course of an ACR; and

(iii) Prior to any request that a class member sign a service plan.

(b) Whenever DCFS provides funds or denies funds under paragraph 5 of this Consent Order, DCFS shall provide written notice to the class member of the decision. Such notice shall include the amount of the funds provided, the basis for determining the amount provided, the basis for a decision, if any, to provide less funds than requested or required to meet the needs that must be met under the service plan, and notice of the right to appeal the decision. A copy of this notice shall be retained in the class member's case file.

(c) Defendant shall provide all class members with an administrative appeal as set forth in [cite DCFS Service appeal regulations]. It shall be the policy of DCFS that issues related to the provision of hard services shall be appealable only by the parents or guardian or child and their representatives. No notice related to such appeal shall be furnished to any other persons.

REVIEW OF NEW POLICIES AND PROCEDURES

11. Defendant shall provide to plaintiffs' counsel drafts of all new policies, procedures, programs, rules, regulations and notices for implementation of the provisions of this Consent Order at least thirty days prior to the relevant effective date specified in this Consent Order. Plaintiffs' counsel shall inform defendant's counsel of any objections they have to any such drafts because of plaintiffs' contention that said draft may violate the terms of this Consent Order, and the parties shall negotiate in good faith regarding any such objections.

TRAINING

12. Not later than December 1, 1991, defendant shall conduct training of all staff at DCFS in direct-service positions, including supervisors and administrators, as to the policies and procedures that have been or will be promulgated and effectuated pursuant to this Consent Order; and the duties of each employee to carry out his/her respective responsibilities consistent with these policies and procedures. This training will also be provided to private agencies, including agencies providing family preservation services, that provide services to class members. Defendant shall provide such training to all new direct-service staff, supervisors, and administrators prior to such staff assuming their responsibilities. Defendant shall provide such training to all staff on a regular and periodic basis. Defendant shall provide plaintiffs' counsel with advance notice of all such training sessions, together with copies of the materials to be used or

distributed at such sessions, and shall permit plaintiffs' counsel or their designees to attend at least once a year.

RELIEF FOR CLASS MEMBERS CURRENTLY WITHOUT CUSTODY OF CHILDREN

13. (a) Defendant shall retain a liason to respond to and act upon complaints made by plaintiffs' counsel on behalf of class members.

(b) Not later than September 1, 1991, defendant shall complete a review of all cases of class members whose children are, at the time of the review, in DCFS custody and were taken into the temporary or permanent custody of DCFS prior to September 1, 1991, as to which

(i) there has been an indicated report of inadequate food, shelter, or clothing or environmental neglect; or

(ii) the DCFS worker has identified the case as one where living circumstances are a factor in the class member's inability to regain the custody of the children.

(c) At each review of a case under paragraph 13(b), the administrative case reviewer shall insure that the policies set forth in this Consent Order are applied. Plaintiffs' counsel or their designees shall be allowed to attend each of the case reviews, for the purpose of monitoring compliance with the terms of this Consent Order.

(d) Defendant shall submit a quarterly report to plaintiffs' counsel and the monitor 14 days after the end of each

quarter in which reviews of cases under paragraph 13(a) are performed. The report shall contain the following information as to each case reviewed in the quarter just ended:

(i) the name of each parent and child whose case is reviewed;

(ii) this basis for DCFS's involvement with the family (original allegations);

(iii) which requirements relating to the parents' living circumstances have been imposed in a service plan or otherwise;

(iv) whether the parents' living circumstances are currently an obstacle to family preservation or reunification;

(v) the services or referrals, if any, provided by DCFS to correct the parents' living conditions; and

(vi) the date on which any child in DCFS custody has returned or is projected to return home or a statement as to why return home is not the goal for the child.

(e) Where, during the case review, DCFS sets a date for the return home of a child in its custody, the department shall cause an examination to be made of such case within 30 days after that date if the child is not, in fact, returned home and to report such results to the monitor.

REPORTING AND MONITORING

14. The court shall appoint an impartial monitor who shall receive reports from defendant and make recommendations concerning the implementation of this Consent Order for a period of four years from July 1, 1991. The parties shall agree upon the identity of the monitor by January 30, 1991. In the event the parties cannot agree, each party shall submit the name of one person together with that person's qualifications to the court, and the court shall select one of the names. Defendant shall pay reasonable compensation to the monitor. Defendant shall cooperate fully with the monitor.

15. The monitor together with plaintiffs and defendant on or before March 30th, 1991 shall devise procedures for gathering on a semi-annual basis beginning January 1, 1992 and concluding on July 1, 1995, reliable and valid information necessary to measure and ensure compliance with the terms of this Decree. Such procedures will be designed to provide information on at least the following:

(a) whether defendant is properly determining who is and is not a class member;

(b) whether defendant is providing timely and sufficient cash assistance to eligible class members;

(c) whether defendant is making reasonable efforts to prevent removal and to reunify families of class members by the provision of hard services as defined in Paragraphs 1 and 4;

(d) the status of defendant's efforts to implement and utilize the guidelines mandated by Paragraph 9(c);

(e) whether DCFS workers and case reviewers are sufficiently trained on the policies, procedures and rules related to the implementation of this Decree;

(f) whether the policies, procedures and rules related to the terms of this Decree are being properly applied and enforced through the Administrative Case Review process and the review provided in Paragraph 13(b) including whether children who are to be returned home by a set date have been returned home, and if not, whether the failure to return such children home results from non-compliance with the terms of this decree.

(g) whether class members are afforded the full notice and appeal rights provided by this Decree;

(h) whether defendant is making good faith efforts to reach necessary interagency agreements and to maximize funding and resources for hard services to class members;

(i) whether DCFS is taking all necessary steps to maximize payment of DPA benefits to eligible persons;

(j) whether defendant's risk assessment practices and policies are consistent with the terms of this Decree;

16. Within 60 days after receipt of the semi-annual information described under Paragraph 15, the monitor shall submit to the parties and the court a report regarding compliance with the terms of this decree, including recommendations to bring DCFS into compliance should the monitor find that defendant is not complying with this Decree. Any such recommendation shall be considered by defendant in developing a plan to comply with the terms of this

Decree, which plan shall be negotiated with plaintiffs' counsel, with the assistance of the monitor.

17. For the quarters ending July 1 and October 1, 1991, and January 1 and April 1, 1992, and thereafter until July 1, 1995 as the monitor shall determine, the defendant shall provide the information it maintains under paragraph 5(b) of this Consent Order to the monitor and plaintiffs' counsel. The information shall be provided within 30 days after the close of the relevant reporting period.

18. Within 30 days after securing interagency agreements under paragraphs 6 or 7 of this Consent Order or contracts for services under paragraph 7, or renewals thereof, defendant shall provide copies thereof to plaintiffs' counsel and the monitor. Within 30 days after a non-renewal, amendment, or rescission of any such contract or agreement, defendant shall provide notice and copies thereof to plaintiffs' counsel and the monitor.

19. Defendant has agreed to voluntarily dismiss appeal No. 90-2337 upon entry of this Consent Order.

20. This court retains jurisdiction over this case to enforce compliance with this order or the recommendations of the monitor. Plaintiffs may file a motion with this court at any time to seek compliance with the provisions of this order or the recommendations of the monitor, provided that, to the extent such a motion is based upon a report or recommendation of the monitor under Paragraph 16, no motion shall be filed until plaintiffs have made attempts to negotiate the development and implementation of a

compliance plan with defendant, with the assistance of the monitor, as set forth under Paragraph 16.

21. Defendant may file a motion with this court at any time seeking modification of the terms of this Decree if factual or legal circumstances materially change, experience with the administration of the Decree shows the need for modification in order to more effectively accomplish the goals of this Decree, it is no longer equitable that the Decree should have prospective effect, or such modification is necessary due to the hardship caused defendant by the Decree because of new and unforeseen conditions. Any decision by the court allowing or denying such a modification shall be made by weighing the interests of the class members in the immediate and strict enforcement of the terms of the Decree against the interests and harm to defendant without the proposed modification, and against the public interest.

22. Plaintiffs are entitled to their costs and reasonable attorneys' fees, although defendant reserves the right to contest the amount of those costs and fees. Plaintiffs may file an application for attorneys' fees within the time provided in Rule 46 of the General Rules of this court. Plaintiffs may file a bill of costs within 90 days from the entry of this order or within such further time as the court may allow.

23. The provisions of this Consent Decree shall constitute a complete resolution of the claims in this action as to the class certified herein.

ENTER:

UNITED STATES DISTRICT JUDGE

Dated: 3/11/71

APPROVED:

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for such return