

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|-----------------------|---|--------------------------|
| C.H., <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | No. 1:09-CV-1574 SEB-DML |
| |) | |
| |) | |
| JAMES W. PAYNE, |) | |
| |) | |
| Defendant. |) | |

Plaintiffs’ Motion to Approve Form and Manner of Notice to the Class and Motion to Set Case for Fairness Hearing

Come now plaintiffs, by counsel, and say that:

1. On this date the parties have filed their Stipulation to Fully Settle Action Following Notice to the Class and Subject to Class Approval and Court Order Pursuant to Rule 23 of the Federal Rules of Civil Procedure.
2. This Stipulation seeks to settle a class action and, accordingly, class notice must be given pursuant to Rule 23(e) of the Federal Rules of Civil Procedure so that this Court may determine if the settlement is fair, adequate and appropriate.
3. Attached to this Motion is a proposed form of notice.
4. The undersigned counsel and counsel for defendant have agreed that the notice is appropriate and should be given in the following manner:
 - posted notice in all offices of the Department of Child Services
 - in newspapers of general circulation in Indianapolis, Fort Wayne, Evansville, Gary, New Albany and Richmond
5. Plaintiffs’ counsel will report back no earlier than 30 days after the notice is initiated as to any comments from the class.

6. It would therefore be appropriate to set this matter for a fairness hearing in late January of 2011.

WHEREFORE, plaintiffs request that the Court approve the attached notice as well as the proposed manner of providing the notice, and for all other proper relief.

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/s/ Gavin M. Rose
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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 2010, a copy of the foregoing was filed electronically with the Clerk of this Court. The parties may access this filing through the Court's system:

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Attorney at Law

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| JAMES W. PAYNE, |) | |
| |) | |
| Defendant. |) | |

ORDER

Come now plaintiffs, having filed their Motion to Approve Form and Manner of Notice to the Class and Motion to Set Case for Fairness Hearing, and the Court having reviewed the Motion, and being duly advised, finds that good cause exists to grant the Motion, and,

IT IS THEREFORE ORDERED that the class notice attached the Motion shall be given to the class as follows:

-Posted notice in all offices of the Department of Child Services.

-In newspapers of general circulation in Indianapolis, Fort Wayne, Evansville, Gary, New Albany and Richmond.

IT IS FURTHER ORDERED that no earlier than 30 days following the initial posting and publication of the notice, plaintiffs’ attorneys shall file their report with this Court as to the results of the class notice, and,

IT IS FURTHER ORDERED that this case is set for a fairness hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure on _____, 2011 at _____ M. in Room 216, United States Courthouse, 46 E. Ohio Street, Indianapolis, Indiana.

Date

Judge, United States District Court

cc:

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To: All foster parents and foster children receiving foster care maintenance directly from the Indiana Department of Child Services and all adoptive parents, and their children, who were receiving adoption assistance payments that were reduced in January of 2010

In December of 2009, we filed a lawsuit against the Department of Child Services challenging the planned reduction in foster care maintenance payments and adoption assistance payments that were scheduled to go into effect in January of 2010. The lawsuit is filed in federal court in Indianapolis and is entitled *C.H., et al. v. James W. Payne*, No. 1:10-cv-381. The case was certified as a class action with four classes, which means that the individuals who filed the case represent not only themselves but all others like them in the classes. The classes are defined as:

Class A-

all foster parents who are receiving, or will receive, foster care maintenance payments directly from the Indiana Department of Child Services pursuant to 42 U.S.C. § 672.

Class B –

all children in foster care, or who will be in foster care, for whom foster care maintenance payments are being made, or will be made, directly from the Indiana Department of Child Services pursuant to 42 U.S.C. § 672.

Class C-

all adoptive parents who are receiving adoption assistance payments through the Indiana Department of Child Services pursuant to 42 U.S.C. § 673, and whose payments were reduced by 10% as of January 1, 2010.

Class D-

all adoptive children for whom adoption assistance payments are being made through the Indiana Department of Child Services pursuant to 42 U.S.C. § 673, and whose payments were reduced by 10% as of January 1, 2010.

In January, the Court issued a preliminary injunction that prevented any cut in the foster care or adoption payments. This is a temporary order in place until the case is fully resolved. However, rather than continue with the case, we have reached a settlement that resolves the case. Because this is a class action, court rules require that class members be notified of the settlement and be given an opportunity to comment on it. We have summarized the settlement below and at the end of this memo we have set out how you can comment on it if you wish to do so.

Under the settlement the following terms apply to foster parents and foster children receiving payments directly from the Department of Child Services (DCS).

1) DCS agrees that it will cease its efforts to reduce the foster care payments and will continue to pay at least \$25 a day until it establishes a new policy. One of the criticisms in our lawsuit was that DCS had no clear method by which it was establishing the new rates. It is currently establishing a new method to compute the costs of the items that are to be included in foster care maintenance payments. It anticipates introducing these new rates on or before January 1, 2011.

2) It is entirely possible that the new rates that the DCS will introduce in the future may be lower than the current rates. By entering into this settlement we are not waiving our right to bring a new lawsuit to challenge these rates.

Under the settlement the following terms apply to adoptive parents and their children whose adoption assistance payments were scheduled to be reduced on January 1, 2010.

1) DCS will continue to pay all monthly adoption assistance payments that were being paid as of December 31, 2009. This includes payments being made from both Title IV-E and State funds. These payments will not be reduced without the agreement of the adoptive parents.

2) DCS will no longer rely on any practice or policy that allows it to set a maximum amount for the adoption assistance payments of 75% of the foster care maintenance payments.

3) However, federal law provides that the adoption assistance payments made under Title IV-E cannot be greater than the foster care payments. Therefore, if foster care payments are reduced in the future, this may have an effect on the adoption payment, depending on the new foster care rate.

4) If the adoption assistance payment is less than the foster care payment, you have the right to request that the adoption amount be raised if you can show it is justified by a change in circumstances.

After we won the preliminary injunction DCS started an appeal of the case to the appeals court in Chicago that is the appellate court over Indiana. DCS will dismiss its appeal of our case once the settlement is approved. And, once the settlement is approved we will dismiss this case with prejudice. This means that no class member will be able to file it again. However, nothing stops you, or the attorneys, from filing a new case if foster care payments and adoption assistance payments are reduced in the future.

The settlement also provides that we are to be paid attorneys' fees and costs in this case of \$104,811.92. This is paid by the DCS. Our services are free to our clients. The fees go to the not-for-profit organization that employs us.

As we indicated above, under the rules governing class actions, the Court cannot approve the proposed settlement without giving you notice and an opportunity to respond. Then the

Court must determine that the proposed settlement is fair, reasonable, and adequate. This is the notice to the class. No fewer than thirty (30) days after notice is given, we will inform the Court of any comments by class members so that the Court can make the determination of fairness or not as required by the federal rules.

Therefore, if you have an opinion about the proposed settlement, please mail your comments at the earliest opportunity to us at the address below. You may also call us or e-mail us as well. We would be happy to send any of your written comments to the Judge. If you want me to do this, please put in your letter or e-mail the following language: "I authorize you to give the Court a copy of this letter including my actual name." If you do not do this we will not give the Court a copy of the letter and we will not disclose your actual name. We will, however, summarize all comments that are made. But, unless you tell us specifically otherwise, we will keep all your comments anonymous.

Thank you very much.

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