

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



ERRATA

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: CORRECTION TO ALL COUNTY LETTER NO. 98-87

This replaces the Superior Court Order attached to All County Letter 98-87. There were several errors due to scanning, which resulted in typographical errors.

KENNETH E. MARTONE
Clerk of the Superior Court

JUN 10 1998

By: A. DEWHUUST, Deputy

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SUPERIOR COURT OF CALIFORNIA
SAN DIEGO COUNTY

DOSSIE M. GARRETT and DANIEL A.)
GARRETT, by his guardian ad)
litem DOSSIE M. GARRETT,)
Plaintiffs-Petitioners,)
v.)
ELOISE ANDERSON, Director,)
California Department of)
Social Services, and)
CALIFORNIA DEPARTMENT OF)
SOCIAL SERVICES,)
Defendants-Respondents.)

CASE NO. 712208

STIPULATION FOR ENTRY OF
FINAL JUDGMENT AND JUDGMENT

Dept: 43
Judge: Hon. J. Michael Bollman
Filed: July 9, 1997
Trial: June 12, 1998

Plaintiffs-Petitioners Dossie M. Garrett and Daniel A. Garrett by his guardian ad litem Dossie M. Garrett through their attorney Charles Wolfinger, and defendants-respondents Eloise Anderson, in her capacity as Director of the California Department of Social Services and the California Department of Social Services (collectively "Social Services"), by their attorneys Daniel E. Lungren, Attorney General of the State of California, by Deputy Donald P. Cole, have met and conferred concerning the issues presented by this lawsuit. To avoid the expense and uncertainty of

1 future litigation, the parties have agreed to settle the matter in
2 dispute between them.

3 In the interests of a prompt and final settlement,
4 consistent with the public interest and responsibilities of Social
5 Services,

6 THE PARTIES STIPULATE AS FOLLOWS:

7 1. The parties have reached a mutually acceptable
8 resolution of their dispute and agree to entry of judgment against
9 Social Services. This judgment shall order a permanent injunction
10 against Social Services that may be modified by any lawful means,
11 including:

12 A) Noticed motion or

13 B) In the case in which a statutory or regulatory
14 change would operate to change the injunction, Social Services
15 shall give 30 days written notice to Charles Wolfinger at his last
16 address of record in this matter before such changes are
17 implemented.

18 2. No term of this agreement shall be construed as an
19 adjudication or admission of fact or law.

20 3. The court may issue a mandatory injunction against
21 defendants-respondents Social Services that no later than 120 days
22 after service of a conformed copy of this judgment on counsel of
23 record for Social Services, Social Services will issue an All
24 County Letter instructing counties about the procedures for
25 assessing whether a minor eligible for In-Home Supportive Services
26 (IHSS) needs protective supervision, which shall include all the
27 following points, but not necessarily in the exact language, with
28

1 appropriate citations to the Welfare and Institutions Code ("WIC")
2 and Manual of Policies and Procedures ("MPP"):

3 A) A county must assess mental functioning of all
4 IHSS eligible minors including by taking the following steps:

5 (1) Assess an IHSS eligible minor for a mental
6 impairment. (WIC §§ 12300, subd. (d)(4), 12301.1, 12309, subd.
7 (b)(1)(2)(C); MPP §§ 30-756.1, 765.2; 761.261.)

8 (2) Request the parent or guardian to obtain
9 available information and documentation about the existence of a
10 minor's mental impairment, including about whether a minor is SSI
11 eligible based on mental impairment or eligible for regional center
12 services based on mental retardation, autism or a condition like
13 mental retardation or needs services like someone with mental
14 retardation, and then review such information and documentation.
15 (MPP §§ 30-756.31, 756.32.) A county is not required to
16 independently obtain such information and documentation, but must
17 ask the parent or guardian to do so.

18 (3) For minors with some mental impairment, assess
19 mental functioning as provided for in the regulations.
20 (MPP §§ 30-756.1, 756.2.)

21 (4) A county may not automatically assign a "1" to
22 mental functioning for a minor of any age; mental functioning must
23 be reviewed based on an individualized evaluation. (WIC §§ 12301,
24 subd. (a), 12301.1; MPP § 30-756.372.)

25 B) A county must advise parents of a minor with a
26 mental impairment of the conditions for receiving protective
27 supervision including by taking the following steps:

1 (1) Do not presume that parents will provide
2 otherwise needed services voluntarily. (MPP § 30-763.622.)

3 (2) Advise parents of the availability of
4 protective supervision; parents do not have to specifically request
5 it. (WIC §§ 10061, 12301.1, 12309, subd. (c) (1); MPP §§ 30-760.21,
6 760.23, 760.24.)

7 C) A county must assess the minor's need for
8 protective supervision if minor has a mental impairment including
9 by taking the following steps:

10 (1) Assess each minor with a mental impairment for
11 protective supervision based on individual need. (WIC §§ 12300,
12 subd. (d) (4), 12301.1, 12309, subd. (b) (1), (2) (C); MPP §§ 30-
13 756.1, 756.2, 761.261.)

14 (2) Request the parent or guardian to obtain
15 available information and documentation about a minor's mental
16 impairment, including other agency records like those from regional
17 centers with the written consent of parents or appropriate persons,
18 and then review such information and documentation. (MPP § 30-
19 761.26.) A county is not required to independently obtain such
20 information and documentation, but must ask the parent or guardian
21 to do so.

22 (3) Determine whether a child needs more
23 supervision because of his mental impairment than a child of the
24 same age without such an impairment. (WIC § 12300, subd. (d) (4).)

25 (4) A county may not deny a minor protective
26 supervision based solely on age. (WIC § 12301.1.)

27 (5) A county may not deny a minor protective
28 supervision based solely on the fact that the minor has had no

1 injuries at home due to the mental impairment so long as the minor
2 has the potential for injury by having the physical ability to move
3 about the house (not bedridden). (WIC § 12300; MPP § 30-763.1.)

4 (6) A county may not deny a minor protective
5 supervision solely because a parent leaves the child alone some
6 fixed period of time, like five minutes. (§ 12301.1.)

7 4. Social Services will set aside the Director's Alternate
8 Decision, dated November 13, 1996, In the Matter of Hearing
9 #96208113, for Claimant Dossie M. Garrett, issue a new decision
10 consistent with the terms stipulated above, finding Daniel A.
11 Garrett eligible for protective supervision retroactive to
12 April 10, 1996 and pay plaintiff Dossie M. Garrett retroactive IHSS
13 with prejudgment interest from April 10, 1996 through November 1,
14 1997.

15 5. Plaintiffs-petitioners' counsel, Charles Wolfinger, is
16 entitled to reasonable attorney fees and costs, the amount to be
17 agreed on or determined after a noticed motion filed within 60 days
18 from the date of entry of judgment.

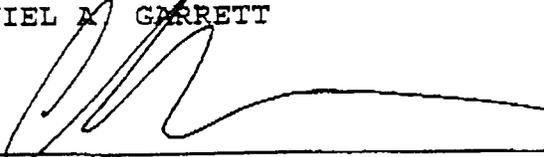
19 FOR PLAINTIFFS-PETITIONERS

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21 Dated: 6/8/98



DOSSIE M. GARRETT, Plaintiff and
Guardian ad Litem for Plaintiff
DANIEL A. GARRETT

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25 Dated: 6/10/98



CHARLES WOLFINGER
Attorney for Plaintiffs-Petitioners

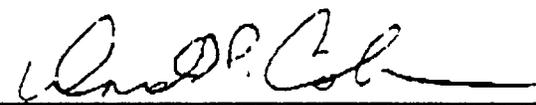
FOR DEFENDANTS-RESPONDENTS

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3 Dated: June 10, 1998


LAWRENCE B. BOLTON
Deputy Director, Legal Division
Department of Social Services

6 DANIEL E. LUNGREN, Attorney General
of the State of California
7 JOHN H. SANDERS, Supervising
8 Deputy Attorney General

9
10 Dated: 6-11-98


DONALD P. COLE, Deputy
11 Attorney General
12 Attorneys for Defendants-Respondents
13 Eloise Anderson, Director, and
California Department of Social
Services

14 JUDGMENT

15 Having read and considered the foregoing terms, THIS COURT
16 HEREBY ORDERS that the above stipulation of the parties is the
17 final judgment of the court.

18
19 Dated:

JUN 10 1998

J. MICHAEL BOLLMAN
HON. J. MICHAEL BOLLMAN, JUDGE
San Diego County Superior Court