

ARBITRATION BETWEEN

SEIU LOCAL 925, VICTORIA PARKER, GRIEVANT

AND

STATE OF WASHINGTON

Opinion and Award
Richard W. Croll, Arbitrator
AAA Case No. 75 390 00237 08
April 9, 2009

PROCEDURE

This grievance was filed by SEIU Local 925 (Union) on the behalf of Victoria Parker, (Grievant). It was filed under the Agreement¹ between the Union and the State of Washington (State). The grievance alleges that the Grievant was denied a payment of money due her as a state subsidized child care worker.

The parties were unable to resolve this grievance and it was processed to arbitration under the terms of the Agreement, Article 7. The parties requested arbitration through the American Arbitration Association (AAA) and the grievance will be arbitrated under the rules of the AAA and the terms of the Agreement. The Arbitrator was properly appointed by the parties under the above rules.

A hearing was convened in the offices of the State Attorney General at 1019 Pacific Ave., Third Floor, Tacoma, WA, 98401, on January 22, 2009, and the hearing was concluded on that date. The parties stipulated that the grievance was properly before the Arbitrator for his opinion and award. The parties were allowed a full opportunity at the hearing to present evidence, examine and cross examine witnesses and to make argument. A complete record of the hearing was taken by Amy Patricia Rostad of Lake Washington Reporting and Legal Video. The parties elected to file written arguments and they were received on March 10, 2009 at which date the Arbitrator

¹ This is the Parties first contract (July 1, 2007 through June 30, 2009) and this is the first grievance that has gone to the arbitration step.

declared the hearing adjourned. The Arbitrator's award is to be postmarked by April 9, 2009.

ISSUE

Did the State unilaterally and without required contractual notice terminate the special - needs portion of the daily care rate for two children in Victoria Parker's care for December, 2007?

If the contract was violated, should the State pay Ms. Parker \$7,920.00 for the month of December, 2007?

APPEARANCES

For the State: Laura L. Wulf
7141 Clearwater Drive SW
Po Box 40144
Olympia, WA 98504

For the Union: Antonia K. Bohan
SEIU Local 925
2812 Lombard Ave, Suite 309
Everett, WA 98201

Also present: Victoria Parker, Grievant
Jackie Marks, OFM/LRO
Frances Bailey
Paige Lemcke, Paralegal
Robert E. Walsh, DSHS
Ingrid McKinney

EXHIBITS

- St. 1 2007 – 2009 Collective Bargaining Agreement.
- St. 2 Child Care Subsidies Handbook.
- St. 3 Letter to Ms. Parker from DSHS, 7-23-07.
- St. 4 WCCC Termination Notice Form.
- St. 5 E-mails between Mr. Walsh and Ingrid McKinney, 12/24-26/07.
- St. 6 Case Staffing Memo, 01/02/08.
- St. 7 WCCC Manual regarding Special Needs Child Care.
- St. 8 Letter from Dr. Marilyn Ahearn, 6/25/07.
- St. 9 Forms requesting added Special Needs payment, 12/27/07.
- St. 10 Letter from DSHS to Nicole, 12/27/07.
- St. 11 Letter from Melanie Summerour, 1/17/08.
- St. 12 Case notes reports from DSHS Child Care data base.
- St. 13 Complaints of Ms. Parker, 12/27/07 and 12/28/07.
- St. 14 Letter from Kim Chea to Ms. Parker, 1/30/08.
- St. 15 Step 2 Grievances, 2/15/08.
- St. 16 Response to Step 2 Grievance, 3/26/08.
- St. 17 Step 3 Grievance, 4/04/08.
- St. 18 Response to Step 3 Grievance, 5/12/08.
- St. 19 Letter from Antonia Bohan to Jackie Marks, 6/12/08.
- St. 20 WAC 170-290-0190-0230.
- St. 21 Child Care End Date Reminder, 11/28/07.
- St. 22 Memo of Kathryn Grant-Davis, 1/03/08.
- Un. 1 Child Care End Date Reminder, 11/28/06.
- Un. 2 Case Notes Report, 11 pages, 1/23/08.
- Un. 3 Attendance Logs, Rebecca and Ashley, December, 2007, 2 pages.
- Un. 4 Complaint Investigation by Ingrid McKinney, 1/17/08.

PERTINENT CONTRACT LANGUAGE

Article 7 Grievance Procedure

7.3 Payment and Over Payment

Payment disputes (other than overpayment) shall be subject to the grievance process.

Article 10 Payment:

10.1 Timely Payment

The State shall ensure that child care Providers receive timely, regular and accurate payments for care provided. If a Provider chooses direct deposit, the payment will be processed for direct deposit the first business day of the month following the most recent month of service on the invoice, or after calling in an invoice, whichever is later. If a Provider uses Invoice Express, DSHS will process the payment the first business day of the month following the most recent month of service on the invoice, or after calling in an invoice, whichever is later.

10.2 Payment for Care Provided

Payment will be made:

1. When a Consumer has been determined eligible and has been issued an award/change letter;
2. When an eligible Licensed Provider is selected to provide care; or
3. From the date an Exempt Provider is selected to provide care, or
 - a. has completed Part 2 of the application;
 - b. has been determined not to be disqualified by the criminal or CAMIS background check;
 - c. and is selected to provide care; and
4. When the Provider actually provides care to the child; within the dates of eligibility contained in the award letter.

In the case of verbal confirmation, Providers shall request the case number shown on the award/change letter. Providers must call the Working Connections Information Phone (WCIP) number 1-866-218-3244 with the Provider number and the case number to confirm authorization.

10.3 Termination Notice

The State shall notify child care Providers of the termination of subsidy benefits for the child or the Consumer at the same time that Consumers are notified. Consumers are given ten (10) days notice prior to termination. If the Provider receives notice after the termination date, they will be paid retroactive for all care provided.

Article 11 Fees and Differentials:

11.3 Non-Standard Hours and Overtime Payment

For licensed providers, the current practice on overtime shall continue, specifically any hours over ten (10) in a day is paid at an additional half (1/2) day of pay, and the State pays an additional day of pay for care longer than fifteen (15) hours in a twenty-four (24) hour period.

Effective January 1, 2008, the State authorizes the non-standard hours payment when a child needs forty five (45) hours or more of nonstandard care per month. Non-standard hours are defined as before 6:00 a.m., after 6:00 p.m. or any hours on Saturday, Sunday or holidays. Once a Licensed Provider has reached the forty five (45) hour threshold, the State agrees to pay a non-standard hour bonus of fifty dollars (\$50) per child per month. The total cost of non-standard hours bonus will not exceed two million dollars (\$2,000,000) per biennium. The State agrees to provide information to the Union on January 1, 2009 regarding the utilization for the non-standard hours bonus.

11.4 Special Needs

The State will accept an IFP, IEP, or IHP as long as all required information is included, as defined in WAC 388.290.0230 (2) as verification of the need for special needs care/rate.

BACKGROUND

In 2006 the Legislature created a new state agency, the Department of Early Learning (DEL), whose task is to license and oversee early childhood education, including licensed child care providers. These duties were transferred from the Department of Social and Health Services (DSHS) to DEL. This contract, the first contract between the Union and the State, is administered by the DEL which reviews and licenses the Providers' child care centers and is charged with processing the Union's grievances up to step 3. at which point the State

Office of Financial Management Labor Relations Office (OFM/LRO) becomes involved.

The State program that is at the heart of this grievance is the Working Connections Child Care program (WCCC) which is administered by DSHS. This program is designed to provide child care for the parent or guardian (Consumer) who is employed but whose income qualifies him/her for reimbursed child care. The State office charged with determining whether an applicant Consumer is eligible for assistance for their child care is the DSHS. The DSHS has established a formula which reflects the geography of the State and the various age classifications of the children, *i.e.*, Regions 1 through 6, full day care and half day care and the children's ages ranging from birth to one day shy of the 12th birthday. (St. 20) Other factors are used by the State to determine whether a Consumer will receive an additional subsidy beyond the daily rate funding such as registration fees, field trip fees and special needs care.²

A review of the State bureaucratic assignments shows that DEL is charged with licensing, supervision and level 1 and 2 of the grievance chain for the Providers; DSHS is charged with determining the qualifications of a Consumer for the WCCC program and authorizes the subsidy; and in the event a grievance filed by a Provider passes

² To qualify for special needs subsidy daily rate your child must be either: 2. under nineteen and a. Have a verified physical, mental, emotional, or behavioral condition that requires a higher level of care while in the care of the licensed or certified facility; and b. Have their condition and need for higher level of care verified by an individual who is not employed by the child care facility and is either a: i. Health, mental health, education or social service professional with at least a master's degree, ii. Registered nurse. (St. 7 pp. 1&2) Pertinent portion thereof..

step 2, the OFM/LRO is involved; additionally, if the grievance is processed to arbitration, the Office of the Attorney General handles the hearing.

When a Consumer is adjudged eligible for the WCCC program the Consumer will contact a Provider to secure child care. The Provider will be authorized pay at the subsidy daily rate as provided for in the formula which was referred to above. These determinations are made by staff in DSHS Community Staff Offices (CSO's).³

DISCUSSION AND OPINION

Trail of the Case Notes, June, 2005 – December 22, 2007: The Grievant is a licensed family home child care provider. She was contacted on a daily basis by the Consumer in this matter who requested she be given an interview and placement in the Grievant's program. The Consumer had told the Grievant in the several phone calls she made to her that her daughters had problems. The Grievant was reluctant to enroll the children as she felt that they might do better in other circumstances. However, the Consumer persisted and the Grievant said that she finally decided to grant an interview hoping after the interview the Consumer would stop calling her. At the time of the interview the children, two girls, were 5 and 7 years old. During the

³ See (S 2)

interview the Grievant found the girls “*to be adorable and charming*” and “*They started immediately.*” (Tr. P. 22)

The Grievant, who had operated a daycare since 1993 and had other State subsidized children in her program at the time of this placement, demonstrated that she was knowledgeable about the State’s WCCC process. She testified as to what she needed to provide the State so that the subsidy for the children’s care would be approved; the Consumer’s State worker would contact the Grievant and be given her rates, registration fee, provider number etc. The Grievant stated that the procedure she followed for WCCC placements was when an eligible child was accepted by her in her child care program; she verbally supplied the information over the phone that was required from a Provider to qualify the eligible child. She related that the authorization would be granted verbally by phone and usually the paperwork from the State would arrive a week or so later approving the placement of the child.

The case notes showed that the initial placement and eventual State approval of the Consumer’s two children in the Provider’s program occurred toward the end of June, 2005. (Un. 2, p. 11) Within approximately two weeks the Provider contacted the State Worker and requested special needs applications for the children. (Un. 2 p.1)

January 10, 2006, the case notes show the following entry;

“I advised Victoria that I would be approving her request for \$200/wk (\$40/day) SN rate for care of Ashley. Approved SN

rates retroactively back to 10/31/05, as this was the date that verbal inquiry was made by provider.” (Un.2 p.10)

A case note entry for 07/31/06 reads as follows:

“In light of this information and the detailed information submitted by the Provider, I will approve the provider’s request for SN rate of \$40/day (for Rebecca) beginning 6/7/06 (date of verbal request fr/provider.)” (Un. 2 p.8)

The State’s case notes leading to the granting of special needs subsidies of \$40 per day for each of the children are replete with requests for special needs information from the Provider, the Consumer and sources such as a physician and the children’s school, Greater Lakes. On 11/29/06 the State’s case notes indicate that the provider requested an increase in the special need’s subsidy of \$40/day to \$50/day for the children. The State’s response was:

“...approved back to 11/1/06...” (Un. 2 p. 6)

According to the case notes the \$50/day for special needs per child was authorized for the Provider until 07/23/07 at which time the Provider contacted the State and requested another increase in special needs rate for the children’s care. The case notes indicate the Consumer was working an evening shift and she was entitled to sleep time. The case notes also stated that on those days when the children were in the Providers care, they would be with her for 17 hours per 24 hour period (to allow the Consumer sleep time) and the Provider requested a special needs increase to \$180.00 per day for each child.

The case notes state:

“(A)s both children are special needs children, and need one on one care and she⁴ needs to pay for extra help during the times the children are there. \$180.00/17hrs = \$10.58 per hr, which is under the maximum amount that can be paid per hr, for special needs rates. (A)uthorized) full time for the \$180.00 per day, per child.” (Un. 2 p. 5)

The State then sent to the Provider the Authorization for Special Needs for the children. (St. 3) This form was dated 07/23/07 and it provided for the \$180.00 per day for each child’s child care and it specifically stated that this authorization was approved for 07/01/07 through 11/31/07.

A summary of the requests for and the granting of the increases of the subsidy for the Consumer and her two children demonstrate that the practice of recognizing the children’s special needs and paying increases for their care retroactively was well established. In July 2005 the Provider requested South Pierce CSO to increase the subsidy for special needs for Ashley and Rebicca. The Provider received a phone call on 01/10/06 notifying her that Ashley was approved for a rate of \$40.00 per day and it would be retroactive to 10/31/05. In July 2006 the State notified the Provider that a rate of \$40.00 per day was approved for Rebicca retroactive to 06/07/06. In November 2006 the Provider requested an increase in the daily rate for the children (as she was having them in the daycare more hours per day) and the State responded by increasing the rate to \$50.00 per day. The Provider again requested more pay for the children’s care as they were now staying in

⁴ Provider.

daycare for up to 17 hours per day. The State then approved an increase to \$180.00 per day per child and made it retroactive to 07/01/07.

The Impact of the CSO Transfer: A further event affecting this case is that the Consumer moved sometime during the second half of 2007. Apparently, while this move still left the Consumer in Pierce County the move was from one DSHS CSO administrative unit to another; from South Pierce CSO to Lakewood CSO. (Tr. P.100) It was not established on the record when the Consumer relocated her residence; although it had to be sometime prior to December 22, 2007.⁵

It was at this juncture that the conflict was ignited between the Union and the State. The Lakewood CSO through their subsequent actions and decisions demonstrated a wholly different approach to the administration of WCCC than the South Pierce CSO, or at least they did so in this case. Staffers with the Lakewood CSO were reviewing records on an overtime assignment on December 22, 2007, when they discovered that the records in the instant case indicated the special needs authorization of \$180.00 per day had expired on November 30, 2007. They had never authorized special needs in this amount before, \$180/day, and thought there should be an investigation.

The Lead at Lakewood CSO was Mr. Walsh who e-mailed Ms. McKinney of the DEL regarding the Provider and the two SNs

⁵ Mr. Walsh testified it was on December 22, 2007, while assigned to work overtime that he first became aware of the authorization (St. 3) which forms the basis of this dispute. (Tr. P.101)

children. (St. 6) Mr. Walsh indicated the SN subsidy would not be invoiced to the Provider for anytime after November 30, 2007, and he requested a meeting with Ms. McKinney. As it was the holiday season the meeting was held on January 2, 2008. It was attended by Ms. Lazareschi, CSO Lakewood, Mr. Walsh, CSO Lakewood, Ms. Jenks, DEL Lakewood and Ms. McKinney, DEL Lakewood. On December 27, 2008, the Provider filed a written complaint against Mr. Walsh, she also filed a grievance on December 28th regarding the discontinuation of the SN subsidy. The Provider's grievance stated:

"This letter is to inform you that I did not receive ANY notice that the special needs child care I provide was ending. I want to file an immediate appeal and have the special needs rates instituted again and go back retroactive for the month of December 2007 and ongoing." (St. 13 p. 2)

It was established in this initial grievance filing that the Provider was grieving the lack of notice prior to the discontinuation of the SN subsidies for Ashley and Rebicca; further, it was established the period of time she was discussing was for at least the month of December 2007. The Union neither disputes the State's right to determine authorization of a Consumer for subsidy, nor do they dispute that the State can determine qualifications for special needs. The Union's argument is that under this **first** contract with the Union, specifically referring to Section 10.3, the State cannot discontinue to pay for services for which they have contracted without an appropriate notice.

Much of the State's case and subsequently their presentation in this matter was focused on whether the Consumer's children were in fact qualified for special needs. Reviewing the record that has been

introduced into this hearing provides convincing evidence that this was a decision that had already been made; the decisions of the South Pierce CSO (the State) establish that the Consumer and her children were both qualified and authorized for special needs. The case notes spell out in some detail how requests were made by the Provider and the Consumer and the investigation of those requests. The actions of the Provider and the Consumer were thoroughly explained in the case notes. When there was a request of the Provider or Consumer for information or reports from other sources, their requests for special needs or other subsidies were not approved until after the requested information was supplied to the State. The case worker at the Lakewood CSO indicated (in his case notes for December 28, 2007) that he could not find electronic records to support the previous subsidy requests for special needs for the children, notwithstanding that the case notes repeatedly referred to fact that supporting information had been requested from the Consumer and the Provider and had previously been supplied to the State.⁶ (Un. 2 pp. 2-3)

The objection to the Union's attempt to introduce hearsay testimony at the hearing, *i.e.*, that the Consumer had said documents were missing from the Lakewood CSO file, was sustained. However, the case notes provide the following information:

“ (Consumer) came in with the two children.. This is not a new SNs case. The professional's statements? In file do identify that the children do have difficulties and behavior problems needing attention, I did NOT find documentation that clearly stated

⁶ Based on the above comment from the case notes, there was information that had been supplied to the State and it appears that information, which is documented in the case notes, did not arrive at the Lakewood CSO.

what were child's 'additional' needs when in daycare. I showed the documentation to (Consumer) and she agreed that there were missing items from the case.” (St. 12 p. 9)

This note indicates nothing more than the fact that the Lakewood CSO file was missing documentation, which is not under the Consumer's control. The case notes, dating from 06/27/05 to 01/23/08, contain references both about the children's diagnoses and their treatment plans while the children were with the Grievant. An entry dated 1/10/06 states:

“Documentation shows that Ashley has multiple severe behavior issues which require almost constant attention and intervention both at home and in child care.

‘Ashley's tx plan includes many interventions/behavior strategies that must be carried over into the childcare setting in order to be effective at modifying her behavior.’

‘(Grievant) is requesting additional SN rate of \$200/week. This is \$40/day, which, at 22 FT days equals \$880/month. This amount is approximately equal to the amount for two FT slots and the Provider has decreased her client base by more than two time slots.’

‘Approved SN rates retroactively back to 10/31/05, as this is the date that the verbal inquiry was made by provider.’ (Un. 2 p. 10)

An entry in the case notes concerning Rebicca dated 07/31/06 contained the following:

“In light of this information (from Greater Lakes School) and the detailed information submitted by the provider, I will approve the provider's request for SN rate of \$40/day

beginning on 6/7/06 (date of verbal request fr/provider.”(Un. 2 p. 8)

Greater Lakes School on 11/12/06 supplied the following Information to the South Pierce CSO:

“...from greater lakes – she stated that child has suicide thoughts and that adult supervision needs be present at all time. Also that she is aggressive to sister and can harm her. Also has self harm and aggression to others when she becomes angry Stated that she needs adult supervision.” (Un 2 p. 7)

On 11/29/06 the South Pierce CSO reviewed the Provider’s record and decided the increase to \$50.00 a day she had requested was warranted and authorized the increase to \$250.00 a week retroactive to 11/01/06. (Un. 2 p. 6) Between each of these raises in the special needs subsidies for the children there are a number of entries in the case notes requesting reports and back-up. On 07/23/07 the Provider requested that her rate be increased to \$180.00 per day when the children were at her daycare as she would have them for 17 hours per day. The South Pierce decision in this matter was:

“ as both children are special needs children, and need one on one care and she needs to pay for extra help during the time the children are there, \$180.00/17hrs = \$10.58 per hr, which is under the maximum amount that can be paid per hr for special needs rates. authrized full time for the \$180.00 per day, per child.” (S 12 p. 7)

The December and January actions of both Lakewood CSO, and Lakewood DEL regarding this case, other than the continuation of the basic child care subsidy, were made as though there was absolutely no past history of this case in the State’s memory. It may have been true that Mr. Walsh did not find the electronic records he said were needed

to continue the SN subsidy, but to treat this SN request de novo, to ask the Provider and the Consumer for new and additional documentation to support the childcare special needs of these two children,⁷ is basically accusing them of some sort of fraud. There is no record that Lakewood CSO had any communication with South Pierce CSO about this case. While the names of the various CSO workers are encoded, the staff at Lakewood CSO surely knew who they were and if they did not, they had a responsibility to find out and contact them. There is no indication that anyone at South Pierce CSO was contacted about this case by anyone at the Lakewood CSO. It seems that if the personnel at Lakewood CSO were mystified by the granting of a subsidy of \$180.00 per child by the staff at South Pierce CSO, the very first place to have started an investigation would have been South Pierce CSO.

It is apparent from a review of the States case notes reports (Un. 2) that the Provider and the Consumer were not attempting to do anything inappropriate in this matter; they were working together to provide care for two children who obviously had very serious developmental problems. Time after time they were requested to provide documentation and information on the children, and it appears that they fulfilled each and every request. The staffing meeting of the Lakewood DEL and Lakewood CSO on 02/01/08 developed the following:

⁷ See St. 6

“ISSUE: Provider(#, Grievant) has been paid over \$57,000.00 for regular and Special Needs (SN) child care during 2007. The latest period of 7-1-07 through 11-30-07 resulted in a payment of \$42,151.20 of which SNs amounted to \$35,500.00. The Provider is requesting an additional \$900 per week per child to provide overnight SNs care.’ (St. 6 p. 1)

Prior to the above meeting Ms. McKinney created a situation whereby she could legitimately investigate the Provider in this case. She filed charges against the Provider with Child Protective Services regarding several areas of Provider’s childcare. However, it appears from the issue above, the only concern being discussed at the meeting was the amount of money being spent for the children’s special needs. But regardless, Ms. McKinney filed charges against the Provider with CPS on the 31st of December, 2007. (Tr. pp. 163 – 164) She wrote in her report on the investigation that the charges gave her the authority to investigate the Provider’s program which she did on January 3, 2008. (Un. 4) The report listed the following areas of investigation: “Facility Environment, Staff, Supervision, Nutrition and Subsidies.” The report issued on January 17, 2008, stated that all charges were found to be “Not Valid.”⁸ (Un. 4) Ms. McKinney testified that she did not recall where she received the information that led to the charges she filed with CPS on 12/31/07, and investigated on 01/03/08 and filed a report on dated 01/17/08. (Tr. p. 171)⁹

⁸ The Provider explained that “Not Valid” meant that the complaints against her were not true.

⁹ The above investigative activities by the State are misdirected. If the State was upset with the amount of money they were paying the Provider, then they should have investigated the people responsible for authorizing the funds, the South Pierce CSO. It does not appear that anyone at the Lakewood CSO contacted anyone other than the DEL the Provider and the Consumer. It is confusing that the only person investigated was the Provider, her only access to funds is to request them from the State which she did. Someone in the South Pierce CSO authorized those subsidies. Mr. Walsh’s comments about how he had never authorized that much or even seen that amount for special needs are irrelevant. The fact is that the

The children's disabilities: What did the State know about the special needs of the two children and when did they know it? Dr. Marilyn Ahearn, MD, responding on 6/26/2007 to requests for information about the children described both of them as having severe and chronic behavior problems and noted that both are being seen regularly at Greater Lakes Mental Health Center. As to Rebicca she said her diagnoses are bipolar disorder, intermittent explosive disorder, ADHD and oppositional defiant disorder as well as a learning disability. (St. 8) Both the parent and the provider supplied Lakewood CSO (Rec. Dec 28, 2007) with extensive multi page descriptions of the children, their behavior, the childcare setting and how they were working with the children. (St. 9)

Mary Bridge Children's Hospital and Health Center on 1/17/2008 responded to requests from the State as follows:

"Ashley's diagnoses are 314.01 ADHD, 296.89 Bipolar D/OII With psychotic features, and 312.14 Intermittent Explosive disorder.

'Rebicca's diagnoses are 314.01 ADHD, 296.89 Bipolar Disorder type II and 312.14 Intermittent Explosive Disorder.'" (St. 11 p. 1)

As was mentioned previously the State's case notes, which run from June 2005 through early 2008, contain many references to the children's various diagnoses, treatments and problems. Some such as they harmed themselves, kleptomania, lying, stealing, running away,

South Pierce CSO staffer wrote that the \$180.00 per day was less than the maximum hourly rate and that remark is uncontested.

etc. were reported by the Provider and the mental health professionals. The State argues that the Provider and the Consumer had not established a case that there were special needs that needed to be funded. This is just not true, over the years the facts were reviewed by the State's staff and they granted the special needs because they were felt they were justified and needed. For the State to refuse to fund these diagnoses due only to a change in administrative offices, without intensive investigation is inappropriate.

What does the Contract say? The State argues that in Section 10.3 of the Contract the words "subsidy benefits" refer only to the basic benefits. The state under WCCC pays basic benefits, registration, field trips, and special needs for qualified consumers. The State takes the position in this case that it did not need to "notify" the Provider before discontinuing payments for the children's special needs because the Provider knew in July that special needs ended automatically on November 30th. (St. 3) The Union's position is that the ten day notification contained in 10.3. refers to any subsidy.

The State offered WCCC Termination Notice (St. 4) and argued that this would be the notice the Provider would receive if the benefit was ending. It is apparent that this notification was intended to be for the Consumer, not the Provider. It speaks to the consumer; all of the questions are aimed at the Consumer. The Provider testified she had never seen this form before. In contrast The Child Care End Date Reminder is addressed to the Provider. (St. 21) This document, which was mailed on November 28, 2007, indicates that child care payments

to the Provider end on 12/31/2007 and it provides ample warning that the subsidy benefits are ending on that date. The case notes are full of entries that explain that the Provider often was not paid the correct amount at the appropriate time; the case notes usually relate that the missing payment would be made up in a supplemental payment. Several times it is recorded in the case notes that the Provider was given a verbal okay for a payment and the paperwork might not arrive for many days some times a week or more. This was the helpful service and attitude the Consumer and Provider had learned to expect at South Pierce CSO, but this service and attitude was not repeated at Lakewood CSO.

There are other persuasive factors that convince one that the notification procedures in Section 10.3 pertain to both basic and special needs subsidies. Not the least of these factors is the language of 10.3, "subsidy benefits". It unambiguously states, the plural "benefits," which plainly cover both basic care and special needs care. The language of 10.3 is clear and convincing.

The Provider was authorized for \$180.00 per day per child on July 23, 2007; the CSO staffer who approved this rate stated it was actually "less than" the State's maximum special needs rate of \$15.89 per hour. (St. 7 p.8) In the authorization sent to the Provider (St. 3) there is no delineation of the subsidy, it is simply \$180.00 per day for each child. The subsidies for registration and field trips are not involved in this dispute as they are usually one time payments and end with that payment. However, the combined basic and special needs payments

can go on for several months and, as was recorded in the case notes, they can be renewed, often retroactively.

The reasonableness of the State's action: There appears to be some factors that may have been out of the State's control regarding the termination of this subsidy, perhaps there were some things that fell through the cracks, so to speak. There is no record of the date of the transfer of this case from South Pierce CSO to Lakewood CSO and also no record of any communication on this case from South Pierce CSO to Lakewood CSO and visa versa. It is on the record that the Lakewood CSO did not become aware of the case until December 22, 2007, and on that date it was noted that the case was closed (Un. 2 p.4); due to the impending holidays the staff was unable to discuss the case until January 2, 2008. (St. 6 p.1) It is readily apparent from the above discussion that the contract language supports the concept that the Provider and the Consumer must receive ten day notices regarding the termination of all ongoing subsidies. Let us assume that the ten day termination notice was not sent due to the transfer of the case from one CSO to another; what, then, was the reasonable approach that should have been taken regarding the subsidy? Taking together the date of discovery of the case by Lakewood CSO, December 22, 2007, and the amount the subsidy was reduced, $\$180.00 - 90\% = \18.00 , the State reasonably should have contacted the Provider and informed her the special needs portion of the subsidy was to be discontinued on December 31, 2007, and would only be reinstated if the State felt it was appropriate. It should have been obvious to the State that by December 26 or 27, 2007, the Provider who reasonably

been working under the assumption she was to receive a full subsidy for December - had already spent the majority of her subsidy. Under the given circumstances, disregarding the contract violation, the State was acting in an unreasonable fashion to deny the payment for December 2007 at the end of December 2007.

Summary: During the time Ashley and Rebicca were in the Provider's care; the case notes, Un 2, provide a running commentary on the relationships and activities of all participants: the State, the Consumer, the Provider, and outside professionals. The first issue they reveal is that the Provider followed proper protocol and procedures. There is no doubt, from the diagnoses by the professionals, that Ashley and Rebicca had serious problems which were both emotional and behavioral. The goal of the WCCC program in this case was to assist the Consumer to be employed and to provide care for the children; in the face of very serious circumstances the goal was being achieved.

The transfer of the case from South Pierce CSO to Lakewood CSO triggered a new set of circumstances, *i.e.*, different staff, the end of both the basic subsidy and the special needs subsidy and the holidays. There is no doubt that the contract, Section 10.3, was violated when the Lakewood SCO decided to cancel the special needs portion of the Consumer's subsidy effective *retroactively to 11/30/07 without notice* to the Provider. The only termination notification the Provider received during the time frame in question was dated 11/28/07 which

said the benefits for the Consumer would be ending on 12/28/07. (S 21)

Disregarding the contract violation above, the State's action of *retroactively* discontinuing the Consumer's special needs subsidy benefits for the month of December 2007 late in that month was neither a reasonable action nor did it reflect the relationship that had been established between the parties over the years.

AWARD

The grievance is sustained. The State shall pay the Grievant, Victoria Parker, \$7,920.00 for childcare for Ashley and Rebicca that she provided in December 2007. This payment shall be made no later than fifteen (15) days after receipt of this award.

Richard W. Croll, Arbitrator

Date