

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Adoptive Family #1 and Their Daughter	:	
A., et al,	:	CASE NO.: 1:18-cv-179
	:	
Plaintiffs,	:	Judge: Susan J. Dlott
v.	:	Magistrate Judge: Karen Litkovitz
	:	
Warren County, Ohio/Warren County	:	SETTLEMENT AGREEMENT
Board of Commissioners	:	
	:	
Defendants.	:	

I. INTRODUCTION

1. This Settlement Agreement (“Agreement”) is entered into between Adoptive Family #1, et al. (“Plaintiffs”) and Defendant Warren County, Ohio Board of County Commissioners (“Defendant” or “Warren County”) and will become effective upon Court approval.
2. Through this Agreement the parties resolve all of the claims made in this action and seek to build on initiatives already commenced by Warren County through its Children’s Services Department (“WCCS”) to improve the Title IV-E Adoption Assistance program for families who adopt eligible children with special needs through WCCS.
3. Warren County denies liability and the allegations of the Plaintiffs, but agrees to the terms hereof in the spirit of cooperation and to reduce the expenses of ongoing litigation. Nothing in this Agreement shall be construed as an admission of liability.
4. The Plaintiffs challenge WCCS’s performance of its obligations to enter into Adoption Assistance agreements with the adoptive families of children determined to have special needs under the Title IV-E Adoption Assistance program. The program is meant to provide financial support to families who adopt children from the public child welfare system who have special needs that make them difficult to place for adoption. Plaintiffs allege that WCCS has failed to

comply with federal law. Defendant denies the allegations and claims it has followed federal law. Specifically, Plaintiffs allege, and Defendant denies, that in the past Warren County:

- a. Improperly required eligible children to have a diagnosis to qualify for adoption assistance payments;
- b. Improperly restricted assistance to medical needs rather than all the anticipated and ordinary needs of the child;
- c. Improperly refused to consider the family's circumstances in determining the amount of assistance including but not limited to lost wages in the family attributable to the adoption;
- d. Has not always provided accurate information to families eligible for adoption assistance.

Defendant asserts that it has complied with all federal and state law and regulations, and that it is obligated to obtain reasonable documentation of requests for federal, state and county tax dollars for adoption assistance subsidies and to negotiate based on the unique and individualized circumstances of each family.

5. Plaintiffs allege that as of the filing of this lawsuit these practices caused WCCS to provide the lowest average Adoption Assistance subsidies in the State of Ohio. WCCS denies this allegation. WCCS alleges that the subsidies were agreed to based on the circumstances of each family, the resources available to each family, and the requirements of federal and State law.
6. This Court denied a motion by Warren County for judgment on the pleadings. See Doc. 26, 40.
7. This Court also denied Warren County's motion to dismiss for failure to join the State of Ohio as a necessary party and declined to join the State of Ohio as a necessary party. See Doc. 58, 102.
8. The parties engaged in extensive discovery related to the Plaintiffs' motion to certify a class, including some discovery going to the merits of Plaintiffs' claims. Defendant has produced the extensive WCCS files on Adoptive Families #1 – 7, which consist of thousands of pages

of records. It has also produced the various policies, forms and materials related to adoption and Adoption Assistance. Plaintiffs took depositions of one WCCS adoption caseworker, the director of WCCS and the former director of WCCS. Defendant took 15 depositions. It deposed the five putative class representatives, the mother of Adoptive Family #1 and the mother and father of Adoptive Families #2 and #3. Defendant also deposed the three mothers and three fathers of declarant families #4, #5, #6, and #7. Defendant also deposed two experts, as well as the Title IV-E Unit Supervisor at the Ohio Department of Job and Family Services. The Court held an evidentiary hearing on Plaintiffs' motion to certify a class on January 22, 2019. The United States Magistrate Judge recommended class certification on February 28, 2019. See Doc. 106.

9. There has been no final ruling on the Plaintiffs' claims, but the parties have agreed to class certification and a proposed settlement in order to minimize the risks and cost of litigation. The parties have been negotiating throughout most of the time that the lawsuit has been pending. They have utilized the services of the United States Magistrate Judge and of a private mediator. The negotiations have been undertaken in good faith and at arm's length, allowing the parties to agree on the terms of this Agreement. The parties freely and voluntarily, with the advice of counsel, enter into this Agreement for that purpose.

II. CERTIFICATION OF PLAINTIFF CLASS

10. The parties agree to certification of the following class under FRCP 23 (b)(2) for the purposes of settlement:

All adoptive parents and their adopted children who, as of the date of the filing of this lawsuit and/or through the date of the fairness hearing, were eligible to receive subsidies under Title IV-E of the Adoption Assistance and Child Welfare Act and who fall under the jurisdiction of Defendant Warren County, Ohio and who receive or received less than \$250.00 in monthly adoption assistance payments.

Adoptive Families #1, #2 and #3 shall be designated as class representatives and Alphonse A. Gerhardstein, Jennifer L Branch, M. Caroline Hyatt and Barbara Thornell Ginn shall be designated to serve as class counsel.

III. REMEDIAL TERMS

11. **Adoption Assistance Criteria.** The parties agree that the attached criteria sheet (Attachment A) is an accurate summary of relevant portions of current Title IV-E Adoption Assistance eligibility and negotiation criteria based on federal and state law and regulations as understood by the parties to be effective as of the signing of this agreement. Defendant shall provide the criteria to staff and train them on its use.
12. **Adoption Assistance Negotiation Tool.** Defendant will provide a copy of the attached Adoption Assistance Negotiation Tool (Attachment B) to all staff and all families involved in negotiating Adoption Assistance amounts. Training will be provided to WCCS staff and families on its use. A copy will be posted on the WCCS website. The negotiation tool is based on federal and state law and regulations as understood by the parties to be effective at the time of this Agreement.
13. **Adoption Assistance Annual Letter.** Defendant shall use the revised annual cover letter (Attachment C) when determining annual assurance of Title IV-E eligibility, which invites families to consider renegotiating their Adoption Assistance Agreements. Training will be provided to WCCS staff on its use. The annual cover letter is based on federal and state law and regulations as understood by the parties to be effective at the time of this Agreement.
14. **Training.** Parties agree that WCCS will invite the State Department of Job and Family Services to join in a training for staff members, and make that training available to class members, any family with an Adoption Assistance Agreement, and class counsel, that will

review the Title IV-E Adoption Assistance program and the process for negotiating an amount of monthly adoption subsidy. This training shall be held within a reasonable time of the approval of the class action settlement. Parties agree that a draft of the training materials will be shared with class counsel, who will be invited to comment on the content of the training materials.

15. **Access to Files.** Subject to a protective order under which biological family member identifiers will be redacted and protected child welfare information will remain confidential for use in this case only, class counsel shall have access to all of the WCCS adoption records, including Statewide Automated Child Welfare Information System (SACWIS) activity logs, for the children who are members of the class, solely for use in assisting class members secure their rights under this agreement. Class counsel shall be permitted to communicate with members of the class to assist each member secure his/her rights under this agreement. Access to a class member family file shall be provided only after written authorization by the class member family.

16. **Notice of Right to Redetermination and Renegotiation.** For purposes of this Agreement, “Redetermination” of Adoption Assistance refers to a request for “Retroactive Adoption Assistance” and is the reconsideration of a previous Adoption Assistance Agreement. “Renegotiation” refers to the amendment of an Adoption Assistance Agreement based on newly-documented needs of the child or circumstances of the family that were not subject to the previous Adoption Assistance Agreement. Class members shall receive an agreed notice from class counsel advising them of their right to participate in the process for Redetermination and Renegotiation set out in this Agreement.

17. **Process for Redetermination of Adoption Assistance.** Each class member shall be given the

opportunity to apply for redetermination of their Adoption Assistance Agreement. Initially, each class member family and WCCS shall negotiate to seek agreement on any redetermination by cooperating, sharing information, providing documentation if reasonably necessary in that case, and making proposals in a good faith effort to resolve the request for redetermination. All positions taken by WCCS during this process will be supported by written individualized reasons that cite to the agreed criteria and/or principles governing redeterminations and relate to the facts of that family. Class members shall have the right to counsel at their own expense during this process. With written authorization from the class member family, Class counsel shall be copied on all communications to and from WCCS relating to all class member redeterminations.

18. Renegotiation may be Pursued at the Same Time as Redetermination. Initially, each class member family and WCCS shall negotiate to seek agreement on any renegotiation by cooperating, sharing information, providing reasonable documentation, and making proposals in a good faith effort to resolve the request for renegotiation. Any renegotiated amount shall take effect as of the time agreed to by the parties or based on the circumstances of the individual case. All positions taken by WCCS during this process will be supported by written individualized reasons that cite to the criteria and/or principles governing renegotiations and relate to the facts of that family. Class members shall have the right to counsel at their own expense during this process. With written authorization from the class family member, Class counsel shall be copied on all communications to and from WCCS relating to all class member renegotiations.

19. Appeal of Redetermination and Renegotiation of Adoption Assistance. If an Agreement for Retroactive Adoption Assistance (in the case of redetermination) or an Amended Adoption

Assistance Agreement (in the case of renegotiation) cannot be secured within 30 days of receipt of the written documented request by a class member seeking redetermination or renegotiation, the matter shall be resolved using the existing mediation, fair hearing, and/or judicial appeal process provided for in the Ohio Administrative Code. With written authorization from the class member family, Class counsel shall be copied on all documentation relating to mediations, fair hearings, and appeals.

20. **Determining Special Needs.** Warren County pursuant to OAC 5101:2-49-03(A)(2)(e), shall have each child evaluated as to whether severe separation and loss would occur if the child were placed in another setting due to the significant ties with the prospective adoptive parent(s), if no other criteria is met that qualifies them for a monthly adoption assistance amount.
21. **Contingencies.** The Warren County Board of County Commissioners must approve this Agreement for it to be binding on the parties. The State shall be provided a copy of this term sheet to ensure that the state will not object to paying its portion of adoption subsidies determined pursuant to the terms set out herein. The Court must approve this settlement pursuant to FRCP 23.
22. **Monitoring.** Class counsel shall monitor compliance with this Agreement for 24 months after court approval. That is, class counsel shall be permitted to secure evidence of necessary training, use of and posting of agreed documents, and other terms of this Agreement. Warren County agrees to cooperate in these efforts.
23. **Fees and Expenses.** Class counsel shall be paid one hundred thousand dollars (\$100,000) as full compensation for all past and future fees and expenses relating to this litigation, including future monitoring.

24. **Term of Agreement.** This Court shall retain jurisdiction of this Agreement pursuant to *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994), for a period of 24 months unless a shorter time or an extension is approved by the Court. The effective date of this Agreement shall be the date of the court order approving the Settlement Agreement after a fairness hearing. The lawsuit shall be dismissed with prejudice upon conclusion of the fairness hearing and Court approval of the settlement, subject only to the Court retaining jurisdiction to enforce the terms of the settlement agreement.

IV. RELEASE

25. This release shall apply to all parties to this Agreement, including all class members as defined in paragraph 10, but is not binding on families and counties not parties hereto.

26. Upon the effective date, the Plaintiff Class representatives and the Plaintiff class members shall by operation of this paragraph individually and jointly, for their heirs, executors, agents, attorneys, successors and assigns, hereby release, acquit and forever discharge Warren County, Ohio, along with its Elected Officials, Agents, Corporations, Servants and Employees and their assigns, attorneys, and successors, in their individual and official capacities, from any and all claims, demands, causes of action, rights of property, damages, costs and expenses of every kind, nature and description, whether in law or in equity, whether based on State or Federal law, whether known or unknown, which the parties may now or hereafter have against the other arising from, in connection with, as a result of or in any way pertaining to their eligibility for, receipt of, or denial of adoption assistance subsidies, except as described in this Agreement.

27. **Modification.** Should the Adoption Assistance and Child Welfare Act, or the state law and regulations effectuating that Act, be amended during the period in which this Court has

jurisdiction over this agreement, such that this Agreement is no longer in compliance with federal and state law, the Parties shall have the opportunity to modify this Agreement, subject to Court approval.

V. MISCELLANEOUS

28. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective estates, heirs, successors and assigns.
29. This Agreement, and all documents specifically incorporated and referenced herein, constitutes the entire Agreement of the parties with regard to the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by all parties hereto.
30. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
31. The titles in headings in this settlement Agreement are purely for the convenience of the reader. The parties do not intend that they be given any weight in interpreting the Agreement.
32. This Agreement shall be construed in accordance with the laws of the State of Ohio and federal law. Nothing in this Agreement shall be construed in a manner that violates current or future federal or state statutes or rules concerning Title IV-E of the Adoption Assistance and Child Welfare Act. Plaintiffs reserve the right to independently challenge any OAC state laws or rules that they believe in good faith violate federal law.
33. All information and documents which are not otherwise public records, and which are obtained in execution of this Agreement, shall be maintained confidentially by the parties and their counsel.
34. The parties agree to act in good faith in carrying out their obligations under this Agreement.
35. No one shall be retaliated against as a result of participation in this lawsuit.

36. In entering into this Agreement, the parties agree and represent that this Agreement is fair, reasonable, and adequate to protect the interests of the class.

37. This Agreement is binding upon the Defendant named in this lawsuit, the Defendant's successors in office, employees and agents, and the Plaintiffs.

38. Only the representative Plaintiffs and Defendant shall have standing to file a motion seeking enforcement of any of the terms and conditions of this Agreement.

IN WTNESS WHEREOF, the parties hereto have executed this Settlement Agreement, by the President of the Warren County Board of County Commissioners, pursuant to Resolution Number _____, dated _____, and by the representative Plaintiffs on behalf of the class as defined herein.

SIGNATURES OF PARTIES:

Shannon Jones
President, Warren County
Board of County Commissioners

Reviewed by:

Susan Walther
Director, Warren County Children Services

Approved as to form:

Kathryn M. Horvath
Assistant Prosecuting Attorney

Adoptive Family #1

Adoptive Family #2

Adoptive Family #3

Approved:

Alphonse A. Gerhardstein
Lead Class Counsel