

**IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA
JUVENILE DIVISION**

In Re: Melanie Akers

No. DP-59-10

DOB: 7/28/1994

Judge: The Honorable Mary Ann Ullman

**BRIEF OF JUVENILE LAW CENTER
AS AMICUS CURIAE IN OPPOSITION TO MOTION TO TERMINATE
SUBSIDY IN RE: M.A.**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTEREST OF AMICUS CURIAE	1
STATEMENT OF QUESTIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	3
ARGUMENT.....	5
I. M.A. is A Dependent Child Pursuant to the Juvenile Act as Amended by Act 91	5
A. Act 91 Expanded the Definition of “Child” to Include Youth Like M.A. Who Work at least 80 Hours Per Month.....	5
B. M.A. is Eligible for Extended Dependency Jurisdiction Under Act 91 and a Disposition Consistent with 42 Pa. C.S.A. § 6351.....	7
II. If A Child is Dependent, the Court Has Plenary Authority and Responsibility to Craft and Order a Disposition that Meets the Individual Child’s Needs.....	9
A. The Court’s Dispositional Authority is Plenary and Limited Only by the Child’s Needs and the Purpose of the Juvenile Act.....	9
B. The Court’s Dispositional Authority is Independent and Discretionary.....	13
C. The Court’s Dispositional Authority is Not Bound by Funding Limitations.....	14
III. Federal and State Law Provide Several Means to Fund a Dependent Youth’s Disposition, Including Direct Payments of Youth to Defray the Cost of Care.....	16
A. Independent Living Services Grant Funds can Fund Stipends such as M.A.’s.....	17

B.	State Regulations Provide Cost Sharing for Most Child Welfare Services, Including the Cost of Care Paid Through a Stipend.....	20
C.	Title IV-E Allows For Federal Reimbursement of the Cost of Care Paid as A Direct Stipend to a Youth Between Ages 18 and 21.....	21
CONCLUSION.....		24
APPENDIX		
	Order Inviting Juvenile Law Center to Submit an Amicus Brief.....	A1

TABLE OF AUTHORITIES

Federal Laws and Regulations

42 U.S.C.A. § 672.....	17, 21, 22
42 U.S.C.A. §675.....	6, 10, 22
42 U.S.C.A. § 677.....	17, 18
42 C.F.R. § 1356.60.....	22

State Law and Regulations

42 Pa. C.S.A. § 6301.....	9
42 Pa. C.S.A § 6302 (2014).....	3, 5, 6, 8
42 Pa. C.S.A § 6302 (2012).....	6
42 Pa. C. S. A. § 6351.....	9, 10
55 Pa. Code § 3130.34.....	14
55 Pa. Code § 3130.38.....	13, 14
55 Pa. Code § 3140.22.....	19, 20
62 P.S. § 704.1.....	20

Legislative Acts

H.B. 75, Sess. of 2011 (Pa. 2011).....	3, 5
Fostering Connections to Success and Increasing Adoptions Act of 2008, H.R. 422, 110th Cong. (2008).....	5

Cases

<i>In re A.T.</i> , 2013 PA Super 308 (Pa. Super. Ct. Nov. 27, 2013).....	11, 12, 13, 16
<i>In re S.J.</i> , 906 A.2d 547, 550 (Pa. Super. Ct. 2006).....	10, 11, 12, 16, 20, 21
<i>In re Lowry</i> , 484 A.2d, 383, 386 (Pa. 1984).....	13, 14
<i>In re N.E.</i> , 787 A.2d 1040, 1041 (Pa. Super. Ct. 2001)	15

In re Tameka M., 534 A.2d 782, 787 (Pa. Super.1987) *aff'd*, 580 A.2d 750 (Pa. 1990).....9

In Re Tameka M., 580 A.2d 750, 755 (Pa. 1990).....9, 10, 15

Guides and Publications

Administration on Children, Youth and Families, *Guidance on Fostering Connections To Success and Increasing Adoptions Act of 2008*.....10, 22, 23

Commonwealth of Pennsylvania Department of Public Welfare Office of Children, Youth and Families, *Youth Independent Living Services Guidelines*, Bulletin 3130-11-04 (July 8, 2011).....18, 19

Commonwealth of Pennsylvania Office of Children, Youth and Families, *FY 2013-2014 Needs Based Plan and Budget Bulletin Instructions & Appendices*.....17, 18, 19

Juvenile Law Center and Pennsylvania Partnerships for Children, *Maximizing Fostering Connections to Benefit Pennsylvania Youth* (2012).....5

Alison Mitchell & Evelyne P. Baumrucker, *Medicaid's Federal Medical Assistance Percentage (FMAP), FY2014* (2013).....22, 24

Court Documents

M.A. Budget, 10/18/2013, Exhibit 3.....9

Mot. to Terminate Subsidy, Nov. 20, 2013.....3, 4

Order, Aug. 12, 2013, Exhibit 2.....4, 8

Transcript of Record, *In re: M.A.*, No. DP-59-10 (Berks Cnty. Ct. Comm. Pleas 2013).....3, 4, 9, 12, 13, 19, 22

INTEREST OF AMICUS CURIAE

Juvenile Law Center, founded in 1975, is the oldest multi-issue public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Recognizing the critical developmental differences between youth and adults, Juvenile Law Center works to ensure that the child welfare, juvenile justice, and other public systems provide vulnerable children with the protection and services they need to become healthy and productive adults. Core to Juvenile Law Center's work is ensuring that federal and Pennsylvania laws extending protections and supports to dependent youth aged 18- 21 are fully and fairly implemented. Juvenile Law Center participates as amicus curiae in state and federal courts throughout the country, including the United States Supreme Court, in cases addressing the rights and interests of children.

STATEMENT OF QUESTIONS INVOLVED

1. Is a youth who is under age 21, was adjudicated dependent before turning age 18, has asked that the court continue its jurisdiction past age 18, and who is working at least 80 hours a month eligible to remain under the court's jurisdiction Pursuant to Act 91?

Suggested Answer: Yes

2. Can the juvenile court order the county children and youth agency to provide a stipend to defray the cost of care for a dependent child if it determines that the disposition is consistent with 42 Pa. C.S.A. § 6351 and is in the child's best interest?

Suggested Answer: Yes

3. Is the manner or source of funding determinative of whether the court can authorize a disposition under 42 Pa. C.S.A. § 6351?

Suggested Answer: No

4. Can a disposition that includes payment of financial assistance to a dependent child who is between the ages of 18 and 21 be funded by the Independent Living Services Grant (including Chafee Foster Care Independent Living funds), Act 148 Funds, and funds under Title IV-E (foster care maintenance funds) of the Social Security Act?

Suggested Answer: Yes

STATEMENT OF THE CASE

On July 5, 2012, Act 91, a law allowing eligible youth to remain in or reenter foster care until age 21, was signed by Governor Corbett and immediately became effective across Pennsylvania. *See* H.B. 75, Sess. of 2011 (Pa. 2011), available at http://jlc.org/sites/default/files/press_release_pdfs/ACT%2091.pdf (codified as amended at 42 Pa. C.S. § 6302). In order to be eligible for this foster care extension, initial dependency jurisdiction must have been terminated within 90 days before, or any time after the youth's 18th birthday. The youth must also request that the court extend or resume dependency jurisdiction, must be under 21 at the time of the request, and must be participating in any of five qualifying activities:

- i. completing secondary education or a program leading to an equivalent credential;
- ii. enrolled in an institution which provides post-secondary or vocational education;
- iii. participating in a program or activity designed to promote, or remove barriers to, employment;
- iv. employed for at least 80 hours per month; or
- v. incapable of doing any of the activities described in (i)-(iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan of the child. medical condition, which incapability is supported by regularly updated information in the case plan of the child

Id.

M.A. was born on July 28, 1994 and is currently 19 years old. Mot. to Terminate Subsidy, Nov. 20, 2013. She was adjudicated dependent on April 1, 2010 and temporary legal custody was transferred to Berks County Children and Youth Services (hereinafter "the child welfare agency") until it was terminated on June 29, 2013, when she was 18 years old. *Id.* On August 8, 2013, M.A. requested that the court resume jurisdiction of her dependency case pursuant to Act 91. *Id.*; Transcript of Record at 21, *In re: M.A.*, No. DP-59-10 (Berks Cnty. Ct. Comm. Pleas 2013). M.A.

works 40 hours a week at a full-time job, *id.* at 22, thereby meeting all of Act 91's eligibility criteria for resumption of dependency jurisdiction and continued court jurisdiction.

On August 12, 2013, this Court resumed dependency jurisdiction of M.A.'s case and ordered that the child welfare agency provide financial support until M.A. turned 21 in the amount of a \$10-a-day stipend. Order, Aug. 12, 2013, Exhibit 2.

M.A. continues to work 40-hours a week at a full-time job. Transcript of Record at 22, *In re: M.A.*, No. DP-59-10 (Berks Cnty. Ct. Comm. Pleas 2013). She resides in a home in which her mother also lives. *Id.* at 22. She is responsible for paying for the majority of her room and board, and incidentals. *Id.* at 10, 23, 25 -26, and 29-30.

On November 20, 2013, the child welfare agency filed a Motion to Terminate Subsidy, alleging that M.A. was not currently enrolled in a course of instruction or incurring expenses associated with a course of instruction. Mot. to Terminate Subsidy, Nov. 20, 2013. M.A. continues to work full time, has requested that the court continue its jurisdiction over her case, and that the child welfare agency continue to provide her assistance.

The Motion to Terminate Subsidy is currently before this Court.

ARGUMENT

I. M.A. is A Dependent Child Pursuant to the Juvenile Act as Amended by Act 91

A. Act 91 Expanded the Definition of “Child” to Include Youth like M.A. Who Work at Least 80 hours Per Month.

On July 5, 2012 Act 91 amended and expanded the Juvenile Act’s definition of a dependent child to eligible youth up to age 21.¹ The law implemented the Fostering Connections to Success Act of 2008, a federal law that sought to improve outcomes for children in foster care, and became effective immediately.² Extending a youth’s time in foster care allows youth in the child welfare system comparable access to financial and other supports to those received by youth living at home with their parents as they make the challenging transition to adulthood. Act 91 was passed in recognition of the incontrovertible statistical and anecdotal evidence that expansion of foster care and adoption and guardianship subsidies to age 21 would not only decrease state and county expenses on foster care, but would also be a critical step in improving outcomes, achieving permanency, and easing the transition to adulthood for the youth the state serves.³

¹ See H.B. 75, Sess. of 2011 (Pa. 2011), available at http://jlc.org/sites/default/files/press_release_pdfs/ACT%2091.pdf (codified as amended at 42 Pa. C.S. § 6302).

² Fostering Connections provided states the opportunity to receive federal funds to pay for the cost of care of youth between the ages of 18 and 21 if they adopted the foster care extensions laid out in the law. This option was significant because without adopting the foster care extensions, Title IV-E reimbursement ends at age 18 (or 19 if the youth is in high school). See Fostering Connections to Success and Increasing Adoptions Act of 2008, H.R. 422, 110th Cong. (2008), available at http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/Att%20B%20-%20HR%206893.pdf.

³ Juvenile Law Center and Pennsylvania Partnerships for Children, *Maximizing Fostering Connections to Benefit Pennsylvania Youth* (2012), available at http://jlc.org/system/files/press_release_pdfs/Maximizing%20Fostering%20Connections%20to%20Benefit%20PA%20Youth.pdf?download=1.

By amending the definition of “child” in the Juvenile Act to include eligible youth up to age 21, Act 91 ensured that all of the legal and procedural protections already in place for dependent youth – including the right to counsel, independent living services and a hearing on permanency every six months – continued to apply to these youth until age 21. Extended support is essential to a youth’s successful transition to adulthood. By expanding and specifying the conditions under which a youth may remain under the court’s jurisdiction after turning age 18, Fostering Connections aimed to provide young adults several avenues to acquire the skills and competencies they need to flourish in the adult world. Act 91 adopted all the criteria for remaining in care past age 18 listed in Fostering Connections. These include:

- i. completing secondary education or a program leading to an equivalent credential;
- ii. enrolled in an institution which provides post-secondary or vocational education;
- iii. participating in a program or activity designed to promote, or remove barriers to, employment;
- iv. employed for at least 80 hours per month; or
- v. incapable of doing any of the activities described in (i)-(iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan of the child. medical condition, which incapability is supported by regularly updated information in the case plan of the child

42 U.S.C.A. § 675 (8)(B); 42 Pa. Cons. Stat. Ann. § 6302.

Prior to Act 91, in Pennsylvania youth could only stay in care past age 18 if they were in a program of “instruction or treatment.”⁴ Act 91’s four activity requirements, and one exception, replace the “instruction or treatment” requirement and provide much needed clarity on the

⁴ Prior to Act 91, the definition of “child,” 42 Pa. C.S. § 6302 (2012), *amended by* 2008, Oct. 9, P.L. 1396, No. 109, § 1 (2012) (current version at 42 Pa. C.S. § 6302), included an individual who “was adjudicated dependent before reaching the age of 18 years and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, but in no event shall a child remain in a course of instruction or treatment past the age of 21 years.” The definition has been amended by Act 91 as described above.

criteria for continued court jurisdiction. Notably, and of particular importance to the instant case, Act 91 enables the youth to stay in care if he or she is working at least 80 hours a month.

The creation of an eligibility requirement based solely on youth's employment allows dependent youth the flexibility and autonomy to develop the skills they need to support themselves while pursuing their goals – whether academic, vocational or some combination of the two. Each of Act 91's eligibility criteria – and the exception – is given equal weight under the Juvenile Act. A county child welfare agency cannot elect to implement certain provisions of the law and not others. If a youth is otherwise eligible (age, adjudicated dependent before turning age 18, and request to remain in care, or for the court to resume dependency jurisdiction), and meets any of Act 91's four activity requirements or falls within the exception, he or she is eligible for the court's extended jurisdiction.

B. M.A. is Eligible for Extended Dependency Jurisdiction under Act 91 and a Disposition Consistent with 42 Pa. C.S.A. § 6351.

In this case, the child welfare agency seeks to terminate its obligation to provide a dependent youth with financial support solely because she is not currently enrolled in a course of instruction. The youth is employed at least 80 hours a month, which independently satisfies the Juvenile Act's activity requirement for eligibility for extended dependency jurisdiction until she turns 21. Because she continues to qualify as a dependent child under the Juvenile Act, the child welfare agency is obligated to provide her with support in line with the court's disposition, regardless of whether she is engaged in a course of instruction as defined by the agency.⁵ Making a subsidy contingent on a "course of instruction" is impermissible under Act 91.

⁵ Counties can encourage certain activities, like pursuit of higher education, but cannot exclude youth from the benefit of the law if they select one the other activities, such as employment, enumerated in the law. Counties that want to encourage youth to pursue higher education can and should implement policies and support services that

Because of the addition of the Act 91 employment criteria, M.A. remains a dependent child pursuant to the Juvenile Act's definition of "child" as amended by Act 91, and as recognized by this Court's order dated August 8, 2013. *See* Order, Aug. 12, 2013, Exhibit 2; *see, also* 42 Pa. C.S.A. § 6302 (2014). She was born on July 28, 1994 and is currently 19 years old. She meets all the criteria for extended dependency jurisdiction as laid out by 42 Pa. C.S. § 6302: she (1) is under the age of 21; (2) was adjudicated dependent at age 15, on April 1, 2010, before reaching the age of 18; (3) requested that the court resume dependency jurisdiction on August 8, 2013; and (4) is employed for at least 30 hours per week, greatly exceeding the minimum employment requirement of at least 80 hours per month. *See* definition of "child" at 42 Pa. C.S.A. § 6302 (2014). M.A. is entitled as a matter of law to the support of the county children and youth agency.

Accordingly, this Court ordered that the child welfare agency provide services and support to M.A. consistent with her needs. Pursuant to its traditional and required dispositional authority under the Juvenile Act, the court issued an order that required that the child welfare agency provide the youth financial support of \$10 a day, paid to the youth directly on a monthly basis. *See* Order, Aug. 12, 2013, Exhibit 2. Her disposition included placement in her mother's home where M.A. would be responsible for her room and board and other expenses. As a dependent youth, M.A.'s disposition would also include child welfare agency case management, the right to counsel, and court supervision and review. Based on the documents submitted to the

increase the odds that youth will pursue higher education. However, they may not prevent youth from accessing extended care by removing one of Act 91's eligibility criteria or the activity exception in furtherance of this goal. Examples of programs or services that would encourage youth to pursue education could include providing more academic support and college exploration activities as early as possible and as part of the IL curriculum. It could also include partnerships with local colleges and universities to better prepare youth for higher education and help with retention. Connecting youth with SAT and ACT preparation classes and academic mentoring programs could also be implemented. Providing all of these services and supports and communicating to youth that the county values their education is a great way to increase the odds that older youth will pursue higher education and training and is not only permissible, but encouraged.

court, the stipend amount reflected the youth's expenses for room, board and incidentals, wages from employment as well as her activities. *See* M.A. Budget, 10/18/2013, Exhibit 3; Transcript of Record at 12, *In re: M. A.*, No. DP-59-10 (Berks Cnty. Ct. Comm. Pleas 2013).

II. If A Child is Dependent, the Court Has Plenary Authority and Responsibility to Craft and Order a Disposition that Meets the Individual Child's Needs.

A. The Court's Dispositional Authority is Plenary and Limited Only by the Child's Needs and the Purpose of the Juvenile Act

The Juvenile Court is tasked with designing a disposition that is in the child's best interest and ensures that the child's needs are met. The court's authority to order an appropriate and individualized disposition for a dependent child stems from section 6351 of the Juvenile Act, which requires the court to make "orders of disposition best suited to the safety, protection and physical, mental, and moral welfare of the child [...]." *See* 42 Pa. C. S. A. § 6351 (a). The dispositional authority must also carry out the various purposes of the Juvenile Act, which include "provid[ing] for the care, protection, safety and wholesome mental and physical development of children coming within the provisions of this chapter." *See* 42 Pa. C.S.A. § 6301 (b)(1.1). The court has the authority to "impose whatever conditions or limitations are necessary to meet the best interests of the child." *In re Tameka M.*, 534 A.2d 782, 787 (Pa. Super.1987) *aff'd*, 580 A.2d 750 (Pa. 1990); *see also In re Tameka M.*, 580 A.2d 750, 755 (Pa. 1990) ("We too, in construing the Juvenile Act, are directed by Section 6301 to observe the same stated purpose. Accordingly the result which will encourage, rather than discourage, action related to the best interests and protection of the child is preferred.")

Pennsylvania case law presents ample examples of the court properly exercising its dispositional authority. For example, in *Tameka M.*, the Pennsylvania Supreme Court affirmed a decision ordering the child welfare agency to pay for a youth's Montessori school when the

record showed that the Montessori school's academic and treatment program met her needs and there were no equivalent alternatives, emphasizing that the Juvenile Act "was passed for the benefit of dependent children and is based on humanitarian ideals." *In Re Tameka M.*, 580 A.2d 750, 755 (Pa. 1990). The trial court arrived at the disposition after considering testimony and evidence about the child's needs, the services available, and previous efforts to meet her needs through other means.⁶ The disposition was deemed appropriate to address the child's "special problems and special needs" *Id.* at 751.

When reviewing a disposition of a dependent child who is age 18 or older, the court is engaging in the same type of analysis as it does for a younger dependent child; the difference is that, in general, the age-appropriate needs of older youth and young adults are often perceived as more challenging and unique. The individualized analysis remains the same, however, other legal principles and considerations do apply to guide the analysis. For example, given the independent living and transitional planning mandates of federal and state law,⁷ the dispositional authority includes the considerations of orders that allow a youth to "have the opportunity to evolve into a mature young adult and develop the skills to live independently." *See In re S.J.*, 906 A.2d 547, 550 (Pa. Super. Ct. 2006) (citing the trial court's opinion.) *In re S.J.* is one of the first cases in which the court addressed, among other things, the nature of an appropriate

⁶ The record demonstrated that the child's condition deteriorated on other programs attempted, but improved in the Montessori program. *See In Re Tameka M.*, 580 A.2d 750, 755 (Pa. 1990). The disposition was ordered because it was determined to be "best suited for her special needs" in conjunction with other elements of her disposition, including her foster care placement. *See id.* The Court concluded that the highly structured program at Montessori was therapeutic as well as educational and that enrollment there was in Tameka's best interest. *Id.* at 751.

⁷ State and federal law require that services be provided to assist an older youth in care to make the transition to adulthood beginning at age 16. 42 U.S.C.A. 675 (1)(D); 42 Pa. C.S.A. § 6351 (f) (8). Federal guidance has also made clear that the reasonable efforts finding for youth who remain in care past age 18 includes ensuring that efforts to prepare a youth for adulthood are part of the reasonable efforts finding. *See Administration on Children, Youth and Families, Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008*, available at <http://www.acf.hhs.gov/sites/default/files/cb/pi1011.pdf>, pg. 10.

disposition for a dependent child who was age 18.⁸ *See id.* S.J. was placed in kinship care and was pursuing her post-secondary education. *Id.* at 549. Like many youth her age, she opted to go to college and live in the dorms during the school year. *See id.* at 550. After examining S.J.’s goals, needs, and wishes, the court ordered that S.J. would maintain her kinship foster care placement while college was not in session and would live in the dorms while school was in session. *See id.* at 549 – 50. She was to receive a small financial stipend to cover daily living costs and incidentals that were not covered by her financial aid package. *See id.* This disposition was determined after reviewing S.J.’s individual circumstances as well as her permanency and transition goals. *See id.* at 550 (citing trial court opinion). The county children and youth agency objected to the court-ordered stipend. *Id.* On appeal, the Superior Court found it was in the trial court’s discretion to order the stipend and reasoned that the additional financial assistance would “preclude any additional hindrances that could potentially thwart S.J.’s success in pursuing higher education that she otherwise would have had to deal with had she not received the funding.” *Id.* (quoting the trial court’s opinion.)

Most recently, the Superior Court found the trial court’s order that the local child welfare agency provide a personal laptop or desktop computer for a dependent youth an appropriate disposition because the court determined that this was in the child’s best interests and furthered her permanency and independent living goals. *See In re A.T.*, No. 1186 EDA 2013, 2013 PA Super 308 (Pa. Super. Ct. Nov. 27, 2013). To arrive at this disposition, the trial court considered A.T.’s history of responsibility, employment, prior success in school and in her Supervised Independent Living Program, and general compliance with her permanency plan. *See id.*, No.

⁸ *In re S.J.* is a pre-Act 91 case. As described above, at that time, a youth needed to be engaged in a “course of treatment of instruction” to remain under the court’s jurisdiction past age 18. It is for that reason that one of the focuses of the case was on post-secondary education. Act 91 has provided expanded criteria for remaining in care.

1186 EDA 2013, 2013 PA Super 308 at *1. The court also made findings on the record about A.T.'s classes and why A.T. believed that she needed a computer. *Id.* The court also considered testimony about how access to the computer would assist achieving her academic goals and the current barriers to accessing a computer through other available sources. *See id.* The Superior Court found that the trial court did an extensive individualized analysis of the youth's needs as well as her transition and permanency goals to determine that the disposition that best suited this youth included ordering the child welfare agency to procure a computer for the youth. *See id.* at *6.

Tameka M., S.J., and A.T. are all examples of the court's traditional role in determining a child's individual needs and ordering dispositions that further the goals of permanency and a successful transition to adulthood for older youth. In M.A.'s case, detailed evidence has been provided that M.A. is working hard to develop her adult living skills, including budgeting, employment, and household responsibilities. *See* Transcript of Record at 8-9, 22-28; *In re: M.A.*, No. DP-59-10 (Berks Cnty. Ct. Comm. Pleas 2013). A stipend of approximately \$300 a month provides limited but important assistance as this youth develops and masters her adult living skills. In this case, testimony was provided that despite M.A.'s employment, finances were tight, demonstrating that a small amount of financial assistance in combination with M.A.'s income are important to her success and meeting her needs. *See* Transcript of Record at 30-33. Like S.J. and A.T., this youth has displayed maturity, responsibility and the potential to succeed. She has met all of the requirements for extended dependency jurisdiction. It is the court's role to determine what services and supports meet her needs and order a disposition to that effect. If the

court orders that a small monthly stipend meets this youth's needs and helps facilitate the achievement of her permanency and transition goals, it should be ordered and provided.⁹

B. The Court's Dispositional Authority is Independent and Discretionary

The court's dispositional authority is independent of the child welfare agency. The child welfare agency must provide "any services and care ordered by the court under provisions of the Juvenile Act" 55 Pa. Code § 3130.38 (a). The juvenile court does not act in "the role of adjudicator reviewing the action of an administrative agency," but "rather the court acts pursuant to a *separate discretionary role with the purpose of meeting the child's best interests.*" *In re Lowry*, 484 A.2d, 383, 386 (Pa. 1984) (emphasis added). While the child welfare agency can, of course, implement various policies and procedures, these policies do not limit the court's authority. In addition, the court cannot enforce policies that are not consistent with the law. *See id.* at 387 ("departmental regulations are not binding upon the court entering a dispositional order under Section 6351").

In this case, the child welfare agency states that it cannot provide M.A. a stipend because she is living in her parent's home :

Berks County CYS does not pay for subsidies for children that are residing within their homes with parents. They should not be. We do not have a policy set up to provide

⁹ It is important to note that the courts in *S.J.* and *A.T.* did not require that the youth be destitute or have no resources whatsoever to warrant ordering the payment of a small stipend or the procurement of a computer. *See, e.g. In re S.J.*, 906 A.2d 547, 550 (Pa. Super. Ct. 2006) (noting the trial court's reasoning that "added financial assistance may preclude any additional hindrances that could potentially thwart S.J.'s success in pursuing higher education that she otherwise would have had to deal with had she not received the funding."); *In re A.T.*, No. 1186 EDA 2013, 2013 PA Super 308 at *3 (Pa. Super. Ct. Nov. 27, 2013) (holding that the availability to the youth of alternate and no-cost alternatives were not "equally effective" as a personal computer and the court "did not abuse its discretion in ordering a service best suited to furthering A.T.'s school work regardless of the financial consequences" to the child welfare agency.) The court in both cases found that the minimal assistance provided was helpful and important to youth's total plan and achievement of the various permanency and transition goals. Both courts identified the support as appropriate given the youth's needs, and important to reducing the barriers to success that dependent youth often confront. As stated above, testimony was provided that despite M.A. employment, finances were tight, demonstrating that a small amount of financial assistance in combination with M.A.'s efforts are important to her success and meeting her needs. *See* Transcript of Record at 30-33.

funding for that. If there would be, if there would be such payments. That would be 100% county money. That is not part of any funding that the federal government or state participates in.

Transcript of Record at 14, *In re: M.A.*, No. DP-59-10 (Berks Cnty. Ct. Comm. Pleas 2013). It was further stated that subsidies could only be paid to youth who were in school because “[t]hat’s based on the subsidy policy that Berks County developed, and it was approved through the independent living program through the state.” *See id.* at 15. As described below, there is no legal prohibition on using Independent Living Services Grant funds, Act 148 funds, and potentially Title IV-E funds, for a stipend for a youth who resides with her parent. Thus, not only is the juvenile court not bound by a county agency policy, the policy presented is not itself required by law.

C. The Court’s Dispositional Authority is Not Bound by Funding Limitations

As explained above, the court’s dispositional authority flows from the Juvenile Act. It is plenary and autonomous of any state, federal, or county funding obligations. As discussed in Section II (A), if the court’s disposition meets the child’s needs, the county must fund it. *See In re Lowry*, 484 A.2d, 383, 387 (Pa. 1984). Neither the cost of services nor the manner in which the cost is allocated can restrict the court’s authority. In *Lowry*, for example, the court placed a dependent child in the home of an unlicensed foster parent after determining it was in the child’s best interest even though the child welfare agency could not receive state reimbursement for an unlicensed home and would bear the cost of placement until the home was licensed. *Id.* at 388-89. Neither the county’s policy to prohibit placements in unlicensed homes or the lack of state and federal reimbursement until the home was licensed limited the court’s disposition, which was guided by a best interests determination. *See id.* at 388. This legal principle has also been embedded in state regulations, which require that the county child welfare agency “provide or

arrange for the provision of service and care ordered by the court under” the Juvenile Act, 55 Pa. Code § 3130.38 (a) as well as “other required services, including services or care ordered by the court” 55 Pa. Code § 3130.34.

In Re N.E. also provides an instructive example for the instant case given that M.A.’s placement is not a traditional foster care placement, but rather a supervised independent living arrangement that is in the home where her mother also resides. *In Re N.E.*, 787 A. 2d 1040 (Pa. Super. 2001). In that case, N.E. was adjudicated dependent and placed in her mother’s home under court supervision pursuant to 42 Pa. C.S.A. § 6351. *Id.* The Superior Court found a disposition proper that ordered the child welfare agency to pay for the cost of dental care to the child that was not covered by her health insurance. *Id.* The court found both the availability of reimbursement or type of placement unimportant to whether the disposition was proper under the Juvenile Act:

A dispositional order was issued by the Trial Court ordering placement of N.E. with her mother. It is immaterial that in *Tameka M.*, the child was placed with a foster family, as both children were dependent and both were placed by the trial court, pursuant to 42 Pa. C.S.A. §6351 with the child's best interest in mind. Subsequent to placement, the Trial Court exercised its continuing discretion in the best interest of the child by ordering [the child welfare agency] to pay for any amount which was owed for N.E.'s dental care after her mother's insurance had paid its portion. As held in *Tameka M.*, [the child welfare agency] has a duty to provide financial support and a duty to provide for N.E.'s physical welfare. *See Tameka M., supra* at 357, 580 A.2d at 755. N.E. has the right to have [the child welfare agency] pay for her unreimbursed dental expenses. *Id.* Accordingly, we hold that the Trial Court did not abuse its discretion in ordering [the child welfare agency] to pay the unreimbursed dental expenses resulting from the injuries sustained by N.E. when she fell.

Id. at 1044 (internal footnotes omitted).

The court has been clear that the county youth agency has a legal duty to provide and pay for the care of the child and consideration of the expense is secondary to the disposition suited to the best interests of the child. *See, e.g., In re Tameka M.*, 580 A.2d 750, 755 (Pa. 1990).

Although the court should give some consideration to the financial restraints of the county child welfare agency to encourage efficiency, creativity and fiscal responsibility, the court's primary responsibility is to the best interest of each child and the facts of each individual case.¹⁰

In this case, the child welfare agency's stipend policy should not limit the court's disposition if it is at odds with the court's determination of the child's best interest. This is especially the case when the county's stipend policy is not consistent with the law as expressed in the Chafee Act and the State Independent Living Services Bulletin, and can be funded by several means that the county has not sought, as presented below. *See* Section III. Moreover, as discussed in Section III, the cost of M.A.'s current disposition is much less than the cost of placing her in a traditional foster care placement. The current disposition both demonstrates an age-appropriate and individualized disposition that is quite economical.

III. Federal and State Law Provide Several Means to Fund a Dependent Youth's Disposition, Including Direct Payments of Youth to Defray the Cost of Care

As stated above, how a disposition is funded is not determinative of the court's authority to order it. However, federal and state law and regulations clearly provide cost-sharing mechanisms that allow the county to provide a stipend to M.A. and incur minimal cost. There are several federal and state laws that govern how services and supports can be funded for dependent children in Pennsylvania. These laws and regulations include: the Chafee Foster Care

¹⁰ In fact, the court has historically been quite mindful of the financial constraints on the child welfare agency in considering a disposition. *See, e.g. In re S.J.*, 906 A.2d 547, 552 (Pa. Super. Ct. 2006) (noting that "the trial judge went to great lengths to balance the financial considerations of this obligation with the appropriate needs of S.J. regarding college."); *In re A.T.*, No. 1186 EDA 2013, 2013 PA Super 308 at *6 (Pa. Super. Ct. Nov. 27, 2013) (noting the trial court's suggestion that "DHS may explore resources to possibly obtain a refurbished laptop at no cost.") Similarly, while *Amicus* contends that the funding source is not, in the end, relevant to the disposition, Section III provides multiple avenues that the county can take to defray the cost of providing a stipend to M.A.

Independence Act, the Public Welfare Code and its implementing regulations, and Title IV-E of the Social Security Act.¹¹

M.A. is eligible for the same array of services as any other dependent child. Indeed, if her current living arrangement fell through or her needs were not being met, she could request placement in a foster home, group care or another supervised independent living setting. If that were the case, the cost of care, even with state and federal reimbursement, would rise well above the full cost of the current stipend. Instead of pursuing a one-size-fits all placement and service system for older youth, the child welfare agency has done something innovative by working with older youth to determine a combination of living arrangements and services that meet their age-appropriate and transition needs. In this case, the youth's connections with supportive adults has also been given consideration. Federal and state law encourage this innovation for older youth and provide the fiscal incentives and cost sharing means to make it economically feasible.

A. Independent Living Services Grant Funds can Fund Stipends such as M.A.'s

The Chafee Foster Care Independence Act ("Chafee funds") was enacted in 1999 to provide states with increased funding to serve older youth in foster care and youth aging out of care so they are better prepared for adulthood. *See* 42 U.S.C.A. § 677. Currently, in Pennsylvania Chafee funds, along with state Independent Living (IL) funds are distributed to each county through the Independent Living Services Grant in the Needs Based Plan and Budget. *See* Commonwealth of Pennsylvania Office of Children, Youth and Families, *FY 2013-2014 Needs Based Plan and Budget Bulletin Instructions & Appendices*, available at [http://www.pccyfs.org/dpw_ocyfs/2013-14_NBPB/2013-14_NBPB_Bulletin\(FINAL\).pdf](http://www.pccyfs.org/dpw_ocyfs/2013-14_NBPB/2013-14_NBPB_Bulletin(FINAL).pdf).

¹¹ 42 U.S.C.A. § 672 (Foster Care Maintenance Payments Program).

(Hereinafter “OCYF FY 2013-2014 NBPB Bulletin.”) The result of this practice is that the bulk of Independent Living (IL) services are funded with federal Chafee dollars, but state funds can also be used to serve older youth who are not Chafee eligible if the county so chooses. The Bulletin states:

The Independent Living Services (ILS) Grant was implemented for the FY 2009-2010 NBPB in order to accurately account for, and report on, the amount of funds used for IL Services. This effort combined the federal CFCIP Funding and Act 148 funds. For FY 2013-2014 all IL services for youth most likely to remain in foster care until age 18 and those discharged from foster care until age 21 will continue to be reimbursed as a separate special grant which includes federal, state and local funds. All counties should request sufficient funds to meet the IL needs of youth for FY 2013-2014 through the ILS Grant.

Id at § 4-2 (b), p. 32. The Bulletin further explains that the portion of the Independent Living Services funds that come from the Chafee grant are all federal funds and do not require a local match. *See id* at pg. 73. If the county elects to provide IL services for youth who are not eligible for Chafee funds, the local match is 15%. *See id*.

Independent Living (IL) funds can be used to fund an array of services and supports for youth ages 16 and older who are in foster care and for youth who have aged out and are under age 21. *See* 42 U.S. C.A. § 677 (a)(5) (Chafee funds can be used to “provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood.”). The Office of Children, Youth and Families (OCYF) has issued a Bulletin to provide further guidance on how IL funds can be used. *See* Commonwealth of Pennsylvania Department of Public Welfare Office of Children, Youth and Families, *Youth Independent Living Services*

Guidelines, Bulletin 3130-11-04 (July 8, 2011), available at

http://www.dpw.state.pa.us/cs/groups/webcontent/documents/bulletin_admin/d_005741.pdf

(hereinafter “ILS Bulletin”).

Among the services that can be provided through the IL grant are stipends. Stipends are considered “support services” that can be paid directly to youth in certain circumstances under the IL grant. *See id* at 17-18. OCYF does require that counties submit their stipend policy for approval. OCYF simply requires that the county “[m]ust have written policy and procedures addressing the administration of stipends including, but not limited to addressing the following: [c]onditions for earning or awarded based upon need; amounts that may be earned or awarded based upon need; payment procedures; conditions that would result in a stipend being withheld; and other specific eligibility criteria for stipends.” *OCYF FY 2013-2014 NBPB Bulletin* at 78-79; *ILS Bulletin*, at 18. Thus, OCYF does not limit the award of stipends to youth in certain types of placements, and does not exclude youth who are placed with parents or family. Counties can provide stipends to youth who are eligible for IL services in an array of circumstances. The child welfare agency’s contention that 1) it cannot provide a stipend to a youth who is eligible for IL services, but residing in the home of a parent, Transcript of Record at 14, *In re: M. A.*, No. DP-59-10 (Berks Cnty. Ct. Comm. Pleas 2013), and 2) paying a stipend to such a youth would require 100% county funding,¹² *id.*, is inconsistent with the Chafee Act, the Needs Based Budget and Plan and Independent Living Services Bulletin.

¹² Michelle Fronheiser, Fiscal Operations Officer for Berks County Children and Youth Services, testified that “Berks County CYS does not pay for subsidies for children that are residing within their homes with parents. They should not be. We do not have a policy set up to provide funding for that. If there would be, if there would be such payments. That would be 100% county money. That is not part of any funding that the federal government or state participates in.” Transcript of Record at 14, *In re: M.A.*, No. DP-59-10 (Berks Cnty. Ct. Comm. Pleas 2013).

M.A.'s stipend falls squarely within the ILS grant. If M.A. is Chafee eligible, Chafee funds would cover 100% of the monthly \$300 stipend. If M.A. is not Chafee eligible, the county would pay 15% of the \$300 a month stipend: this amounts to \$45 a month or \$540 a year.

B. State Regulations Provide Cost Sharing for Most Child Welfare Services, Including the Cost of Care Paid Through a Stipend

The Public Welfare Code, 62 P.S. §704.1, *et seq.* sets out a formula and process for how the state will reimburse the county for services provided to dependent and delinquent youth. The level of reimbursement depends on the service provided. Section 3140.22 of Title 55 of the Pennsylvania Code details the rates of reimbursement for county children and youth social service programs. *See* 55 Pa. Code § 3140.22. The regulations cover a range of child welfare services, including placement services, case planning, and treatment services. *See id.* Among the array of services that the state reimburses at an 80% rate is “supervised independent living services.” *See* 55 Pa. Code § 3140.22 (e) (3). This service is defined as “the provision or arrangement of living quarters and social services designed to support and supervise children who are living on their own. The child may be in the custody of the child’s parents, the county agency, or another agency or individual.” *Id.* A stipend like the one M.A. receives could be funded through this service category as she remains under the jurisdiction of court, receives case management from the child welfare agency and court supervision, and is living in a setting where she has a good deal of independence and responsibility.

In fact, the court has addressed the use of this service category for the payment of a stipend in a pre-Act 91 case, *In Re S.J.* *See In re S.J.*, 906 A.2d 547 (Pa. Super. Ct. 2006). In that case, testimony was provided about Philadelphia county’s practice of providing funds directly to dependent youth who remain in care past age 18, which Philadelphia refers to as a “board

extension.” Under its policy, youth directly received “approximately \$14.03 per day” and the “stipend is paid regardless of the financial assistance the child receives from the college.” *See id.* at 549. Testimony from Philadelphia Department of Human Services (DHS) Administrators revealed that the stipend was considered a supervised independent living service under 55 Pa. Code §3140.22 (e)(3). The *S.J.* Court relied on the Administrators’ testimony that “the Commonwealth reimburses the Department for 80% of the program's expenses, thus defraying the cost to the Department to \$2.01 per day, per child.” *See* 906 A.2d at 549. Similarly, the court placed great importance on one Administrator’s statement “that he was not aware of an instance in which the Commonwealth refused to reimburse the department.” *See id.* (emphasis added). The Superior Court noted that the county funds expended on the program for stipends was “a reasonable expense in providing for the “wholesome mental development of the child.” *Id.* at 552.

M.A.’s stipend is clearly of the type that could be funded in the independent living services cost category. In this case, the county would pay 20% of the \$300 a month stipend: this amounts to \$60 a month or \$720 a year.

C. Title IV-E Allows For Federal Reimbursement of the Cost of Care Paid as a Direct Stipend to a Youth Between Ages 18 and 21

In addition to state reimbursement, federal Title IV-E foster care maintenance funds¹³ may also serve as an additional and crucial source of funding for child welfare placement and services. If a child is Title IV-E eligible and the services provided are eligible services, a percentage of the cost will be reimbursed by IV-E funds in addition to the state share. Similar to

¹³ 42 U.S.C.A. § 672 (foster care maintenance payments program).

Pennsylvania state regulations, the size of the federal share depends on the service provided.¹⁴ The reimbursement available for “foster care maintenance”¹⁵ is called the federal financial participation (“FFP”). See 42 C.F.R. § 1356.60(a) (1) (Fiscal requirements (Title IV-E)). The federal financial participation is available at the rate of the Federal Medical Assistance Percentage (“FMAP”). See 42 C.F.R. § 1356.60(a) (2). The FMAP rate for Pennsylvania for 2014 is 53.52%.¹⁶ This means that the federal Title IV-E funds can cover 53.52% of the total cost of expenses under the foster care placement maintenance category.

In 2008, the Fostering Connections to Success and Increasing Adoptions Act amended the Title IV-E of the Social Security Act to include an additional reimbursable placement or living arrangement for youth who remain in care and are between ages 18 and 21: “a supervised setting in which the individual is living independently.” See 42 U.S.C.A. § 672(c). This living arrangement was added to provide a more age-appropriate continuum of placement and services for older youth. The Administration on Children, Youth and Families (ACYF), the federal agency charged with interpreting and providing guidance on the federal child welfare laws, provided instruction that states should be as creative and flexible with this living setting as possible to fulfill the purpose of the Act, which includes preparing youth for an independent and successful adulthood. See Administration on Children, Youth and Families, *Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008* at page 9, available at <http://www.acf.hhs.gov/sites/default/files/cb/pi1011.pdf>. Examples of settings include: host

¹⁴ For example, administrative cost such as case management, are reimbursed at a different rate than placement maintenance. See 42 C.F.R. § 1356.60 (c).

¹⁵ Foster care maintenance includes, among other things, “payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals....” See 42 U.S.C. 675 (4)(A). As is discussed in more detail below, a stipend to cover these types of expenses, as in M.A.’s case, falls under the category of foster care maintenance.

¹⁶ Alison Mitchell & Evelyne P. Baumrucker, Medicaid’s Federal Medical Assistance Percentage (FMAP), FY2014 (Congressional Research Service 2013) 21, available at <https://www.fas.org/sgp/crs/misc/R42941.pdf>.

homes, college dormitories, shared housing, semi-supervised apartments, supervised apartments or another housing arrangement. *See id.* ACYF Guidance also makes clear that youth could be paid directly for the cost of the settings, as in the payment of a stipend. *See id.*

Federal guidance has also been provided that residing in the home of a parent does not preclude the living arrangement from being considered a supervised setting under Fostering Connections as long as the constituents of the living arrangement demonstrate a good deal of independence and responsibility is being provided to the youth. The following guidance was provided:

[T]he title IV-E agency may consider a youth who normally resides in a dorm during college who then lives in a room in the home of his/her parent during breaks from college, or a youth who takes classes and rents a basement room from his/her guardian to be in allowable supervised independent living settings when paired with agency supervision. Ultimately, it is up to the title IV-E agency to consider the circumstances of the youth and the supervised independent living arrangement to determine whether it would be an appropriate and allowable independent living setting.”

Administration for Children and Families, *Child Welfare Manual*, 8.3A.8d TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Facilities requirements, supervised independent living, available at http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/index.jsp?idFlag=0.

M.A.’s specific arrangement is similar to the youth who rents a room from his or her guardian or parent. M.A. gives her mother money monthly for rent, food, transportation, and other expenses. *See* Transcript of Record at 12, *In re: M. A.*, No. DP-59-10 (Berks Cnty. Ct. Comm. Pleas 2013). M.A, her mother, and her mother’s boyfriend all work at the same place, *id.* at 10-11, earn comparable amounts, *id.* at 11, share transport to and from work, and contribute to household and transportation expenses, *id.* at 27. M.A. is responsible for covering her own individual expenses, including her health insurance payments and personal incidentals. *Id.* at 24. There is also continued agency supervision through visits and contact with her case worker, Ms.

Worthington. *Id.* at 23. Therefore, not only will the county be reimbursed by the state at a 20/80 rate for the youth's supervised living arrangement, it may also be able to receive federal IV-E reimbursement.

As laid out above, if M.A. is a IV-E eligible youth, to determine the impact of IV-E reimbursement on the final county share of the stipend, the county first applies the FMAP rate to the total cost of care. The cost shared between the state and county is determined based on the amount that remains once the federal share is taken out. Based on a FMAP rate of 53%,¹⁷ federal IV-E funds would cover \$159.00 per month of M.A.'s \$300.00 stipend. Of the remaining \$141.00, the state would cover \$ 112.80. The county would be responsible for \$28.20 per month or \$338.40 per year of M.A.'s stipend.

CONCLUSION

For the foregoing reasons, *Amicus* Juvenile Law Center requests this Court deny Berks County Children and Youth Services' Motion to Terminate Subsidy.

¹⁷ To simplify the calculations, 53% was used as opposed to the slightly higher FMAP of 53.52%. See Alison Mitchell & Evelyne P. Baumrucker, Medicaid's Federal Medical Assistance Percentage (FMAP), FY2014, *supra* note 10.

APPENDIX

In the Interest of:

MELANIE AKERS,
d.o.b. 07/28/1994

:IN THE COURT OF COMMON PLEAS
:OF BERKS COUNTY,PENNSYLVANIA
:JUVENILE DIVISION

:

:

: DOCKET NO: CP-06-DP-59-2010

: FID:

: Assigned Judge: Ullman

ORDER

And now this 7th day of January 2014, this Court invites the Juvenile Law Center to submit an amicus brief in the above captioned case to offer expert information regarding Dependency and the paying of subsidies to older Dependent youth in Pennsylvania under various circumstances and information on the related funding laws.

The Juvenile Law Center shall be allowed access to relevant case information to help them craft a helpful, informational amicus brief.

The amicus brief shall be produced as soon as reasonably convenient but no later than January 29, 2013. The original shall be filed to the case in Berks County Clerk of Courts, (633 Court St., 2nd Floor, Courthouse, Reading PA 19601) with copies and distribution to the Court (Judge Ullman, 633 Court St., 5th Floor, Services Center, Berks County, PA) Berks County Children and Youth (11th Floor Services Center), Jennifer Grimes, Esq. (11th Floor, Services Center), Cathy Badal, Esq. (4th Floor Services Center), Nicole Akers, 546 Swallow St., Edwardsville, PA 18704, and James Akers, 5064 38th St. Court, Tacoma, WA 98422.

By the Court:


Mary Ann Ullman, J.

**IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA
JUVENILE DIVISION**

In Re: Melanie Akers

No. DP-59-10

DOB: 7/28/1994

Judge: The Honorable Mary Ann Ullman

CERTIFICATE OF SERVICE

I, Jennifer Pokempner, hereby certify that on January 24, 2014, a true and correct copy of the foregoing BRIEF OF JUVENILE LAW CENTER AS AMICUS CURIAE IN OPPOSITION TO MOTION TO TERMINATE SUBSIDY has been sent to the following via first class mail:

Jennifer L. Grimes, Esq.
Assistant County Solicitor
Berks County Children and Youth Services
633 Court Street, 11th Floor
Reading, PA 19601

Cathy Badal, Esq.
Guardian *ad litem*
Guardian's Office
Berks County Children and Youth Services
633 Court Street, 11th Floor
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Date: January 24, 2014


JENNIFER POKEMPNER

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