

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

ANNETTE TORRES, ANNABEL TORRES,
LAUREN CAMBRA, MONICA BROSHIOUS,
CRISTELA CASTRO, SAMANTHA RIVERA-
all residents of New Mexico on behalf of themselves
and individuals similarly situated and
ORGANIZERS IN THE LAND OF
ENCHANTMENT, New Mexico membership based
organization, representing low-income families.

Plaintiffs,

vs.

No. D-101-CV-2018-02769

MONIQUE JACOBSON, in her official capacity as
Secretary of the New Mexico
Children, Youth and Families Department,

Defendant.

SECOND AMENDED STIPULATED ORDER

The Court, having been fully informed on this matter, hereby GRANTS the parties' Joint Motion to Enter Second Amended Stipulated Order. The Court hereby ORDERS that the Joint Second Amended Stipulated Order attached to the parties' joint motion is APPROVED. Having been advised of the agreement between the parties, the terms of which are stated herein, the Court FINDS:

I. Regulations

1) The Defendant will continue to provide the opportunity for eligible families seeking child-care assistance to receive benefits with incomes up to 200 percent of the federal poverty level until and unless the Department lawfully promulgates regulations to increase or decrease the eligibility threshold.

2) Defendant will continue to post on the Department's website and in each field office base co-payment rates and the calculation methodology used to determine the share of child care costs a family must pay.

3) No later than December 31, 2021, Defendant shall implement final regulations through the process required by the state rules act and CYFD act that codify all eligibility requirements and Department standards that impact individuals who are not employees of the Department, as required by the State Rules Act NMSA 1978, Sec. 14-4-1, *et seq.* Defendant will give Plaintiffs 30 days to review and comment on the proposed rules prior to publishing the Notice of Proposed Rulemaking. The proposed regulations shall include:

a) how the Department calculates monthly family income to determine child care assistance eligibility;

b) how the Department calculates the share of child care costs a family must pay, including base copayment levels and the methodology the Department uses for determining how the co-payments are discounted for families based on hours of care needed and the number of children receiving care.

4) Defendants will conspicuously post on their website the formulas for calculating client income and co-payments with example calculations for each and the verifications list attached to this Order as Exhibit A. By agreement, the parties may update the verifications list on the website at any time.

II. Notices of Action

1) No later than August 31, 2021, Defendant shall implement a standardized system of written notification in English and Spanish, including the child-care placement agreement. Eligibility notice shall meet the following requirements:

- a. State the Department's eligibility decision as to hours of care, share of costs a family must pay, and duration of assistance; and
- b. Provide the reason for a decision, if the individual is denied or not approved for full assistance; and
- c. Provide information about the individual's right to appeal, including the timeframe and method for doing so; and
- d. Provide the contact information for free legal services.

2) Defendant will continue to post posters in the Early Childhood offices that describe child-care application rights with the same information available and distributed as a flyer to applicants.

3) After completing the requirements in Sections 1 and 2, Defendant will train staff of the Early Childhood Education and Care Department on the changes made to regulations under this order by March 31, 2022 and on changes made to notices of action under this order by March 31, 2022. Defendant will provide training materials and recordings of trainings to Plaintiffs' Counsel. To the extent practicable, Defendant will provide training materials to Plaintiffs' Counsel in advance of the actual training.

III. Monitoring and Enforcement

1) Defendant will provide Plaintiff's Counsel with any proposed changes to notices of action and any proposed regulatory changes implemented pursuant to this Order at least 30 days prior to implementation to allow Plaintiffs' Counsel the opportunity to provide written comment and the opportunity to meet and confer.

2) Defendant shall notify Plaintiffs' Counsel when the Department believes it has complied with Section I and Section II. Plaintiffs' Counsel will notify the Department in writing

as to their position on compliance within thirty (30) days of being notified the Department believes it has met the requirements of Section I or II. If the parties agree that the requirements of Section I or II have been met, they shall file a joint notice to the Court. If the parties disagree as to compliance with Section I or II, they will meet and confer within two weeks of Plaintiffs' written notice of disagreement. Plaintiffs shall not withhold agreement as to compliance without good cause.

3) For three years following the administrative closure of this case, Defendant will hold quarterly meetings to solicit and document all feedback from families that participate in the Child Care Assistance Program. The meetings will be open to all families participating in the child care assistance program, held in-person (if possible, depending on public health orders) with a virtual access option, held at a time and location that is most accessible for families that participate in the program, after work hours if necessary, and will include interpretation services.

4) No more than thirty (30) days after the quarterly meeting, Defendant and Plaintiffs will meet to review and discuss the feedback received from families after each quarterly meeting and determine whether any feedback requires attention by the Defendant as agreed to by the parties.

5) The Court retains jurisdiction to hear and resolve any disputes relating to performance of the terms and conditions of this Second Amended Stipulated Order. Plaintiffs may file a motion to enforce this Order upon reaching an impasse in the meet and confer process or upon Defendant's refusal to meet and confer or hold the quarterly meetings as set forth in Section III. If Plaintiffs bring an action to enforce this Order within three years of the closure of this action and prevail, Defendants shall be liable for Plaintiffs' reasonable attorneys' fees and costs. This time limitation solely concerns the right to recover attorneys' fees under this Order and shall not be

interpreted to bar recovery of attorneys' fees in an action to enforce this Order under any other legal theory or cause of action.

6) Once the terms of this agreement have been fully implemented by Defendant, her agents or successors, the parties will jointly move for administrative closure of this case.

Accordingly, the Court ORDERS and CONCLUDES:

- 1) The Court ORDERS the parties to comply with the terms of the Order as set forth herein.

The Honorable Matthew J. Wilson
First Judicial District Court Judge

Respectfully submitted,

NM CENTER ON LAW AND POVERTY

By: /s/ Tim Davis

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