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Attorneys for Petitioner
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ENDORSED
FILED
ALAMEDA COUNTY

MAR 23 2010

CLERK OF THE SUPERIOR COURT
By Molly Kautz

CALIFORNIA SUPERIOR COURT
IN AND FOR THE COUNTY OF ALAMEDA

SHIRLEY BRAZWELL, on behalf of [REDACTED]
[REDACTED]

Petitioner,

v.

JOHN WAGNER, Director, California Department
of Social Services

Respondents.

Case No.: RG10505601

**VERIFIED PETITION FOR WRIT OF
MANDATE (CCP §§ 1094.5 AND 1085)**

1 I. INTRODUCTION

2 1. Petitioner is the grandmother and relative guardian of [REDACTED], and by this action,
3 challenges Respondents' denial of Kinship Guardianship Assistance Payment (Kin-GAP) program
4 benefits to her grandson, and to other youth similarly situated, based on a misinterpretation of the
5 Kin-GAP statute. Respondents are mistaken in their position that when a dependency (foster care)
6 court establishes legal guardianship of a youth with a relative caregiver, the financial support
7 provided by Kin-GAP to assist that caregiver must end if the youth later becomes entangled with
8 the law and is then returned home to that same legal guardian with an open delinquency case.

9 2. Relatives of children in either the foster care or probation/delinquency systems often
10 agree to become legal guardians of the children when their parents are unable to care for them. A
11 guardianship puts the relative in the role of the parents and offers the youth a sense of permanency.

12 3. Kin-GAP is a state funding program that was created in 1999 to "enhance family
13 preservation and stability by recognizing that many children are in long-term, stable placements
14 with relatives." Welf. & Inst. Code § 11361.¹ Initially, Kin-GAP provided cash benefits and Medi-
15 Cal only to children in a legal guardianship that was established by the dependency court. In 2006,
16 the program was expanded to include youth whose legal guardianship was created through the
17 delinquency system.

18 4. Kin-GAP is intended as a financial incentive to encourage relatives to care for these
19 youth, to stabilize the family, and ultimately allows the dependency and, in some instances,
20 delinquency case to be closed with appropriate supports in place. Eligibility requirements for Kin-
21 GAP include, among other things, that: 1) a legal guardianship must have originated through either
22 the dependency or delinquency systems, and 2) that the court of origin has dismissed the underlying
23 case so it no longer has jurisdiction of the child.

24 5. It is not uncommon for a child in a relative legal guardianship that was established
25 by the dependency court to later become entangled with the law and come under the jurisdiction of
26 the delinquency court. If the youth is incarcerated, Kin-GAP payments to the guardian cease.

27 _____
28 ¹ All references herein to Codes are to those of the State of California.

1 However, if the delinquency court later returns the child to the home of the relative legal guardian,
2 Kin-GAP payments should resume. Inexplicably, the state has taken the position that if the
3 delinquency court has retained jurisdiction of the child to supervise his probation while in the home
4 of the legal guardian, the Kin-GAP payments cannot resume because there is an open court case.
5 This is contrary to the Kin-GAP statute, which requires only that case in the court where the legal
6 guardianship was established – the court of origin – no longer be open.

7 6. The State's position not only misinterprets the Kin-GAP statute, but can lead to
8 devastating consequences. Often these families cannot survive without the Kin-GAP funding.
9 Moreover, their entitlement to Medi-Cal is terminated when their Kin-GAP is cut as well. The legal
10 guardian, who has agreed to care for and assume responsibility for a child who is not his or her
11 own, and may have been able to do so only because of the promised Kin-GAP support, no longer
12 has the financial assistance needed which can put the entire guardianship at risk of failing.

13 7. Plaintiff in this case is a Shirley Brazwell, a grandmother who became the legal
14 guardian of her fifteen-year-old grandson, [REDACTED], through the dependency court system. Kin-GAP
15 payments for [REDACTED] were received until an arrest landed him in the delinquency court system and a
16 detention facility. Eventually, the delinquency court returned [REDACTED] to his grandmother's home
17 because she was still his legal guardian, but the County refused to reinstate Kin-GAP payments,
18 stating that [REDACTED] was ineligible because he had an open delinquency court case. The fact that
19 [REDACTED] delinquency case remained open should not have had an effect on his right to receive Kin-
20 GAP payments because the legal guardianship established by the dependency court was still intact.

21 8. Mrs. Brazwell filed for an administrative hearing challenging the denial of Kin-GAP
22 benefits and the ALJ found in favor of the County in a decision that inaccurately interpreted the
23 Kin-GAP laws.

24 9. The language of the statute and implementing All County Letters (ACLs) is very
25 clear that the expansion of the Kin-GAP program to delinquency youth in 2006 was not intended to
26 change the basic Kin-GAP eligibility requirements; that is, the changes in law were not meant to
27 limit benefits for children whose legal guardianships and Kin-GAP eligibility were established
28 through the dependency system. Respondents either confuse the requirement that the court case in

1 which a legal guardianship originated be closed before Kin-GAP can issue to mean that there can
2 be no other court with jurisdiction over the child while in legal guardianship. Or, Respondents rely
3 on the expansion of the Kin-GAP program as the basis for denying Petitioner's benefits, mistaking
4 the extension of Kin-GAP eligibility to a new population as a limitation on eligibility for existing
5 Kin-GAP cases.

6 10. Respondents' interpretation of the Kin-GAP eligibility requirements leads to the
7 breakdown of otherwise stable family placements, because relative legal guardians are expected to
8 provide the same level of care, despite being stripped of critical monetary assistance. The loss of
9 critical funding threatens these vulnerable children with removal from a stable home environment
10 with a relative guardian to placement with a licensed stranger or in a group home. Not only are
11 families destabilized, but the cost of the latter placement potentially far outweighs the cost of
12 providing Kin-GAP benefits to relative caregivers.

13 11. In the case of Petitioner, Kin-GAP benefits were terminated on November 12, 2008,
14 when the Fresno County discovered that the Petitioner's grandson was incarcerated. The County
15 informed Ms. Brazwell that she had to provide proof that [REDACTED] was no longer a ward of the
16 delinquency court before her Kin-GAP benefits would be reinstated.

17 12. After the administrative hearing, in which the Administrative Law Judge affirmed
18 the County's position, Ms. Brazwell depleted her savings to care for [REDACTED]. When her savings ran
19 out, without ongoing Kin-GAP, she could no longer provide for [REDACTED] and, in April of 2009, he
20 was placed in a costly group home.

21 13. Petitioner/ Plaintiff (hereinafter "Petitioner") hereby respectfully petitions this Court
22 for a writ of administrative mandate, pursuant to California Code of Civil Procedure § 1094.5, to
23 overturn Respondent's decision. On behalf of the minor, the Petitioner is entitled to Kin-GAP
24 benefits beginning November 24, 2008.

25 14. Petitioner also respectfully requests this Court to issue a writ of mandate under Code
26 of Civil Procedure § 1085 requiring Respondents' state child welfare officials to stop their practice
27 of terminating or denying Kin-GAP benefits to otherwise eligible children who later enter the
28 delinquency system and to instruct its agents, including County Welfare officials, accordingly.

1 **II. PARTIES**

2 **A. Petitioner**

3 15. Petitioner Shirley Brazwell (hereinafter "Petitioner") is the grandmother of [REDACTED]
4 [REDACTED] She is, and has been, a resident of Santa Clara County. She seeks reversal of
5 Respondents' final decision denying retroactive Kin-GAP benefits from November 23, 2008 in
6 Hearing Number 2008357255 (hereinafter "ALJ Decision"). As the child's court-appointed
7 guardian and his sole support, Petitioner is aggrieved by Respondents' decision.

8 16. Petitioner further seeks relief for all similarly-situated children and their legal
9 guardians who are denied ongoing Kin-GAP benefits when the children subsequently become
10 wards² of the juvenile court, and are returned home to live with their guardian.

11
12 **B. Respondents**

13 17. Respondent/ Defendant John Wagner (hereinafter "Respondent Wagner") is the
14 Director of California Department of Social Services and, as such, he is charged under Welf. &
15 Inst. Code § 10553 with administering Kin-GAP and ensuring its compliance with the law. His
16 duties are partially set out in Welf. & Inst. Code § 11400, *et seq.* Respondent Wagner is sued in his
17 official capacity.

18 18. Respondent California Department of Social Services (hereinafter "CDSS") is
19 responsible for the delivery and administration of public programs and services relating to children
20 and families in California, including but not limited to, foster care services. CDSS is responsible
21 for establishing and administering Kin-GAP and for ensuring each county's compliance with the
22 law. The counties act as agents of CDSS in administering their child welfare programs.
23 Respondents Wagner and CDSS are collectively referred to as "Respondents."

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27 ² In California, a child becomes "ward" of the juvenile court when he is adjudicated in the
28 delinquency system.

1 **III. STATEMENT OF FACTS**

2 19. █████ entered Fresno County's foster care system on November 13, 1997 at the
3 age of three and was placed with his grandmother, Ms. Brazwell, who lived in Santa Clara County.
4 Ms. Brazwell was his primary caretaker from this point forward.

5 20. On January 20, 2000, the Fresno County juvenile court appointed Ms. Brazwell as
6 █████'s legal guardian pursuant to Welfare and Institutions Code Section 366.26.

7 21. On July 7, 2006, the Fresno County juvenile court terminated jurisdiction on
8 █████'s dependency case and ordered that Kin-GAP benefits be paid to Ms. Brazwell, as she was
9 his legal guardian. Ms. Brazwell began receiving Kin-GAP payments shortly after the July 7, 2006
10 hearing.

11 22. █████ has a history of emotional and mental health issues. He was diagnosed with
12 Attention Deficit and Hyperactivity Disorder ("ADHD") as a young child and continues to require
13 medication and treatment for this disorder. █████'s ADHD often manifests itself in disruptive
14 behavior in school. In 2008, he was suspended from school at least thirty-one times and each time,
15 Ms. Brazwell had to leave work to take him home. The school district subsequently transferred him
16 to another school in September of 2008.

17 23. In June of 2008, █████ was arrested in Santa Clara County for a misdemeanor
18 charge. The juvenile court adjudged him a ward of the court on August 6, 2008, pursuant to
19 Welfare and Institutions Code Section 602. On September 11, 2008, the juvenile court placed
20 █████ temporarily in juvenile hall in Santa Clara County.

21 24. Fresno County learned of his detention on November 12, 2008 and the eligibility
22 worker called Ms. Brazwell to inform her that his Kin-GAP benefits would be terminated as of
23 November 30, 2008, based on the fact that he no longer lived with her. The county later sent a
24 Notice of Action to her house dated November 12, 2008.

25 25. Ms. Brazwell contacted the Fresno county eligibility worker to discuss the
26 termination of benefits. The worker assured her that if █████ was released from juvenile hall and
27 returned home before December 30, 2008, Ms. Brazwell would not have to reapply for benefits and
28 that his Kin-GAP payments would resume.

1 26. The Santa Clara juvenile court released ██████ home to Ms. Brazwell on November
2 24, 2008. Ms. Brazwell and her attorney both contacted the eligibility worker on that date to
3 inform her that ██████ had returned home.

4 27. Fresno County did not restore ██████'s Kin-GAP benefits when he returned home.
5 Instead, in early December, the eligibility worker contacted Ms. Brazwell by phone and informed
6 her that their office needed a minute order stating that ██████'s delinquency case had been
7 dismissed in order to resume his Kin-GAP payments. Later that week, Ms. Brazwell received an
8 application packet in the mail with an attachment that said the County needed a minute order stating
9 that ██████ was no longer a ward of the court. In mid-December, Ms. Brazwell received another
10 packet stating that her application would be closed if she did not provide such documentation.

11 28. Ms. Brazwell did not have documentation that ██████ was no longer a ward of the
12 court and on December 22, 2008, she requested a fair hearing to dispute the denial of her Kin-GAP
13 application. In a Notice of Action dated January 1, 2009, Fresno County informed Ms. Brazwell
14 that it had denied her application Kin-GAP benefits because she had failed to provide requested
15 court documents.

16 29. In its Position Statement filed shortly before the administrative hearing, the County
17 contended that it "denied the Kin-Gap . . . application for child because the claimant did not provide
18 the requested documentation to determine eligibility."

19 30. On February 5, 2009, the Administrative Law Judge (hereinafter "ALJ") found in
20 the County's favor, concluding that ██████ was "not eligible to receive Kin-GAP benefits as of
21 December 1, 2009 because he was a ward of the Juvenile Court. . . . If and when the Juvenile Court
22 terminates the wardship of [██████], the claimant would have the right to reapply for Kin-GAP
23 benefits for [██████]." A true and correct copy of the ALJ's decision is attached as Exhibit A.

24 31. After the denial of Kin-GAP, Ms. Brazwell struggled to care for ██████ with far less
25 income, as her only sources of income were her social security payments and his sister's Kin-GAP
26 payments, which were only to be used to care for his sister. Ms. Brazwell is seventy-three years old
27 and unemployed. Though she has been looking for employment, she has been unable to secure even
28

1 part-time work. She had to withdraw money from her savings to care for [REDACTED] when his benefits
2 were terminated. As a result, her savings have been completely depleted.

3 32. In April of 2009, the juvenile court removed [REDACTED] from Ms. Brazwell's home and
4 sent him to a costly substance abuse treatment facility because his behavior at home had
5 deteriorated. His probation at home failed in part because of Ms. Brazwell's inability to care for
6 [REDACTED] at the same level as when she was receiving Kin-GAP benefits. [REDACTED] remains at this facility
7 and it is unclear as to when he will return home.

8 9 **IV. PROCEDURAL HISTORY**

10 33. The Fresno County Department of Children and Family Services ("the County")
11 denied Kin-GAP funding in a Notice of Action issued November 12, 2008.

12 34. On December 22, 2008, Petitioner filed a request for an administrative fair hearing
13 to challenge the denial of Kin-GAP benefits.

14 35. The hearing was held on February 5, 2009. The National Center for Youth Law
15 represented Petitioner at the February 5, 2009 administrative hearing. The hearing decision
16 (2008357255), released March 23, 2009, upheld the denial of Kin-GAP benefits based on All
17 County Letter (ACL) Number 07-13 and Welfare and Institutions Code Section 11363(a).

18 19 **V. STATUTORY AND REGULATORY FRAMEWORK**

20 36. Kin-GAP was created to "enhance family preservation and stability" by providing
21 payments to children in long-term, stable placements with relatives without the need for continued
22 court supervision and governmental intervention. Welf. and Inst. Code § 11361.

23 37. Kin-GAP is available to any youth under the age of 18 who meets these four
24 eligibility criteria:

- 25 (1) Has been declared either a dependent, or foster youth, of the Juvenile Court
26 under Welfare and Institutions Code Section 300 or a ward, or delinquent, of the
27 Juvenile Court under Welfare and Institutions Code Sections 601 or 602;
28 (2) Has been living with a relative for at least 12 consecutive months;

1 (3) Has had a kinship guardianship with that relative established by the Juvenile
2 Court pursuant to Welfare and Institutions Code Section 366.26;

3 (4) Has his or her dependency case dismissed pursuant to Welfare and
4 Institutions Code Section 366.3, or delinquency case terminated pursuant to Welfare
5 and Institutions Code Section 728(e), concurrently or subsequently to the
6 establishment of the kinship guardianship.

7 Welf. and Inst. Code § 11363.

8 38. Kin-GAP eligibility is terminated if the guardianship with a kinship guardian is
9 terminated, otherwise benefits will continue until the child is 18 or 19, if the conditions of Welfare
10 and Institutions Code Section 11403 are met, and the child remains living with the relative
11 guardian. *See* Welf. and Inst. Code § 11363(b)-(c).

12 39. Prior to October 2006, Kin-GAP eligibility was limited to foster children for whom a
13 guardianship was created through the dependency system. In October 2006, eligibility for the Kin-
14 GAP program was expanded to include youth for whom a guardianship was created through the
15 delinquency system pursuant to W&IC § 728(d). ACL No. 07-13. As the statute and ACL No. 07-
16 13 make clear, there are two distinct and completely separate ways to create a guardianship through
17 the juvenile court: through the dependency system or through the delinquency system. *See* Welf.
18 and Inst. Code §§366.26; 728(d).

19 40. The ACLs that were released describing the changes to the Kin-GAP program stated
20 that the purpose of this expansion was “to allow Kin-GAP benefits to be provided to probation
21 youth in foster care and under the supervision of the juvenile delinquency court.” ACL 07-13, p. 2.
22 For a probation youth to be eligible, he “must have lived with the relative at least 12 consecutive
23 months; had a kinship guardianship with that relative established by the juvenile court pursuant
24 to...W&IC [§] 728(d); and, had his or her wardship terminated pursuant to W&IC [§] 728(e),
25 concurrently or subsequently to the establishment of the kinship guardianship.” ACL 07-13E

26 41. While the new law created an additional way for youth to gain access to the Kin-
27 GAP program, the legislation and implementing ACLs were clear that the change in law was not
28 intended to limit eligibility for children who already had a guardianship through the dependency

1 system. The ACL is clear that the “benefit and funding enhancements did not change the basic Kin-
2 Gap eligibility requirements...as defined in ACL No. 99-97.” That is, the eligibility requirements
3 for children with guardianships though the dependency system pursuant to W&IC §366.26 had not
4 changed and these changes in policy did not apply to that population of children. ACL No. 07-13,
5 p. 1; ACL No. 07-13E. Nowhere in the language of the Welfare & Institutions Code or the ACLs is
6 there any indication that this expansion affects children for whom the court had created a
7 guardianship through the dependency system.

8
9 **VI. GENERAL ALLEGATIONS**

10 42. An actual controversy exists between Petitioner and Respondents in that Petitioner
11 contends that the state statutes, policies and practices do not support Respondents’ denial of Kin-
12 GAP funding to a child who has been approved for Kin-GAP and subsequently becomes a ward of
13 the state. Petitioner desires a determination of the respective rights and duties of the parties. Unless
14 there is a judicial declaration of Petitioner’s rights, Respondents’ unlawful conduct will continue.

15 43. Petitioner is entitled to a writ of mandate under Code of Civil Procedure § 1094.5
16 because Respondents have denied Petitioner funding through an administrative fair hearing.

17 44. Petitioner is entitled to a writ of mandate under Code of Civil Procedure § 1085
18 because Respondents have a clear, present and ministerial duty to administer Kin-GAP in
19 conformity with the requirements of state law and ensure that similarly situated youth are not
20 erroneously denied Kin-GAP benefits.

21 45. Respondents at all times relevant to this action have, and continue to have, the
22 ability to administer the Kin-GAP program in accordance with the requirements of state law.

23 46. Petitioner has a beneficial interest in the performance by Respondents of its duties to
24 administer the Kin-GAP program in accordance with law.

25 47. Petitioner lacks a plain, speedy, or adequate remedy at law except by writ of
26 mandate.

27 48. Kin-GAP benefits are, by definition, subsistence-income provided to needy children
28 who are exiting foster care to guardianships and who are in need of substitute parenting. The loss of

1 Kin-GAP benefits due to Respondents' unlawful implementation of the law results in the loss of a
2 foster youth's source of financial support, and as a result, placement stability.

3 49. A writ mandating that Respondents cease the denial of Kin-GAP benefits when a
4 minor subsequently becomes a ward of the juvenile court will not cause any substantial harm to
5 Respondents.

6
7 **FIRST CAUSE OF ACTION**

8 **(Administrative Mandamus Pursuant to Code of Civil Procedure § 1094.5)**

9 50. Petitioner realleges and incorporates by reference each allegation in paragraphs 19
10 through 49 above as fully set forth herein.

11 51. This verified petition is brought under Code of Civ. Proc. § 1094.5 and is authorized
12 by Welf. & Inst. Code § 10962, which permits filing a petition to review the entire proceeding
13 conducted by the Department of Social Services (CDSS). Under Code of Civ. Proc. § 1094.5, no
14 filing fee or bond is required for such filing.

15 52. California has declared that public social services are to be administered in full
16 compliance with applicable state laws. Welf. & Inst. Code § 10600. Respondents have taken the
17 position that a child is not eligible for Kin-GAP if the child subsequently becomes a ward of the
18 juvenile court. This position is not consistent with state law.

19 53. Respondent Wagner prejudicially abused his discretion when his agent, the
20 Administrative Law Judge, failed to proceed in the manner required by law.

21 54. The issue in this action concerns a vested fundamental right to welfare benefits and
22 the appropriate standard of review is this Court's independent judgment.

23 55. Petitioner has exhausted all of her administrative remedies and has no other plain,
24 speedy, or adequate remedy at law.

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1 **SECOND CAUSE OF ACTION**

2 **(Administrative Mandamus Pursuant to Code of Civil Procedure § 1085)**

3 56. Petitioner realleges and incorporates by reference each allegation in paragraphs 19
4 through 49 above as fully set forth herein.

5 57. Respondents have a clear, present, and ministerial duty under state law to administer
6 all state welfare programs pursuant to state law. At all times relevant here, Respondents have, and
7 continue to have, the ability to perform their legal duties in accordance with state law and have
8 failed to do so.

9 58. Respondents' denial of Kin-GAP benefits to youth who subsequently become wards
10 of the juvenile court is not supported by state law.

11 59. Respondents, by denying Kin-GAP in reliance on a regulation not supported by state
12 law, have denied Petitioner, and others similarly situated, their rights secured by law.

13 60. Petitioner has no plain, speedy, or adequate remedy at law except by way of
14 peremptory writ of mandate pursuant to Code of Civ. Proc. § 1085.

15
16 **VII. RELIEF REQUESTED**

17 WHEREFORE, the Petitioner respectfully prays for the following relief:

- 18 1. That this Court assert jurisdiction over this matter;
- 19 2. That this Court issue an administrative writ of mandate under Code of Civil
20 Procedure section 1094.5 commanding Respondent Wagner to rescind the decision
21 in Administrative Hearing No. 08357255 and issue a new decision approving Kin-
22 GAP benefits from November 24, 2008, the date Petitioner's grandson returned to
23 her home;
- 24 3. That this Court issue a peremptory writ of mandate under Code of Civil Procedure
25 section 1085 commanding Respondents Wagner and CDSS to (a) cease their denial
26 of Kin-GAP benefits to children who subsequently become wards of the state, and
27 (b) order their agents to comply with the mandatory requirements of state law with
28 regard to Kin-GAP benefits;

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4. That this Court issue an order awarding Petitioners the costs of this action and awarding reasonable attorney fees and costs; and

5. That this Court order other relief as the Court may deem just and proper.

Dated: March 23, 2010

NATIONAL CENTER FOR YOUTH LAW

By: 

FIZA QURAISHI

Attorney for Petitioner

SHIRLEY BRAZWELL

VERIFICATION

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STATE OF CALIFORNIA
COUNTY OF ALAMEDA

I, the undersigned, certify and declare that I have read the foregoing Petition for Writ of Mandate and know its contents.

I am a part to this action. The matters stated in the document described above are based on my own knowledge and believe except as to those matters stated on information and belief, and as to those matters I believe them to be true.

Executed on March 22, 2010, in Gilroy, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


SHIRLEY BRAZWELL

EXHIBIT A

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

Hearing No. 2008357255

In the Matter of Claimant(s):

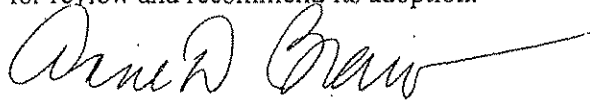
Shirley Brazwell
500 W. 10th Street, #104
Gilroy, CA 95020

PROPOSED
DECISION

Adopted by the Director
MAR 23 2009

California Department of Social Services

I submit the attached proposed decision for review and recommend its adoption.



Anne D. Brandon
Administrative Law Judge

Cert Date: March 23, 2009

State Hearing Record	
Hearing Date:	February 5, 2009
Release Date:	MAR 23 2009
Aid Pending:	Yes
Issue Codes:	[065-2]
Agency:	Fresno County
Agency Representative:	Julia Nida
Agency:	
Agency Representative:	
Authorized Rep. Organization:	
Authorized Rep:	Fiza Kuraishi, Esq.
SSN:	
SSN:	
AKA:	
AKA:	
Case Name:	
Language:	
LA District/Case:	
Companion Case:	

Appeal Rights

You may ask for a rehearing of this decision by mailing a written request to the Rehearing Unit, 744 P Street, MS 19-37, Sacramento, CA 95814 within 30 days after you receive this decision. This time limit may be extended up to 180 days only upon a showing of good cause. In your rehearing request, state the date you received this decision and why a rehearing should be granted. If you want to present additional evidence, describe the additional evidence and explain why it was not introduced before and how it would change the decision. You may contact Legal Services for assistance.

You may ask for judicial review of this decision by filing a petition in Superior Court under Code of Civil Procedure §1094.5 within one year after you receive this decision. You may file this petition without asking for a rehearing. No filing fees are required. You may be entitled to reasonable attorney's fees and costs if the Court renders a final decision in your favor. You may contact Legal Services for assistance.

This decision is protected by the confidentiality provisions of Welfare and Institutions Code §10850.

SUMMARY

Fresno County correctly discontinued Kinship Guardian Assistance Payment (Kin-GAP) benefits for EB effective November 30, 2008 because EB was a ward of the juvenile court. [065-2]

FACTS

There is no California Medical Assistance (Medi-Cal) Program issue to be determined in this decision.

By a Notice of Action (NOA) dated November 12, 2008, Fresno County advised the claimant that, effective November 30, 2008, Kin-GAP benefits for EB would be discontinued. The notice advised the claimant that the reason for the discontinuance was that EB was not living in the home. The notice advised that EB might be eligible for benefits if he applied on his own case.

By a NOA dated January 5, 2009, Fresno County advised the claimant that the county had denied her application, dated December 1, 2008, for Kin-GAP cash aid. The notice listed all possible reasons for denial with no specific section marked.

By a NOA dated January 6, 2009, Fresno County advised the claimant that the Medi-Cal application, dated December 1, 2008 for EB, had been denied on the basis that the claimant had failed to provide the Minute Order stating whether or not EB is a ward of the courts.

On December 22, 2008, the claimant requested a state hearing to contest the county's denial of her request to reopen the Kin-GAP case. As noted above, Medi-Cal is no longer at issue.

At the hearing, it was undisputed that EB had returned to the claimant's home and was living with the claimant from November 24, 2008, forward. Although EB returned to the home prior to the effective date of the discontinuance action, the county determined that the claimant was not eligible to receive Kin-GAP benefits for EB effective December 1, 2008 because EB was a ward of the Juvenile Court. At the hearing, the claimant, her Authorized Representative (AR) and the county representative agreed that the issue for the hearing was whether the claimant was eligible to receive Kin-GAP benefits for EB effective December 1, 2008 even though he was a ward of the Juvenile Court.

The claimant is the grandmother of EB. Effective January 20, 2000 the claimant was appointed legal guardian of EB by the Fresno County Superior Court. Effective July 7, 2006, Fresno County Superior Court terminated jurisdiction on the dependency case and ordered Kin-GAP benefits for EB. The claimant began receiving Kin-GAP benefits for EB shortly thereafter.

EB had been residing in Santa Clara County, with the claimant, prior to the guardianship and is currently living with the claimant in Santa Clara County.

In June 2008, EB was arrested in Santa Clara County for a misdemeanor charge. Because of his mental illness, he was referred to and began receiving services from a provider through the Mental Health Court in Santa Clara County. On August 6, 2008, the Juvenile Court in Santa Clara County adjudged EB to be a ward of the court. On September 11, 2008, the court placed EB, temporarily, in Juvenile Hall in Santa Clara County.

On November 12, 2008, Fresno County learned that EB had been placed in Juvenile Hall in Santa Clara County. On that date, the Eligibility Worker (EW) issued the November 12, 2008,

notice, proposing to discontinue EB's Kin-GAP benefits, effective November 30, 2008 because he was no longer living with the claimant.

On November 24, 2008, EB was released from Juvenile Hall and returned to the claimant's custody, where he has since remained. At the time of his release, according to the Minute Order of the Superior Court, EB was released on "Pre-Court EMP, zero tolerance, to grandmother." The court proceedings were continued to December 3, 2008. No action was taken by the Santa Clara Superior Court, or the Fresno County Superior Court, to change or modify the claimant's legal guardianship of EB.

On November 24, 2008, both the claimant and her AR contacted the Fresno County EW to advise that EB had been released to the claimant. They both left voicemail messages for the EW. According to the AR's Statement of Position (SOP), submitted at the time of the instant hearing, on November 25, 2008, the AR confirmed with the EW that she had received the messages and that benefits would be retroactively paid back to November 24, 2008.

On December 1, 2008, the EW sent the claimant a letter, noting that the county was attempting to determine/re-determine eligibility for EB. The EW noted that it was not necessary for the claimant to see her worker. However, the EW wrote "as per our conversation on the phone in order for me to complete the reopening packet for ... you must provide copies of the Minute Order stating that he is no longer a ward of the court." The claimant submitted an application for the Kin-GAP benefits and also Medi-Cal benefits, which was signed by her on December 6, 2008.

On December 15, 2008, the EW sent the claimant another letter. Again the letter noted that it was not necessary that the claimant see the worker. However, the EW did ask that the claimant provide information by December 26, 2008. The letter noted "I have received the reopening packet you sent to me, but the Minute Order I requested was not included with the packet. I cannot process the reopening packet without the court order stating that ... is no longer a ward of the court. Please provide this information or I may have to close your claim for incomplete application." Apparently this letter was generated by a conversation between the claimant and the EW concerning the Minute Order.

Subsequent to this letter being sent, the claimant's AR had e-mail contact with the Fresno County Department of Child and Family Services, concerning the claimant's ongoing eligibility for Kin-GAP benefits for EB. The e-mail communication not only involved the Fresno County EW, and other members of the Fresno County staff, but also involved the analyst with the California Department of Social Services (CDSS). Based upon information provided to the analyst, he agreed that Fresno County was correct to discontinue/deny Kin-GAP benefits until the wardship "is dismissed or terminated." In the e-mail, dated December 18, 2008, the Fresno County worker noted that the determination is based on Welfare and Institutions Code Section 11363(a)(4) and the information in All-County Letter (ACL) 07-13, which supersedes the information set forth in answer to Question No. 16 in ACL 01-64. Based on this communication, Fresno County decided to deny the claimant's reapplication on the basis that she had failed to provide court documents that established that the wardship has been determinate.

At the instant hearing, the AR submitted a copy of the Minute Order from the Santa Clara County Superior Court. The Minute Order released EB from Juvenile Hall to the custody of the claimant. The Minute Order pertains to the Juvenile Court proceedings in Santa Clara County, stemming from the June 2008 misdemeanor arrest. There were no documents submitted, nor was there any discussion or evidence that there had been any action taken by the Fresno

County Superior Court regarding the underlying guardianship. There is also no dispute that the claimant has had physical custody of EB since November 24, 2008.

In her SOP, the AR provided copies of Welfare and Institutions Code §11363 concerning Kin-GAP aid. The AR also submitted a copy of ACL No. 07-13 which refers to Welfare and Institutions Code §728(d) which is an enhancement of the Kin-GAP Program to include Probation Youth and Foster Care Youth under the supervision of the Juvenile Delinquency Court. The ACL also reads "while the above language specifically refers to probation youth, the benefit and funding enhancements listed in ACL No. 07-13 did not change THE BASIC ELIGIBILITY REQUIREMENTS FOR THE REMAINING Kin-GAP POPULATION. These eligibility requirements are defined in ACL No. 99-97."

Since the county did not send an adequate Notice of Action proposing to discontinue Kin-GAP benefits effective November 30, 2008 on the basis that EB was a ward of the juvenile court, the Administrative Law Judge (ALJ) ordered aid paid pending the outcome of this decision.

LAW

All the regulations cited refer to the Manual of Policies and Procedures (MPP), unless otherwise noted.

The Kinship Guardian Assistance Payment (Kin-GAP) is a child-only cash aid program for children with court dependencies who are placed with relatives who assume guardianship and opt to exit the foster care system. (All-County Letter (ACL) No. 99-92, October 25, 1999)

The CDSS was given the authority to initially implement the Kin-GAP legislation (established by Senate Bill No. 1901, Ch. 1055, Statutes of 1998 and modified by Assembly Bill No. 1111, Ch. 147, Statutes of 1999) by ACL, effective January 1, 2000. (ACL No. 99-97, November 4, 1999)

To be eligible to receive a Kin-GAP payment, a child under age 18 must meet all of the following conditions:

- Been adjudged a dependent child of the juvenile court pursuant to W&IC §300;
- Been an eligible child who lived with a relative for at least 12 consecutive months;
- Had a kinship guardianship with that relative that was established per W&IC §366.26 and has had his/her Juvenile court dependency dismissed per W&IC §366.3 after January 1, 2000.

(All-County Letter (ACL) No. 99-97, November 4, 1999; ACL No. 00-09, January 10, 2000; §§90-105.121, .131, .132, effective July 1, 2000; W&IC §11363(a))

KinGAP Program Changes Implemented by Assembly Bill 1808 and effective October 1, 2006 are as follows:

- The Program has been extended to allow KinGAP benefits to be provided to probation youth in foster care and under the supervision of the juvenile delinquency court. To be eligible, the child must have lived with the relative at least 12 consecutive months prior to the establishment of legal guardianship; the relative guardianship must be established pursuant to a permanency planning hearing under Welfare and Institutions Code (W&IC) Section 727.3, Subdivision (b); and, the child must have his/her wardship terminated pursuant to subdivision (e) of W&IC Section 728, concurrently or subsequently to the establishment of

the guardianship. These children may have been receiving either federal AFDC-FC or CalWORKs payments prior to entering KinGAP.

- The Program permits SCI payments as part of the KinGAP payment if the child was receiving AFDC-FC SCI payments in the month before the month that KinGAP benefits began.
- All KinGAP recipients are now entitled to the \$100 annual state supplemental clothing allowance.
- Children in receipt of KinGAP are now eligible to receive the same clothing allowance which they would have received had they been in foster care based on that county's clothing allowance plan.

(All County Letter 07-13, March 13, 2007)

California Department of Social Services (CDSS) ACL No. 01-64, dated September 10, 2001 provides that the purpose of the ACL is to provide answers to questions concerning the Kin-GAP Program which was implemented under Senate Bill 1901 and modified by Assembly Bill 1111 and Assembly Bill 2876. In the ACL, question No. 16 states "a child in Kin-GAP is placed by probation into a group home for a month; the wardship remains in tack. Can the child return to Kin-GAP?" The answer is "if the child returns home with or without the wardship in tack, Kin-GAP may be paid provided the legal guardianship is still in existence and all other eligibility criteria are met." The answer to question 17 provides that if the court reinstated dependency, "the child would not be eligible for Kin-GAP during the time that the dependency was in existence... Once the court dismissed the dependency, the child could resume Kin-GAP eligibility provided all other eligibility conditions are met."

CDSS ACL No. 07-13, dated August 8, 2007, discusses the enhancements to the Kin-GAP Program, which were made under AB1808. AB1808 established a new Kin-GAP Program which is to be known as Kin-GAP Plus. This Program includes certain enhancements in the Kin-GAP Program, including the inclusion of probation youth in foster care and under the supervision of the Juvenile Delinquency Court. The ACL discusses the requirements for these youth to be included in the Kin-GAP Program under Welfare Institutions Code §728(d). In addition to other criteria, "the child must have his/her wardship terminated pursuant to subdivision (e) of W&IC Section 728, concurrently or subsequently to the establishment of guardianship" to be eligible to receive KinGAP benefits.

CONCLUSION

Fresno County correctly discontinued Kin-GAP benefits for EB effective November 30, 2008 and correctly denied the December 1, 2008 reapplication for Kin-GAP benefits for EB. EB was not eligible to receive Kin-GAP benefits as of December 1, 2008 because he was a ward of the Juvenile Court. Based on the above statutes, regulations and ACLs, a child is not eligible to receive Kin-GAP benefits while he or she is a dependent or ward of the juvenile court. If and when the Juvenile Court terminates the wardship of EB, the claimant would have the right to reapply for Kin-GAP benefits for EB.

ORDER

The claim is denied.