

# Oneida Appeals Commission

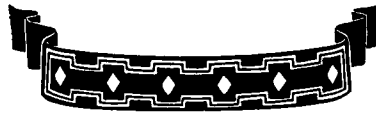
Onlayote 7 a-ka Tsi7 Shakotiya7 Tolé hte

Phone: 920-497-5800

Fax: 920-497-5805

Post Office Box 19

Oneida, WI 54155



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## Trial Court

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Lisa Duff,

Petitioner

Docket No. 03-TC-331

vs.

Oneida Child Care,

Respondent

Date: October 8, 2003

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### Court Decision

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This case has come before the Oneida Appeals Commission. Judicial Officers Mary Adams, Marjorie Stevens, and Stanley R. Webster, presiding.

### I Background

On September 3, 2003 a hearing was held to decide whether the motion for an injunction should or should not be granted. The court was unable to make a fair and judicious decision based on the information provided. The court ordered a recess with the following instructions: (1) the child will remain in the At-Risk Program until a decision is made; and (2) the Respondent shall submit a law, ordinance or policy that defines the At-Risk Program by Thursday, September 18, 2003, to the court and provide copies to the Petitioner. Court will resume on Tuesday, September 23, 2003 at 9:00 am.

On Tuesday, September 23, 2003 a hearing was held on the Respondent's Motion to Dismiss. The Respondent contends that according to their At Risk Criteria, Determining Criteria, (Level 3 - Foster Care) the Petitioner's child was accepted as a foster child in February of 2002. The child was adopted in December of 2002, because the child was no longer a foster child, the child lost eligibility to remain in the At Risk Program. Therefore, the Respondent requests the court to

grant the motion to dismiss.

According to the At Risk/Crisis Program, "The At Risk Team will meet as needed to determine eligibility for acceptance into the Oneida Child Care Program and for approving any necessary extensions." The Respondent upheld the decision of the At Risk Team to withdraw the Petitioner's child from the At Risk Program at the Oneida Child Care, Norbert Hill site. The Respondent claims on August 18, 2003 the At Risk Team sent a notice to the Petitioner notifying her that her child was being withdrawn from the At Risk Program because the Petitioner's child no longer met the At Risk criteria to remain in the At Risk Program. The Respondent further contends that the Oneida Child Care has the right to withdraw a child if unable to meet the child's needs according to the Oneida Child Care Handbook.<sup>1</sup>

## **II Issue**

Has the Respondent properly determined the eligibility of the Petitioner's child?

## **III Analysis**

At the September 23, 2003 hearing, the parties were informed of the absence of Judicial Officer, Stanley R. Webster, and received no objections to continue the hearing as scheduled.

The Petitioner claims her child was accepted in the Oneida Child Care's At Risk Program in February 2002 as a foster child. The Petitioner claims she did not sign a contract for the At Risk Program. The Petitioner adopted the child in December 2002. The Petitioner claims that in July of 2003, a review of the At Risk Program was made and the At Risk Team decided that due to the adoption, the child was no longer eligible to remain in the program.

The Respondent contends that periodic evaluations were conducted on the Petitioner's child.

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<sup>1</sup>. Parent Handbook. Separation of Services: "...Oneida Child Care reserves the right to refuse care to families in situations where: 3) If we cannot meet their needs."

The Petitioner's child passed his testing up to eighteen months of age. The Respondent contends that they did not receive any professional medical statements that verified developmental problems exist with the child. The Respondent claims the child was accepted because he was a foster child and no other reason.

The Respondent contends that the Petitioner knew this was a temporary program which is the reason the Petitioner completed an application for her child to be accepted into the regular child care program. The Respondent claims the Petitioner completed an application form to add her child on the waiting list, but the Respondent was unable to locate the application. However, the Respondent claims that the child's name was still placed on the waiting list and will be eligible to return to the Center in a regular program when his name comes up.

The Petitioner alleges that after several complaints were made to the Center addressing the care of her child, she received the decision that her child is no longer eligible for the At Risk Program. The Petitioner claims she was informed that her son's last day would be Friday, August 29, 2003. The Petitioner claims she was unaware that this was a temporary program and thought her child was accepted based on his potential for FAS/FAE. The Petitioner claims her child's adoption was over 11 months ago and has been in the program for approximately 19 months.

The Respondent was unable to locate the Petitioner's file. The court requested the Petitioner's file because the file should contain an agreement between the At Risk Program and the parent. The agreement should provide the Petitioner's acknowledgment of her obligations to continue in the At Risk Program and most likely identify the causes of ineligibility. In addition, an agreement signed by the parent would support that she/he is cognizant of the child's temporary situation. The Petitioner's child was in the At Risk Program "temporarily" for approximately 19 months. Without an agreement, it is hard to believe that this parent knew that adopting the child would cause this child to become ineligible. According to Black's Law Dictionary 6<sup>th</sup> edition (pg 67): Agreement;

*"The act of two or more persons, who unite in expressing a mutual and common purpose,*

*with the view of altering their rights and obligations.”*

In reference to exhibit 2 of the Petitioner’s Motion for Temporary Restraining Order brief, the second fact:

*The At-Risk Program is a short term program to help children in an interim basis until further help is secured. For example, The At-Risk Program covers: Protection issues like physical abuse; Neglect; Sexual Abuse; Emotional Abuse; Others cover dysfunctional family situations i.e. family use of drugs/alcohol; Violence; Foster Care children; Teen Parents; Developmental delays of over one year (but who fit into the class structure); and Children with Reasoning Medical Conditions such as invasive treatments.*

The program explains that it is a short term program to help children in an interim basis until further help is secured. The issue of “*further help is secured*” begs the question, what type of further help has been or could be secured? This statement is vague and unclear.

In reference to exhibit 6 of the Respondent’s Motion to Dismiss brief, At Risk Process;

*Process (4). The family will be contacted regarding the decision by telephone and in writing by the Social Services Coordinator. If accepted the Social Services Coordinator will have the family sign a 30 day contract with the center. This contract will then be brought up for review in 30 days to determine if the need for child care still exist or should be”*

According to Process (4), a review will be done in 30 days to determine if need for special care for the child still exists. The Respondent failed to provide documentation that a 30 day review was done. The process for the At Risk Criteria is inadequate for several reasons: (1) it states that by being placed in foster care implies some sort of dysfunctioning family situation; (2) the child could be adversely affected emotionally; and (3) it does not contain an approval date.

Process (4) does not contain a period after the word “be”, the court can only speculate what comes next. Based on that exhibit, which contains three (3) of the following pages: page (1) At Risk/Crisis Program, page (2) At Risk Criteria; and page (3) At Risk Process, this court

concludes that the process of this program is incomplete. The criteria to get into the program is valid because it explains the process of being accepted. However, it fails to explain the criteria that makes the child ineligible such as once a child is returned to the natural parents or once the child is adopted, because being adopted does not necessarily mean the child is not in need of the At Risk Program. In addition, it seems that the At Risk Process program should identify who the At Risk Team is that will perform the reviews to determine if the need for special child care still exists. Is the At Risk Team made up of professionals, parents or staff? Most importantly, the Respondent did not provide the court with a signed agreement.

The Petitioner's child had no professional medical evaluations submitted to this court to support whether this child has special needs. Therefore, the court will not make interpretations based on the child's medical needs. The issue of the child's placement based on his special needs will not enter into the court's judgement.

The Petitioner's child was accepted into the At Risk Program over 19 months ago in a temporary program. The Respondent contends that in this case, temporary generally means that the child will remain in the program until he/she is no longer a foster child. Did the Petitioner know that adopting the child would cause the child's termination from the program? Does being a foster child one day and an adopted child the next have such an impact on a child that it justifies removal from an At Risk Program?

The Respondent failed to provide an agreement/contract to support that the Petitioner knew that upon adopting the child, the child would no longer be eligible. The At Risk Criteria and Process is inadequate because it does not include an official start date. It is important to list program's start date and any amendments to show when implementation began and supports that the criteria was effective the date the child was accepted. The methods used to determine whether this child should or should not remain at the Oneida Child Care center must be fair and unbiased. To ensure fairness every applicant accepted into the program should be fully aware of his/her responsibilities to remain in the program. All forms should include an approved date. Each

applicant should sign an agreement upon acceptance into the program. The Respondent is unclear when it stated "*The At-Risk Program is a short term program to help children in an interim basis until further help is secured.*" Does this statement mean the At Risk Program will assess the child's need's and help locate appropriate child care within the Oneida Child Care Centers? The Respondent needs to be clear in their forms and statements.

The court advises the Oneida Child Care Center Director to review their current forms, add implementation or amendment dates, clarify vague statements and develop clear and concise agreements so that the parents and staff know exactly what their roles and responsibilities are.

#### **IV Decision**

Upon accepting a child into a program, it would seem reasonable that a child would simply move from one program into another without disruption. The court overturns the decision of the At Risk Team. The Petitioner's child shall remain in the At Risk Program until an opening is available for his transition into one of the other Oneida Child Care Centers.