

**PETITION FOR DECLARATORY STATEMENT BEFORE THE AGENCY FOR
PERSONS WITH DISABILITIES**

Petitioner, C.G., by and through undersigned counsel and next friend Robert Latham, Esq., pursuant to Chapter 28-105, Florida Administrative Code, hereby requests a declaratory statement from the Agency for Persons with Disabilities and as grounds therefore states the following.

1. Petitioner's Name and Address:

Name: C.G.

Address: c/o Children & Youth Law Clinic, 1311 Miller Dr., F305; Coral Gables, FL 33146

2. Name and Address of Petitioner's Attorney or Qualified Representative:

Name: Robert Latham, Esq. (Attorney)

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3. Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on Which the Declaratory Statement is Sought:

Florida Statute section 393.065(5)(b) – Developmental Disabilities: Application and eligibility determination.

4. Description of How the Statute(s), Agency Rule(s), Agency Order(s), and/or Code Section(s) May Substantially Affect the Petitioner in the Petitioner's Particular Set of Circumstances:

Petitioner C.G. is a 14-year-old girl who is currently on the HCBS/DD waitlist. C.G. is diagnosed with neurodevelopmental delay, which is a disorder of brain affecting cognitive functions such as memory, learning, emotions, and self-control. She has the mental capacity of a three-year-old child and has a documented IQ in the 40s. She has outbursts of violent behaviors and is currently prescribed six psychotropic medications to manage her mood and behaviors. C.G. has a history of self-injurious behavior, verbal and physical aggression towards others, tantrums, and non-compliance. C.G. has also harmed herself several times by cutting the skin around her wrists and arms, as well as hitting herself on the face and body. Her teachers at school

have reported her to be physically aggressive towards them, and state she will hit, kick, attempt to bite or urinate if she does not get her way. C.G.'s IEP states that she will often scream for hours. C.G. requires assistance for the majority of the school day and must be intensely monitored for safety reasons because she can be physically and verbally aggressive to adults.

C.G. was removed from her mother's care by the Department of Children and Families in October 2014 due to the mother's inability to adequately manage her daughter's disability in the home. Before being removed, C.G. often engaged in incidents of physical and verbal aggression towards her mother and other caregivers. Since that time she has been living in a group home for persons with developmental disabilities (an "APD home") in Miami. C.G. is well cared for in the APD home. The home takes her to all of her medical appointments, and participates in her school. C.G. is receiving Behavioral Health Services through a certified behavior analyst who visits every afternoon to work with C.G. The caregivers at the APD home treat C.G. like she is their own child.

The APD home staff have reported that they are in constant contact with C.G.'s mother, who visits frequently and signs all necessary paperwork. C.G.'s mother shows C.G. affection during these visits and it is clear that there is a strong bond between the two. C.G.'s mother has signed and consented to all of her IEP's, and signed that she would attend meetings in the future regarding C.G.'s IEP and status in school. The mother has successfully completed parenting skills classes for children with disabilities. The mother has also signed off on all the most recent CBA documents and participated in treatment for C.G. The behavior analyst ("CBA") working with C.G. has reported that C.G.'s mother visits frequently; and APD home staff take C.G. to visit her mother as well. The CBA reported that the mother is very affectionate towards her daughter when she visits and can tell she loves her daughter very much.

It would be in C.G.'s best interests to remain in the APD home to ensure her health, safety, and well-being while remaining in the legal custody of her mother. The APD home is a setting that is as family-like as possible, is consistent with C.G.'s special needs, and is designed to maintain stability in her educational placement. C.G. has a close emotional connection with her mother and no other family in her life. There is also no indication that C.G.'s mother is unfit or incapable of making long-term decisions regarding her child's upbringing. C.G.'s mother has determined that it is in C.G.'s best interest to remain in the APD home. The dependency parties agree.

Therefore, the supervision of the Department of Children and Families and the dependency court no longer appears necessary for the well-being and safety of C.G. Because the mother has been in compliance with her dependency Case Plan, the parties involved in the dependency case are seeking, pursuant to § 393.065(5)(b)(1)(a) Fla. Stat., to transition C.G. out of the child welfare system and into her mother's legal custody through "*reunification with family members*, and a permanent placement with a relative, or a guardianship with a nonrelative." Under this arrangement, the mother would have legal custody of C.G. and would continue C.G. in the APD

home where her needs are being met. The procedure for accomplishing this goal is not clear in either Florida Statutes or the Florida Administrative Code, and therefore undersigned files this Petition for Declaratory Statement seeking guidance from the Agency on how to proceed.

5. Questions

If reunification is ordered by the dependency court and C.G. is to be released to her mother's legal custody, would C.G.'s severe needs qualify her for Category 1 under § 393.065(5)(a) and the corresponding Florida Administrative Code pertaining to Crisis? If so, what is the proper procedure to apply for Crisis under these circumstances? If not, why not and what additional conditions are necessary for C.G. to qualify under Category 1?

If reunification is ordered by the dependency court and C.G. is released to her mother's legal custody, would this situation qualify as "reunification with family members" under Category 2 pursuant to § 393.065(5)(b)(1)(a) Fla. Stat.? If so, what is the proper procedure to apply for Category 2 under these circumstances? If not, what additional conditions are necessary to qualify under Category 2?

If C.G. is placed in Category 2 under § 393.065(5)(b)(1)(a) Fla. Stat., will she be immediately eligible to be taken off of the waiting list and placed into the HCBS program? If so, what is the proper procedure for requesting removal from Category 2 to the Waiver? If not, why and what additional conditions are necessary to qualify for removal from the waitlist?

If C.G. does not qualify for enrollment under any of the above scenarios, please describe the procedure and conditions for a dependent child with severe needs such as C.G. to exit the child welfare system into the legal custody of a parent while remaining in an APD home.

Respectfully submitted this 6th day of January, 2017.

Respectfully submitted,



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