

**STATE OF FLORIDA  
AGENCY FOR PERSONS WITH DISABILITIES**



IN RE: PETITION FOR DECLARATORY STATEMENT

Robert Latham, Esq. on behalf of C.G.

**Order Disposing of the Petition for Declaratory Statement**

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THE AGENCY, having reviewed the petition for declaratory statement described herein provides the following statement in response thereto:

On January 6, 2016, Robert Latham, Esq. on behalf of C.G. (Petitioner), petitioned the Agency for a declaratory statement seeking clarification on the proper procedure pursuant to Section 393.065(5)(b)1a, Florida Statutes to be utilized so that C.G. who is transitioning out of the child welfare system through reunification with her mother having legal custody and the minor child remaining in the APD home. Specifically, the Petitioner asks the following questions which the Agency will answer in turn as follows:

**Question 1.** "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 section 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 Category1?"

**Answer-**

Section 393.065(5)(a), F.S., provides:

The agency shall assign and provide priority to clients waiting for waiver services in the following order:

- (a) Category 1, which includes clients deemed to be in crisis as described in rule, shall be given first priority in moving from the waiting list to the waiver.

The question posed is improperly seeking a predetermination of a crisis eligibility by requesting a declaratory statement from the Agency. Further, the question asks the agency to respond to hypothetical questions. The purpose of a declaratory statement is to set out the agency's opinion as to the applicability of a specific statutory provision or of any rule or order of the agency as it applies to the petitioner under a particular set of circumstances only. Section 120.565, Fla. Stat. A declaratory statement cannot be issued for general applicability. *Mental Health Dist. Bd., II-B v. Department of Health & Rehabilitative Servs.*, 425 So. 2d 160 (Fla. 1<sup>st</sup> DCA 1983). Although it is more appropriate due to the reunification for the Petitioner to be classified under Category 2, the Petitioner would have to submit an application for services and the agency would determine if she qualifies under Category 1.

**Question 2.** 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 Section 393.065(5)(b)1a, Florida Statutes? If so, what is the proper procedure to apply for Category 2 under these circumstances? If not, what is the procedure to apply for Category 2 under these circumstances? If not, what additional conditions are necessary to qualify under Category 2?

**Answer-**

Section 393.065(5), F.S., provides:

The agency shall assign and provide priority to clients waiting for waiver services in the following order:

- (a) Category 1, which includes clients deemed to be in crisis as described in rule, shall be given first priority in moving from the waiting list to the waiver.
- (b) *Category 2, which includes individual on the waiting list who are:*
  1. *From the child welfare system with an open case in the Department of Children and Families' statewide automated child welfare information system and who are either:*
    - a. *Transitioning out of the child welfare system at the finalization of an adoption, a reunification with family members, a permanent placement with a relative, or a guardianship with a nonrelative; or, . . .*

Pursuant to section 393.065(5)(b)1a, Florida Statute, C.G. who is an existing APD client currently on the waitlist and transitioning out of the child welfare system by reunification with her mother would automatically qualify and be classified in Category 2.


**Question 3.** If C.G. is placed in Category 2 under Sections 393.065(5)(b)1a, Florida Statute, will she be immediately eligible to be taken off 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?

**Answer-** C.G. would be immediately eligible to be taken off the waiting list and placed into the HCBS program upon receipt of the reunification order. This is subject to the availability of funds.

**Question 4.** 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.

**Answer-** C.G. qualifies for enrollment in Category 2 as indicated above.

**DONE AND ORDERED** in Tallahassee, Leon county, Florida, this 6<sup>th</sup> day of April, 2017.

  
**Tom Rankin, Deputy Director of Operations**  
**Agency for Persons with Disabilities**

**RIGHT TO APPEAL**

A party who is adversely affected by this final order is entitled to judicial review. To initiate judicial review, the party seeking it must file one copy of a "Notice of Appeal" with the Agency Clerk. The party seeking judicial review must also file another copy of the "Notice of Appeal," accompanied by the filing fee required by law, with the First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. Review proceedings shall be conducted in accordance with Florida Rules of Appellate Procedure. The Notices must be filed within thirty (30) days of the rendition of this final order.<sup>1</sup>

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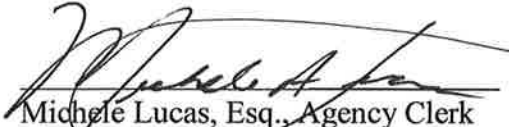
<sup>1</sup> The date of the "rendition" of this Final Order is the date that is stamped on its first page. The Notices of Appeal must be received on or before the thirtieth day after that date.

**CERTIFICATE OF SERVICE**

Robert Latham, Esq.  
Children & Youth Law Clinic  
1311 Miller Drive, F305  
Coral Gables, FL 33146

APD Southern Region Office

I HEREBY CERTIFY that a copy of this Order was provided by U.S. Mail or electronic mail to the above addresses this 6<sup>th</sup> day of April, 2017.

  
Michele Lucas, Esq., Agency Clerk  
Agency for Persons with Disabilities  
4030 Esplanade Way, Suite 335  
Tallahassee, FL 32399-0950