

NOTICE OF PROPOSED SETTLEMENT AND HEARING IN CLASS ACTION ABOUT FOSTER CARE PAYMENTS

Because you are a Hawaii DHS-licensed resource caregiver (foster parent), the proposed settlement may affect you.

A proposed settlement has been reached in a federal class action lawsuit about how much the Department of Human Services for the State of Hawaii (DHS) pays to resource caregivers, also known as foster parents, for the care of foster children.

The purpose of this notice is: (1) to tell you about the proposed settlement and the fairness hearing; (2) to tell you how to obtain more information, including a copy of the full proposed settlement agreement; and (3) to explain how you may object to the proposed settlement if you disagree with it.

The proposed settlement accomplishes two main objectives:

- It increases the amounts to be paid to resource caregivers for the monthly basic board rates and for the annual clothing allowance starting July 1, 2017.
- It requires DHS, for a period of ten (10) years, to take into account increases in certain costs of living and to ask the Hawaii Legislature for funds to increase the basic board rates when those costs increase 5% or more.

The settlement **does not**, however, require the Legislature to approve any proposed increases to the basic board rate. If the Legislature does not approve the July 1, 2017 increase, the lawsuit continues and the Parties go to trial.

The proposed settlement also provides for the payment of attorneys' fees and costs to court-appointed lawyers for investigating the facts, litigating the case, and negotiating the settlement. The State will separately pay for the fees and costs, subject to funding by the Legislature.

This federal lawsuit focuses on how much DHS should be paying for foster care and how and when DHS should increase foster care payments in the future. There is a separate lawsuit filed in state court that focuses on the adequacy of foster care payments made in the past. The state lawsuit has also settled. If you are also part of the state lawsuit, you will receive separate information about your rights in that case.

Your legal rights are affected whether or not you act. Read this notice carefully.

| Summary of Your Legal Rights and Options in the Proposed Settlement | |
|--|---|
| DO NOTHING | If you do nothing, and the proposed settlement is approved, you will receive the increased board payments and, when applicable, the increased clothing allowance starting July 1, 2017, if you have eligible foster children placed in your care. You cannot opt out of (exclude yourself from) the settlement. |
| OBJECT TO THE SETTLEMENT BY APRIL 24, 2017 | You may write to the Court about any concerns you may have about the terms of the proposed settlement. |
| ATTEND THE FINAL APPROVAL HEARING ON MAY 8, 2017 | You may ask to speak in Court about the fairness of the proposed settlement. |

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaii.classaction.com/fostercare>

These rights and options—and the deadlines to exercise them—are explained in this notice.

The Court in charge of this federal case must still decide whether to approve the proposed settlement. The increases proposed in this settlement will not take effect unless the Court approves the Settlement and the Hawaii legislature funds the increases.

Further information about the lawsuit, proposed settlement, and this Notice is available at:
<http://www.hawaiiiclassaction.com/fostercare>

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BACKGROUND INFORMATION

1. Why did I get this notice?

You received this notice because DHS’ records show that you were licensed as a resource caregiver between August 17, 2015, when the Court certified the federal lawsuit as a class action, and March 5, 2017, even if you don’t have any foster children in your care at this time.

The Court authorized this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the proposed settlement. If the Court approves the settlement after any objections and appeals are resolved, DHS will increase its board payments and clothing allowance starting no earlier than July 2017, but only if the funds for the increase are provided by the Hawaii Legislature.

This Notice explains the lawsuit, the proposed settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

Judge Leslie E. Kobayashi, of the United States District Court for the District of Hawaii (the Court), is currently overseeing this case. The case is known as *Ah Chong v. McManaman*, Civ. No. 13-00663 LEK-KSC.

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2. What is this lawsuit about?

Plaintiffs argue that federal law requires DHS to pay foster care maintenance payments that cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. Plaintiffs also argue that federal law requires DHS to conduct periodic reviews of the foster care maintenance payment amounts to make sure that they are appropriate.

Plaintiffs filed a lawsuit claiming that DHS violates federal law because:

- The foster care maintenance payments paid by DHS to resource caregivers are too low;
- DHS does not conduct adequate periodic reviews of its foster care maintenance payments; and
- DHS does not provide enough information to resource caregivers about the kinds of additional payments and benefits that are available to support foster children.

Plaintiffs calculated that if DHS had increased its foster payments to keep up with inflation and Hawaii's cost of living, the payments would be over \$1,000 per month. Plaintiffs asked the Court for prospective relief (relief in the future) of (1) an increase in payments going forward; and (2) changes to the way DHS calculates its payments going forward.

DHS contends that the way Plaintiffs are calculating the amount of the payments is flawed. DHS believes it is complying with the law and has no legal obligation to increase the payments, change the way it periodically reviews the payments, or change the way it provides information to resource caregivers about payments and benefits for foster children.

3. Why is this a class action?

In a class action lawsuit, one or more people called Class Representatives sue on behalf of people who have similar claims. All the people with similar claims are called the Class and are referred to individually as Class Members. The Court resolves the issues for everyone in the Class.

Because the foster care maintenance payment rates affect a large group of people, Raynette Ah Chong, Patrick Sheehey and Patricia Sheehey (the Named Plaintiffs) filed this case as a proposed class action. The Court approved the Class, with Ms. Ah Chong acting as Class Representative, and appointed lawyers to represent the Class in this lawsuit. Those lawyers are called Class Counsel.

4. Why is there a Settlement?

In any litigation, the outcome is uncertain. The Court did not decide the case in favor of Plaintiffs or DHS, but did make some intermediate rulings that impacted the case.

This lawsuit was aggressively litigated. Class Counsel extensively investigated the allegations in this federal lawsuit. They engaged in substantial discovery about the cost of caring for children in Hawai'i, DHS' foster care maintenance payment rates, DHS' process for setting and increasing those rates, additional benefits and payments that are available for the benefit of children in foster care and how many resource caregivers actually request or receive these additional benefits and payments, and the number of people affected by DHS' foster care maintenance payment rates. Class Counsel received over 10,000 pages of hard copy documents from DHS and electronic databases with hundreds of thousands of payments made by DHS to resource caregivers. Both the Class Representative and Named Plaintiff Patricia Sheehey were deposed. Named Plaintiffs responded to written discovery requests from DHS.

The Plaintiffs think they could have won at trial, and DHS thinks Plaintiffs would not have won anything. On the one hand, continuing the case could result in a foster board payment that is more than the amounts in the proposed settlement. On the other hand, continuing the case could result in no increase to the foster board payment, or an increase that is less than the amount in the proposed settlement.

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Based on these factors, the Class Representative and Class Counsel have concluded that the proposed settlement is in the best interests of all members of the Class. The proposed settlement is the product of hard-fought, lengthy negotiations between Class Counsel, DHS and their counsel, and with assistance from federal Magistrate Judge Kevin Chang. Class Counsel was advised by various consultants and experts, including individuals with expertise in Hawaii’s cost of living, and with expertise in foster care maintenance payment costs, payments systems, and payment rates in other States.

More details about the claims, and information about some of the rulings the Court made during the course of the case are described in a document titled Federal Lawsuit Class Action Settlement Agreement, which can be obtained from Class Counsel’s website for this lawsuit: <http://www.hawaiiiclassaction.com/fostercare>.

5. Who are the Members of the Class?

Class Members are: all Hawaii-licensed resource caregivers licensed between August 17, 2015, and March 5, 2017, who were (or are) entitled to receive foster care maintenance payments under federal law when they have foster children placed in their homes. If you have received this notice, DHS’ records indicate that you are a Class Member. The settlement will affect all Class Members.

6. What does the Settlement provide?

The settlement will do two main things:

- 1) In the State’s next fiscal year (July 1, 2017) the basic board rate and clothing allowance paid to resource caregivers for the care of foster children will increase.
- The monthly basic board rates will increase as follows:

| Ages | Current Amount | New Amount |
|------|----------------|------------|
| 0-5 | \$576 | \$649 |
| 6-11 | \$650 | \$742 |
| 12+ | \$676 | \$776 |

Board payments are paid in arrears. That means that they are paid after the month of care provided. In other words, the new increased board rate payments will begin with the payments that are made at the beginning of August 2017 for care provided in July 2017.

- The annual clothing allowance will increase from a single rate of \$600 per year plus \$125 for special circumstances for foster children of all ages to an age-tiered system as follows:

| Ages | New Amount |
|------|------------|
| 0-5 | \$810 |
| 6-11 | \$822 |
| 12+ | \$1026 |

The settlement does not change the ways that a clothing allowance can be obtained from DHS.

- 2) The proposed settlement also requires DHS to conduct periodic reviews of the basic board rates, and to ask the Legislature for additional money to increase the board rates if a comparison of the existing rates to certain indexes shows an increase of five percent or more. DHS will use these indexes for 10 years. However, the Legislature is not obligated to fund any increases that DHS requests.

Under the Settlement, DHS will work with the Class Representative and Class Counsel to provide more information to resource caregivers about the kinds of payments and benefits that are available to help support foster children.

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Separate from this lawsuit, DHS has been looking into changing its difficulty of care (DOC) system. Until it implements the changes, DHS has agreed to consider on request a waiver of the current DOC payment cap of 120 hours per month in appropriate circumstances. Any requests by resource caregivers to increase the number of hours over 120 per month will be subject to current DHS procedures and can be approved only if it is in the best interest of the foster child and other children in the resource family home to do so.

7. Will I be paid any money under this Settlement for foster children currently in my care or for foster children I cared for in the past?

No. This settlement sets future monthly basic board rates and clothing allowances that will begin with the State’s next fiscal year (July 1, 2017). It does not increase payments right now for foster children currently in your care, and does not provide any payments for foster children who were in your care in the past. This settlement provides for what is called prospective, or future, relief only.

There is a possibility that you may be entitled to a payment under the settlement of a state lawsuit that is being resolved along with this federal lawsuit. If you are part of the state lawsuit, you will receive separate information about the terms of that settlement, including whether you will or will not be entitled to a payment. Information about the state lawsuit is available at <http://www.hawaiiclassaction.com/fostercare>.

8. Are there any conditions to this Settlement?

This settlement will not become final until the Court approves this settlement, the state court approves the settlement of the state lawsuit, and the Hawaii Legislature approves the money that will be needed to pay for both settlements.

BEING PART OF THE SETTLEMENT

9. Do I need to do anything to get the benefits of the Settlement?

No. You do not have to do anything to be part of the Class or to get the benefits of the settlement of the federal lawsuit. If you have received this notice, you are part of the Class and automatically part of the settlement.

10. What if I don’t want to be in the Settlement?

By law, you cannot exclude yourself from this settlement. But you can object to the settlement. If the Court approves this settlement, you will not be able to sue the State (including DHS) about the adequacy of the prior and current foster care maintenance payments, or the increased payments embodied in the Parties’ settlement agreement, for the 10 years that this settlement remains in effect.

THE LAWYERS REPRESENTING THE CLASS

11. Do I have lawyers in the case?

Yes. The Court has appointed lawyers to represent you and other Class Members as Class Counsel. Currently, Class Counsel are:

| | | |
|--|---|--|
| Paul Alston J. Blaine Rogers Claire Wong Black Alston Hunt Floyd & Ing 1001 Bishop Street, Ste. 1800 Honolulu, HI 96813 | Gavin Thornton Hawaii Appleseed Center for Law and Economic Justice 119 Merchant St., Ste. 605 Honolulu, HI 96813 | Marc D. Peters James R. Hancock Alessa Hwang Morrison & Foerster LLP 755 Page Mill Road Palo Alto, CA 93404 |
|--|---|--|

You will not be charged personally for these lawyers. If you want to be represented by another lawyer to object to the proposed settlement, you may hire one to appear in Court for you at your own personal expense.

QUESTIONS? CALL (808) 524-1800 OR VISIT <http://www.hawaiiclassaction.com/fostercare>

12. How will the lawyers be paid? Does the Class Representative get paid?

Class Counsel have not received any payment for their services in prosecuting the lawsuit on behalf of the Class, nor have Class Counsel been paid for their out-of-pocket expenses incurred to date. These attorneys' fees and out-of-pocket expenses total more than \$2.98 million.

After negotiation of the terms of the settlement, Class Counsel and DHS counsel engaged in an arm's-length negotiation regarding the attorneys' fees to be paid to Class Counsel. As a result of those negotiations, Plaintiffs intend to apply to the Court for an award of attorneys' fees, costs, and expenses (the "Fee Application") of not more than \$1,100,000.00, which shall be the sole fee application made in the federal lawsuit. Copies of the Fee Application will be made available online at a website to be created and maintained by Class Counsel at: <http://hawaiiiclassaction.com/fostercare>.

You may object to the request for attorneys' fees and costs. After considering the objections of Class Members, the Court will determine the amount of attorneys' fees and costs in accordance with controlling law.

Neither you nor any other member of the Class is or will be personally liable for the Attorneys' Fee Award. The State will pay the amount awarded by the Court, if any. The Attorneys' Fee Award will be the only payment to Class Counsel for their efforts in the federal lawsuit and for their risk in undertaking this representation without prior or ongoing payment. Class Counsel have reserved the right to provide Service Awards for the Class Representative and Named Plaintiffs. These Service Awards are intended to recognize the Named Plaintiffs for the extensive services they performed for the class, the time they spent on this case, and the risks they assumed in connection with this litigation. The amount of the Service Awards, if any, will be deducted from any award of attorneys' fees and costs by the Court to Class Counsel.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

13. How can I object to the Settlement?

You may send a letter to the Court objecting to the settlement if you don't like any part of it. This includes the amount of the basic board rate increase, the clothing allowance increase, the Fee Application, or the Service Award for the Class Representative and Named Plaintiffs. The Court will consider your views.

Send objections to: The Honorable Leslie E. Kobayashi
United States District Court for the District of Hawai'i
300 Ala Moana Boulevard, Room C-338
Honolulu, HI 96850-0338

Be sure to include the following information:

Case Name: *Ah Chong v. McManaman*, Civil No. 13-00663 LEK-KSC

Title of Document: Objection to Class Settlement

Your Information: your name, address, telephone number, the date, and the reasons you object to the settlement.

Deadline: Please **postmark** your objection **no later than April 24, 2017**

THE FAIRNESS HEARING

The Court will hold a hearing, called a Fairness Hearing, to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

14. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Fairness Hearing on **May 8, 2017, at 11:15 a.m.** at the United States District Court for the District of Hawaii, 300 Ala Moana Boulevard, Honolulu, Hawaii, in Courtroom Aha Nonoi on the fourth floor. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check Class Counsel's website (<http://www.hawaiiclassaction.com/fostercare>) or the federal court's calendar (<http://www.hid.uscourts.gov/base.cfm?pid=0&mid=2>).

At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

15. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer questions the Judge may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend on your behalf, but it's not necessary.

16. May I speak at the Fairness Hearing?

You may ask the Court for permission to speak at the Fairness Hearing, either in person or through a lawyer hired at your expense. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Ah Chong v. McManaman*, Civil No. 13-00663 LEK-KSC." Be sure to include your name, address, telephone number, and your signature, and if a lawyer will attend for you, also include your lawyer's name, address, and telephone number. Your Notice of Intention to Appear must be **postmarked** no later than **May 1, 2017**, and should be sent to the Court at the address listed in Question 13, above.

GETTING MORE INFORMATION

17. How do I get more information?

This notice summarizes the proposed settlement. You can call Class Counsel at (808) 524-1800; email Class Counsel at fostercare@ahfi.com; or visit Class Counsel's website for this litigation at <http://www.hawaiiclassaction.com/fostercare>, where you will find other information about the federal lawsuit and the proposed settlement.

PLEASE DO NOT CALL THE COURT WITH YOUR QUESTIONS.

March 21, 2017

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