GREATER BOSTON
LEGAL SERVICES
…and justice for all

December 7, 2020

BY EMAIL

Board of the Department of Early Education
and Care
51 Sleeper Street, 4th Floor
Boston, MA 02210

Re: Proposed Parent Fee Scale

Dear Members of the Board:

We will be submitting comments on EEC's Fee Scale proposals after they are public. For now, as you consider proposals for a revised parent fee scale, we want to draw your attention to a few core issues.

1. **The decision you make has profound consequences for families.**

   We are attaching the story that appeared on the front page of *The Boston Globe* about the experience of our client, Ms. Chanice Lee. Ms. Lee is the lead named plaintiff in the litigation on the issue of the fee scale and the disqualification of children whose parents fall behind, *Lee v. Aigner-Treworgy*, pending in Suffolk Superior Court. Despite having a decent full-time job at a community health center earning $15 per hour, she could not afford her parent fee-- even after she took a second job to try to pay off her debt. She lost her child care, her home and ultimately her job. See Attachment A.

   Ms. Lee is by no means alone. We have represented many child care providers earning $15 per hour, some of whom are homeless despite working as child care providers, who also cannot afford the fees. Some have walked away from the subsidy because they knew they could not afford it.

   EEC's own data shows that from February 1, 2019 through January 15, 2020 alone, EEC terminated **3,634** children whose parents fell behind in fees. Thousands of children are unable to get care again unless and until their parents pay the fee arrears. Thousands of children whose families still need the subsidy cannot afford to pay these arrears, particularly since they now have to pay for child care without an income eligible subsidy. See Attachment B.

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While we applaud EEC's recent decision, (not yet reflected in its Financial Assistance Policy Guide or shared with families) that these families can return to the waitlist if they enter a repayment agreement with their prior provider, providers have no obligation to enter a repayment agreement. Availability of a public subsidy should not turn on an act that a private entity can refuse to do. Moreover, the result is that low-income families are shouldering the very heavy consequences of EEC's failure to revise the fee scale before now.

2. Th**e decision you make has profound consequences for child care providers and the system.**

   As we know you are painfully aware, we need more resilience in the child care system, including more funding for providers. Providers know all too well that families cannot afford the fees charged. Many forego compensation rather than terminate children, or try to come up with other means. Many need to direct resources to staffing to support the complexity of charging fees and supporting families' efforts to pay fees, even at the expense of other necessities. Having fees that are affordable eases the burden on child care providers and provides more financial stability for them.

3. **The idea that parent fees are at the expense of caseload is a false dichotomy.**

   We applaud the Commissioner for her leadership in going to the Legislature in the first place to seek the initial $10 million requested last year to support revisions to the fee scale, and her support for paying parent fees during FY'21.

   The Legislature is extremely supportive on this issue and has repeatedly put money into the budget specifically to address parent fees. This level of support reflects the recognition that the system exists for the children families it serves, and addressing the barriers created by the fee scale is vital to the realization of its mission.

   The Legislature has repeatedly made this choice because legislators understand the impact on families and on the field. This money is <u>not</u> available for other purposes, including caseload.

4. **Having total fees at no more than 7% of family income is more than a benchmark.**

   While the federal government has set 7% of income as a benchmark for affordability, the idea that the existence of a benchmark means there is no requirement for affordability is a superficial analysis. EEC has a much more significant obligation under the law. Simply put, fees must be affordable. 45 C.F.R. § 98.45(k). If a Lead Agency chooses to impose fees that are more than 7%, it must justify how those fees are nevertheless affordable for families. Given Massachusetts' exorbitant cost of living, we think no such justification exists. It is important to note that in this context, the agency's other fiscal burdens is not the appropriate inquiry. Unequivocally, that inquiry has to be what a family can afford.

The decision you are being called upon to make has profound implications for thousands of children and their families. Thank you for your consideration of these crucial issues on behalf of all of our children. We invite further conversation on these issues with each and all of you.

Sincerely,

Sarah Levy

Sarah Levy
Counsel for Plaintiffs
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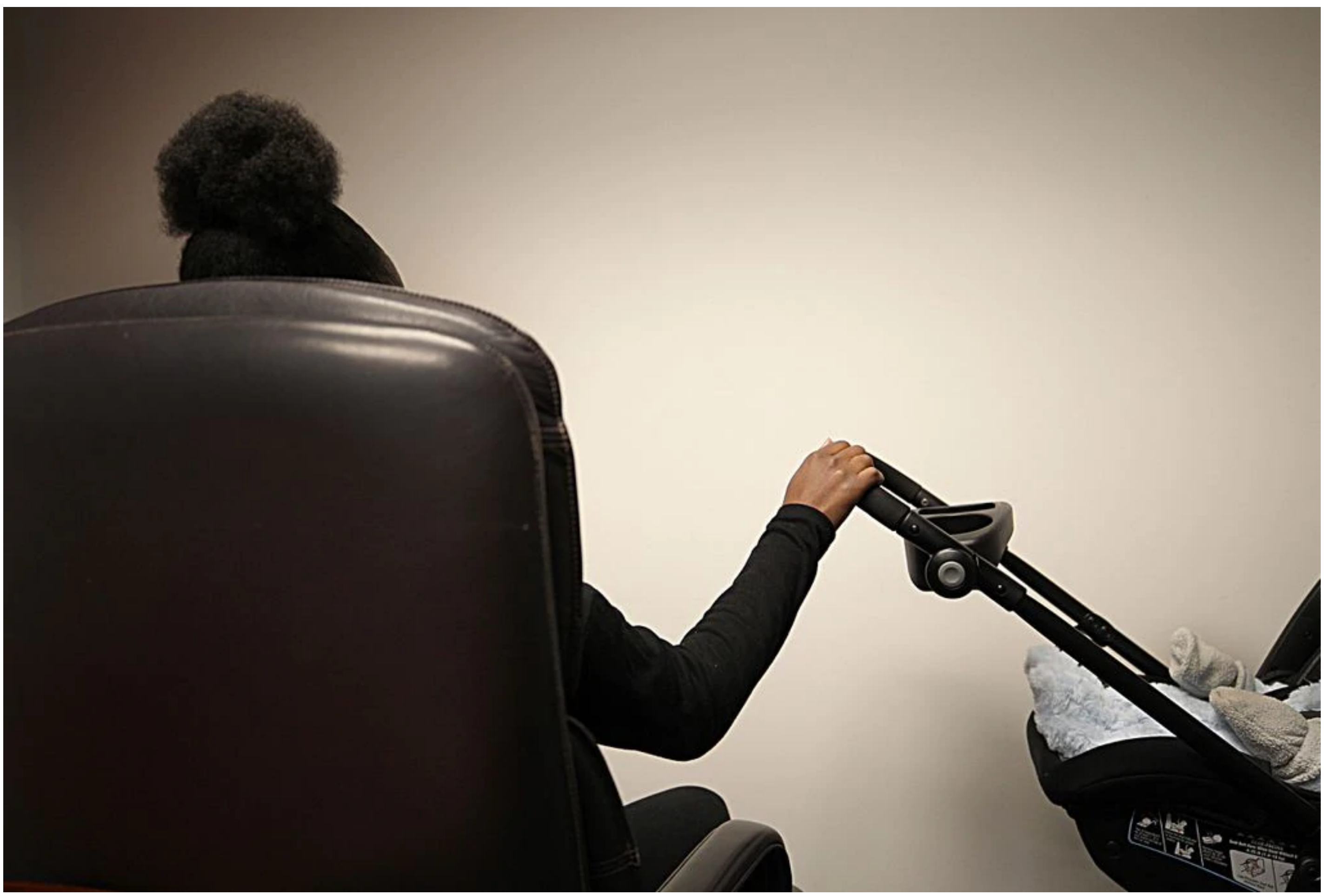
617-603-1619

Cc: Andrew Haile, Esq., Office of the Attorney General

BREAKING: DOW FALLS 5% AS FEAR OF CORONAVIRUS FALLOUT GRIPS MARKET

Draconian state child care assistance leaves too many working poor with debt, advocates say

By **Kay Lazar** Globe Staff, December 1, 2019, 6:31 p.m.



After Chanice lost her subsidized day-care slot, the Roxbury mother lost her job. SUZANNE KREITER/GLOBE STAFF

Chanice was so buried in bills in 2017, she took on part-time work at a taxi company in addition to her full-time job answering phones at a Boston community health center in hopes of digging herself out.

Still, she staggered under the weight of the copayments she was expected to contribute for state-subsidized child care. With more than $2,100 in overdue child care bills, the young Roxbury mother lost her day care spot for her son. Then she lost her job.

“You can’t work without child care,” she said.

Chanice’s experience is far too common for working poor parents in Massachusetts, advocates say. Poor families in Massachusetts with state-subsidized day care still pay, in proportion to their income, the highest child care fees in the nation. Some, in order to get the child care they need to work, wind up spending more than 20 percent of their income for care, nearly three times what federal guidelines recommend for needy families.

And when they can’t pay, the state’s draconian rules lock them out: Parents who fall more than two weeks behind can lose their child care until they pay the full amount they owe. Without child care, however, parents often have to quit their jobs — which makes it impossible to catch up.

Greater Boston Legal Services is petitioning the state Department of Early Education to revise its child care fee schedule and its policy of terminating parents who fall behind on payments, which they argue is illegal.

“Federal law permits disqualifying someone for fraud, but living in poverty and falling behind is not fraud,” said Sarah Levy, a senior attorney with the organization. The legal group is representing 24-year-old Chanice, who asked that her full name not be used because, after experiencing more setbacks, she is homeless with two young sons and looking for work, and she fears identifying her would harm her chances for employment.

Department of Early Education board meeting minutes show the board discussed the need to address problems with child care fees as far back as 2006 and vowed to fix them by 2008.

Samantha Aigner Treworgy, who took over as commissioner of the department in August, said fixing the fee schedule is one of her top priorities. But she was unable to say when that issue, or the policy for terminating parents, might be revised.

"We really need to look at what other states have done and understand how they've addressed these complex issues," Treworgy said. "I can't account for decisions that were made before I got here."

Families can make no more than half of the state's median income to be eligible for child care assistance. That means a family of three, like Chanice's, can make no more than $50,292 annually. Parents who qualify receive either a state subsidized voucher to use at any program that accepts subsidies, or they get a designated seat at a subsidized program.

Advocates say families should pay proportionally more for child care as they earn more, with a cap at 7 percent of their income, as recommended by federal rules. Instead, the state sets a fee schedule that requires the same payment for all households within a given income bracket. For some brackets, there is a big difference between low and high income points, and the poorest families within each tier wind up paying a larger share of their income.

The state's approach also creates a "cliff effect," which can force families to contribute a higher percentage of their income after even a modest increase in pay. Advocates say that punishes parents for trying to work more to get ahead.

That's essentially what happened to Chanice when she took on part-time work in 2017, which pushed her fees from roughly 14 percent of her income to nearly 16 percent.

"The system is set up for you to fail," she said.

The Early Education Department says it has since partially addressed this problem. Pay increases during the year are no longer counted until the family's next annual review, so their child care fees do not immediately rise.

After she lost her full-time job and child care, Chanice found a better-paying job in law enforcement. She enrolled her son in preschool and was paying the full tab. But his tuition cost more than four times what she'd been paying for state-subsidized care, and between school loans and rent, she was never able to repay her old child care debt. Earlier this year, she became too ill to work when she was pregnant with her second son, and she lost her housing. The three are now living in a Boston shelter.

High fees and unforgiving rules are not the only hurdles families encounter.

Thousands of low-income children linger on a state waiting list for care, yet many subsidized seats sit empty. Child care providers say that's partly because the state reserves slots with specific providers that have been chosen based on outdated information about where needy families live. So there are too many spots in communities that don't need them — and too few in those that do.

Treworgy said her department is analyzing where the needs are and hopes to present the data to its board in March. But she was unable to say when the state might make the necessary changes.

"We want to really delve deep into this through our process to make sure we are doing the best we can with the dollars we have," she said.

In the meantime, many families are suffering, said Stephen Huntley, executive director of Valley Opportunity Council in Holyoke, which provides care for about 850 low-income children in Hamden County. His organization offers mandatory financial counseling to help parents with overdue bills avoid termination, which has helped limit the number who've lost care to just four families in two years.

"We know the second their child is terminated from early education, their life becomes exponentially more challenging," he said. "Work becomes a real challenge, and then food and rent become a real challenge."

ATTACHMENT A

Karen Frederick, chief executive of Community Teamwork, a Lowell antipoverty agency that provides care for about 1,400 mostly low-income children, said terminating a child's care for a parent's nonpayment also has far-reaching consequences for children.

"For education to be good, it needs to be consistent, instead of children being dumped out in the middle of the year, so they get the valuable experience they need to be ready for school," Frederick said.

For now, Chanice's two sons, one 4 and the other 3 months old, are receiving early education because the state's system provides it free for families who rely on welfare benefits. Chanice is working toward completing college and paying off her bills, including the $2,100 in child care bills she still owes from when her eldest son received state-subsidized care.

But the clock is ticking. Her sons' free education vouchers run out next October, and they will be barred from further state-subsidized child care until Chanice pays back her outstanding bills in full.

Kay Lazar can be reached at kay.lazar@globe.com Follow her on Twitter @GlobeKayLazar.

Show 67 comments

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Department of Early Education and Care

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SAMANTHA L. AIGNER-TREWORGY,
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January 24, 2020

VIA EMAIL

Sarah Levy
Senior Attorney
Welfare Law Unit
Greater Boston Legal Services
17 Friend Street
Boston, MA 02114

Re: Public Records Request

Dear Attorney Levy:

This responds to your public records request dated January 9, 2020 for:

"The number of income eligible child care subsidies which have been terminated or denied since February 1, 2019 through the date of response to this request broken down by the reason for that denial or termination. If data is available to indicate whether a subsidy [is] at the point of reassessment, please provide that information."

Attached is a document entitled, "Income Eligible Terminations – February 2019 to January 2020" within the custody of The Department of Early Education and Care ("EEC") responsive to your request.

Please note the following about this data:

- The data source is EEC's Child Care Financial Assistance System ("CCFA").
- CCFA data is based on subsidy intakes, authorizations, placements, and billing inputted by subsidized child care providers who have a voucher agreement with a Child Care Resource and Referral Agency or child care contract with EEC.
- The providers are responsible for entering children's and family information in CCFA. The termination data reflects the terminations that were entered by subsidized child care providers into CCFA and may differ from the actual number of subsidies terminated by child care providers. This means that data does not necessarily reflect all terminations that have occurred. EEC cannot confirm the accuracy or completeness of data entered by third parties.

- CCFA does not contain specific data on the number of subsidy terminations that occurred at or near the time of reauthorization because when a termination is entered into CCFA, the authorization end date changes to be equal to the last day of care instead of remaining the family's original authorization date. This means that the data does not necessarily reflect all terminations that may occur around the time of reauthorization.
- EEC does not collect information on those children who later returned to care, either with the same provider or a different provider, subsequent to their care being terminated.
- CCFA does not contain data on subsidy denials.
- The terminology contained in PDF document was taken directly from CCFA.

If you wish to challenge any aspect of this response, you may appeal to the Supervisor of Public Records following the procedure set forth in 950 C.M.R. 32.08, a copy of which is available at http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-source/cmr/. You may also file a civil action in accordance with M.G.L. c. 66, § 10A.

Sincerely,

Jenna R. Buonopane
Paralegal and Secondary Records Access Officer

cc: Felicia Sullivan, General Counsel and Primary Records Access Officer (via e-mail)
Denise J. Karlin, Assistant General Counsel (via e-mail)
Carole Meehan, Director of Caseload and Financial Assistance (via e-mail)

Income Eligible Terminations - February 2019 to January 2020

Termination Reason	Total Number of Placements
Approved Break In Service	1,592
Behavior	84
Excessive Unexplained Absences	142
Failure to submit required documentation at reassessment	22
Immediate Term by Parent (Health/Safety)	7
Immediate Termination by Provider (Health/Safety)	44
IPV - Failure to report a non-temporary change	102
IPV - Failure to Report Income Accurately	7
IPV - Failure to Respond to EEC Request for Information	8
IPV - Non-payment of fees	3,634
Lack of Service Need	57
Over Income	9
Provider no longer accepts subsidized children or business closed	100
Residency Outside the Commonwealth	85
Sanctioned by EEC	1
Submission of False or Misleading Information	39
Substantiated Fraud	47
Violation of Provider Policies	82
Voluntary Termination/Change of Provider	2,555
Voluntary Termination/No Longer in need of subsidy	1,261
Total	**9,878**

Notes:

- Data pulled from CCFA on 1/15/2020. Data is subject to change on a daily basis.

- Data is based on number of placements terminated in CCFA. There may be more than one placement per household or per child.

- Data does not eliminate duplicates so may count a unique child twice if the child has been terminated more than once.