

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

WASHINGTON STATE COALITION FOR)
THE HOMELESS,)
et al.,)

Plaintiffs,)

vs.)

No. 91-2-15889-4

DEPARTMENT OF SOCIAL AND)
HEALTH SERVICES,)
et al.,)

Defendants.)

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

September 15, 1993

COPY

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Attachments:

- Stipulation of Facts (September 1, 1993)
- Declarations and Affidavits:
- Terrence A. Carroll
Elizabeth A. Cole, M.S.W.
Kurt Creager
Martha C. Dilts, M.S.W.
Ronald L. Oldham
Lenore Rubin, Ph.D.
Marybeth Shinn, Ph.D.

1 **Attachments (continued):**

2
3 **Copies of Some Non-Washington Cases:**

4 Hansen v. Department of Social Services
5 193 Cal.App.3d 286, 238 Cal.Rptr. 232, (Cal.App. 1987)

6 Hodge v. Ginsberg,
7 303 S.E.2d 245 (W.Va. 1983)

8 In re Nicole G.
9 577 A.2d 248 (R.I. 1990)

10 In Interest of S.A.D.
11 555 A.2d 123 (Pa. Super. 1989)

12 State ex rel Tiner v. Milwaukee Cty.
13 260 N.W.2d 393 (Wis. 1977)

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<u>City of Seattle v. Auto Sheet Metal Workers Local 387,</u> 27 Wash. App. 669, 620 P.2d 119 (Div. I 1980)	19
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<u>Dependency of C.R.B.,</u> 62 Wash. App. 608, 814 P.2d 1197 (Div. I 1991)	8
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<u>In re Victoria M.,</u> 207 Cal.App.3d 1317, 255 Cal.Rptr. 498 (1989)	29

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2	43 Wash. App. 634, 719 P.2d 127 (1986)	24
3	<u>ITT Rayonier v. Dalman,</u>	
4	67 Wash. App. 504, 837 P.2d 647 (Div. II 1992)	14
5	<u>Metro Seattle v. Labor and Industries,</u>	
6	88 Wn.2d 925, 368 P.2d 775 (1977)	18
7	<u>Murphy v. Department of Licensing,</u>	
8	28 Wash. App. 620, 625 P.2d 732 (Div. II 1981)	15
9	<u>Overton v. Economic Assistance Auth.,</u>	
10	96 Wn.2d 552, 637 P.2d 652 (1981)	14
11	<u>Robinson v. Rhodes,</u>	
12	424 F.Supp. 1183 (N.D. Ohio 1976)	27
13	<u>Snohomish County Builders Assoc. v. Snohomish Health Dist.</u>	
14	8 Wash. App. 589, 508 P.2d 617 (Div. I 1973)	16
15	<u>State ex rel Tiner v. Milwaukee County,</u>	
16	260 N.W.2d 393 (Wis. 1977)	18
17	<u>State v. Lunquist,</u>	
18	60 Wn.2d 397, 374 P.2d 246 (1962)	15
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5	Chap. 74.14A RCW	2, 12, 21, 23, 25
6	RCW 74.14A.020	1, 12, 21, 24
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1 I. INTRODUCTION

2 The plaintiffs' goals from the court are straightforward.
3 First, they ask the court to declare the duties of the Depart-
4 ment of Social and Health Services (DSHS) to the plaintiffs.
5 This is a matter of law. Second, they ask the court to find
6 DSHS in default of those duties. If those duties are not
7 meaningless, this default is clear from the undisputed facts:
8 nearly seventy thousand Washington State children are homeless
9 yearly; nearly fifty thousand of them are turned away from
10 shelter for lack of space; DSHS has stipulated that, except for
11 a modest day care program, it has no service program for
12 families that has homelessness as an eligibility requirement; it
13 has not equipped its caseworkers with housing resources neces-
14 sary to prevent or shorten foster care placements. A trial is
15 also unnecessary to show that as a result this state has a first
16 class child welfare disaster on its hands. Finally, the plain-
17 tiffs ask the court to order DSHS to submit an adequate plan for
18 the fulfillment of its duties.

19 II. RELIEF REQUESTED

20 The plaintiffs ask the court for the following relief:

- 21 A. declare DSHS's duties to homeless children and to
22 those families that need housing assistance to prevent
23 or shorten their children's foster care placement as
follows:
- 24 1. to devise and implement an adequate coordinated
25 and comprehensive plan for the protection and
care of homeless children. (RCW 74.13.031);
 - 26 2. to provide child welfare services to homeless
27 children; (RCW 74.13.031, 74.13.020, 74.14A.020);
- 28

3. to establish adequate criteria and procedures governing DSHS's provision of services to homeless children (due process);
 4. to equip DSHS caseworkers with shelter and housing resources for their use when in their judgment or in the determination of the dependency court this assistance would be necessary and effective to prevent or shorten a child's foster care placement (Chaps. 13.34 and 74.14A RCW; due process).
- B. find that DSHS has failed to fulfill its duties;
- C. order DSHS to submit an adequate plan to the court by April 1, 1994 describing how it will fulfill its duties.

This relief will leave only the damage claims of the named plaintiffs to be resolved. These claims would be subject to mandatory arbitration. The plaintiffs' claims for attorney fees would be presented by motion.

III. STATEMENT OF FACTS

There is no genuine dispute about the following facts:¹

A. The Homeless Children of Washington State

1. *Their numbers, distribution and characteristics*

The court has certified a plaintiff class of all minor children in Washington State, along with their parents or legal guardians who have actual custody of them, who are or will become homeless.² Estimates of the numbers of homeless children

¹ Summary judgment is appropriate when "there is no genuine issue as to any material fact. CR 56(c). Factual disputes do not necessarily preclude summary judgment "if reasonable minds can reach but one conclusion on them." Allen v. State, 118 Wn.2d 753, 826 P.2d 200 (1992).

² All minor children in Washington State, and any of their parents or legal guardians who have actual custody of them:

(1) who are or who will become homeless, or are in imminent danger of becoming homeless; or,

1 surveyed in Washington State from 1991 to 1992 show the
2 following:

3 7,926 families with 17,200 minor children in shelter;
4 23,699 families with 49,768 minor children turned away
5 from shelter for lack of space.³

6 Every Washington State county has homeless families with
7 children.⁴ Of the 17,200 minor children in shelter with their
8 families, 48% were age 5 and younger, 27% were age 6 through 10,
9 and 25% were age 11 through 17.⁵ Racial minorities and house-
10 holds headed by women are vastly overrepresented among the popu-
11 lation of homeless families.⁶

12
13 (2) who are residing or will reside in a housing
14 program which includes housing assistance as a
15 component of the services provided to its residents;
16

17 For purposes of the class definition, "homeless"
18 persons shall be defined as those (1) who lack a
19 fixed, regular, and adequate nighttime residence; or
20 (2) who have a primary nighttime residence that is
21 either (A) a publicly or privately operated shelter or
22 program designated to provide temporary living
23 accommodations (including welfare hotels and
24 congregated shelters), or (B) a public or private
25 place not designed for, or ordinarily used as, a
26 regular sleeping accommodation for human beings. For
27 purposes of the class definition, "imminent danger of
28 homelessness" shall be defined as the receipt of an
eviction notice, or its equivalent, from permanent
housing and the lack of social or monetary resources
to prevent homelessness.

Stipulated Order of Class Certification, page 4 (December 15, 1992).

22 ³ Stipulation of Facts, ¶ 1. These estimates do not include the home-
23 less families with children who sought refuge from other shelters that were not
24 part of the survey or who did not seek shelter at all. *Id.* E.g. Declaration
25 of Debbie Stinsman, page 3 (family staying in car); Declaration of Marie A.
Stone (family staying in car). These estimates also include multiple counts of
those families with children who sought shelter from the surveyed shelters more
than once, and were accepted or turned away. Stipulation of Facts, ¶ 1.

26 ⁴ Stipulation of Facts, § 1.5.

27 ⁵ Stipulation of Facts, ¶ 1.3.

28 ⁶ Stipulation of Facts, ¶ 1.4.

2. What homelessness does to children and their families.

The effects of homelessness on children and the families are evident from the declarations of experts who study them, the professions who serve them, and the parents who, with their children, have been homeless: These effects include:

- homelessness makes children sick and some of them die;⁷
- mental or emotional disturbance and fright;⁸

⁷ Studies have consistently found that homeless children, relative to housed poor children, experience elevated levels of acute and chronic health problems, some resulting in death: rates of low-birth weight births and of infant mortality among homeless infants were one and a half times as high as for housed poor infants and double the rates for the population as a whole.

Declaration of Marybeth Shinn, Ph.D., ¶ 6. The afflictions include: ringworms (Declaration of Darlene Archie, page 12); diarrhea (Declaration of Tammy Casteel, page 2); croup (Declaration of Tammy Casteel, page 2, Declaration of Debbie Emery, R.N., page 5); ear infection (Declaration of Tamara Talley, page 3); colds (Declaration of Tamara Talley, page 3); poor nutrition and malnutrition (Declaration of Tamara Talley, page 3, Declaration of Ann R. Bourdon, page 3, Declaration of Debbie Emery, R.N., page 5, Declaration of Joey Merrifield, R.N., page 3 ("Frequently the children that I treated arrive at the shelter malnourished."); fetal stress (Declaration of Debbie Emery, R.N., page 5 (shelter manager); sore throats (*Id.*); lice (*Id.*). "Common health problems like colds, ear infections, and sore throats often become acute from lack of early detection and treatment or exposure to prolonged periods of being outdoors, sleeping cars or otherwise being on the streets." Declaration of Joey Merrifield, R.N., page 2. See also, Declaration of David P. Pomeroy, M.D., page 2 (declaration filed in support of petition by Washington Academy of Family Physicians to participate as amicus curiae).

⁸ Studies "demonstrate severely adverse psychological and emotional consequences of homelessness to children over age 5." Declaration of Lenore Rubin, Ph.D., ¶ 10. These effects include:

- a. Most of the children stated that they had suicidal thoughts;
- b. One-third of the children scored so high on the Children's Depression Scale as to qualify as presumptive evidence of clinical depression and over one-half scored at a level to require further clinical evaluation for depression;
- c. A majority of the children scored above the median on anxiety as to the Children's Manifest Anxiety Scale.

The data on the homeless children 5 years and under is even more dramatic. . . . These children exhibited significant eating and sleeping problems, inappropriate social interaction with adults, and behavior at the extremes from either very shy and withdrawn to

- developmental delay;⁹
- educational impairment.¹⁰

The harm of homelessness is different and worse than the effects

inappropriately aggressive. . . .

Id. at ¶ 10, 11, 12. See also, Declaration of Marybeth Shinn, Ph.D., ¶ 3, 8. These studies confirm the descriptions by parents of homeless families. E.g.:

Since they had been at the Mission the last time, they had all undergone drastic changes of personality. My sons withdrew from me and became less mindful. They started fighting with each other at home. My oldest son started having trouble at school. . . . My middle son, Jelani, started acting out after we became homeless. Jelani always used to mind me. He used to be a very caring boy. All that changed after we became homeless. He got kicked out of school or off the bus many times last year because of his antics.

Declaration of Darlene Archie, page 9, 11-14. Another mother relates:

My nine year old started crying one day over absolutely nothing. My two and a half year old cries over everything now, especially every time we have to move. It is getting hard on me to hold my family together during this very trying time.

Declaration of Rowena Najera, page 4.

⁹ Studies of homeless children in 4 major areas of development show widespread delays: "Forty-seven percent of these children manifested developmental lags in one area and roughly 1/3 of the children manifested developmental lags in two or more areas. . . . Moreover, a greatly disproportionate number of homeless children are failing to develop normally in several important ways." Declaration of Lenore Rubin, ¶ 11, 15. See also, Declaration of Marybeth Shinn, Ph.D., ¶ 10. This assessment matches the reports of parents of homeless children:

DeAndre [4 years old] also got babified all over again. He was off diapers and bottles when we first became homeless. He reverted back to diapers after we started moving around a lot. . . . Both Michael [7 years old] and Jelani [five years old] started wetting their beds and having nightmares after we became homeless.

Declaration of Darlene Archie, page 12, 13. See also, Declaration of Tammy Casteel, page 2 ("My 2 yr old has stopped talking since we moved to the shelter.")

¹⁰ In one study, "[f]orty-three percent [of homeless children] had repeated a grade and 25% were enrolled in special classes. A full fifty percent were failing or falling behind." Declaration of Lenore Rubin, Ph.D., ¶ 13. See also, Declaration of Marybeth Shinn, ¶ 11; Declaration of Darlene Archie, page (parent), Declaration of Anita Kersey, page 4 (parent), Declaration of Jim Raum and Pat Weisenburg, page 4 (parents).

1 of poverty.¹¹ The harm resulting from homelessness can be long-
2 term.¹² Homelessness makes other services ineffective or inac-
3 cessible.¹³ Homelessness without even shelter is worse.¹⁴

4
5 ¹¹ Declaration of Marybeth Shinn, ¶ 4. ("[I]n comparison with children
6 of housed poor families, [homeless children] are substantially worse off.").
7 See also, Declaration of Elizabeth S. Cole, M.S.W. ¶ 6 ("The mounting evidence
8 is that homelessness is more devastating to a child and its family than poverty
9 alone.")

10 ¹² The long-term developmental impacts of homelessness
11 will likely include permanent, psychological impair-
12 ments to the children Moreover, the longer the
13 period or duration a family is homeless, the more
14 serious the problems become and the harder it becomes
15 for the family to regain and sustain stability.

16 Declaration of Lenore Rubin, Ph.D., ¶ 14, 15. See also, Declaration of Martha
17 C. Dilts, M.S.W., page 3.

18 ¹³ Declaration of Marybeth Shinn, Ph.D., ¶ 15; Declaration of
19 Elizabeth Cole, M.S.W., ¶ 12.2; Declaration of Edgar Marcuse, M.D., page 2
20 (filed in support of American Academy of Pediatrics petition to participate as
21 amicus curiae).

22 ¹⁴ Most studies examine families in shelter. The consensus, however,
23 is that homelessness without even shelter is worse:

24 In my opinion, homeless families without emergency shelter suffer
25 even greater psychological trauma than those in emergency shelters.

26 Declaration of Lenore Rubin, ¶ 13. See, Declaration of Marybeth Shinn, Ph.D.,
27 ¶ 4. A shelter nurse states the same conclusion:

28 The children that I treated are the ones who found their way into
shelter. At least in the shelters, they can receive some atten-
tion. For these children and their families before they got to the
shelters or those families and children who never find shelter,
sleeping in cars, outdoors, or on shared floor space in other
people's apartments can make their health and emotional needs much
more serious.

Declaration of Joey Merrifield, R.N. ¶ 7. The reasons are evident:

My children and I left the Kent Key Apts. [shelter time expired]
and for the next ten and a half weeks we spent most of our time in
my small Datsun B-210 car. Occasionally we stayed at a motel
provided by the Kent Police Dept. and other agencies. Staying in
the car was terrible with three active children. Usually our day
started with going to the storage and getting a change of clothing.
Dropped our blankets off and head out. (sic). We would get ice
from the store and other fast food and most of our days were spent
in the park. We tried to stay overnight in the park but was put out
by the park police. Most nights were spent at church and grocery
store parking lots. These conditions were unhealthy and unsafe for
me and my children. Nights were cold and scary. The children were
all cramped up, they were restless and fought a lot.

Declaration of Debbie Stinsman, page 3.

1 **B. The Foster Care Cases**

2 The court has certified the plaintiff class to include
3 those families who need housing assistance to prevent or shorten
4 the need for their children's voluntary or involuntary foster
5 care placement.¹⁵ Aside from the numbers that may be inferred
6 from their certification as a plaintiff class, there are no
7 formal estimates of the number of these cases.¹⁶ DSHS has not
8 studied the question and does not compile such information or
9 data.¹⁷ The frequency of these cases, however, is evident from
10 the declarations of experts and practitioners in the foster care

11 ¹⁵ All minor children in Washington State, and any of
12 their parents or legal guardians who have actual
13 custody of them:

14

15 (3) who request or are offered voluntary foster care
16 placement of the children by DSHS on the grounds that
17 the family is homeless; or,

18 (4) where the children are or will be placed in foster
19 care pursuant to a court order entered in a dependency
20 proceeding pursuant to RCW Ch. 13.34, and for whom the
21 provision of housing assistance to their parent(s) or
22 guardian(s) is necessary to prevent or eliminate the
23 need for foster care or permit the children's return
24 home, consisting of:

25 (a) those parent(s) or guardian(s) who require
26 housing assistance to provide adequate housing for the
27 family and for whom the provision of housing assis-
28 tance is one issue among others that must be resolved
 to prevent or eliminate the need for foster care
 placement or permit the children's return and where
 the provision of housing assistance to the parent or
 guardian would not, by itself, prevent or eliminate
 the need for foster care placement or permit the
 children's return.

 Stipulated Order of Class Certification, page 4 - 5 (December 15, 1992).

24 ¹⁶ A formal count of these cases, however, is not necessary to this
25 lawsuit since the plaintiffs do not seek individual relief. Instead, they seek
26 only to insure that housing assistance will be made available to the caseworker
27 and the dependency court when the dependency system finds it to be necessary.
28 If that happens less frequently than the available evidence may suggest, the
 plaintiffs will have no complaint.

¹⁷ Stipulation of Facts, ¶ 2.3, 2.4.

1 system, as well as from the cases of the named plaintiffs and
2 some reported decisions.¹⁸

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7 ¹⁸ A recently retired superior court judge estimates that the numbers
8 are "substantial":

9 In my experience, the families' homelessness or other lack of
10 adequate housing is a significant factor contributing to the need
11 for their children's foster care placement in a substantial number
12 of cases in Washington State. . . .

13 A family's homelessness or lack of adequate housing also prevents
14 or significantly delays the children's return from foster care in
15 a substantial number of cases in Washington State. I estimate that
16 this occurred in about twenty (20) per cent of the cases over which
17 I presided.

18 Declaration of Terrence A. Carroll, ¶ 4, 5. A study of foster care placements
19 of black children in Seattle made similar findings based upon a review of DSHS
20 case files:

21 Homelessness was a significant and contributing factor in the
22 placement of 10% of the children; inadequate housing was listed as
23 a significant and contributing factor in the placement of 3% of the
24 children; (page 50 - 51)

25 Inadequate housing was among the remaining barriers to
26 reunification in 22% of the cases. (page 71)

27 Exhibit Z (WHO WILL CARE WHEN PARENTS' CAN'T: A STUDY OF BLACK CHILDREN IN
28 FOSTER CARE (National Black Child Development Institute 1989). See Also
29 Declaration of Shirley Caldwell, M.S.W. (data collector and supervisor for the
30 study's Seattle portion.)(DSHS objected to Ms. Caldwell's recitation of the
31 Report's conclusions on the grounds that it was hearsay and improper opinion.
32 These objections are groundless. As Ms. Caldwell's declaration stated, she was
33 also the data collector and supervisor for the report's Seattle survey. Even
34 if her conclusions are characterized as opinion, they also fall well within
35 those permitted under ER 702 as within her expertise.)

36 The estimates of other practitioners, including DSHS caseworkers, are
37 even higher. Their assessments are reviewed in the Plaintiffs' Reply In
38 Support of Motion for Class Certification, pages 9 - 17. Two reported depen-
39 dency decisions, although they addressed unrelated procedural matters, did
40 report that DSHS's bases for the dependency or termination petitions included
41 allegations that the parents were homeless. Dependency of L.S., 62 Wash. App.
42 1, 4, 813 P.2d 133 (Div. I 1991)("Family does not have stable environment for
43 the child. They have been homeless, move frequently and are presently in
44 temporary shelter.")(emphasis added); Dependency of C.R.B., 62 Wash. App. 608,
45 610, 814 P.2d 1197 (Div. I 1991)("1. On 8/25/89, the child was born at the
46 University of Washington Hospital to a nineteen (19) year old mother, Tina
47 Merriweather, who is without housing and has been homeless and residing in
48 various shelters in Seattle.")(emphasis added). See also, In re A.S., 65 Wash.
49 App. 631, 632-34 (Div. III 1992).

1 **C. The Plaintiff Families Need Shelter and Housing**
2 **Assistance.**

3 Homeless families and those whose child is in foster care
4 for lack of adequate housing need shelter or housing assistance.

5 1. *Homeless Children Need Shelter and Housing*
6 *Assistance.*

7 A consensus of opinion recognizes that, to address home-
8 lessness and any other resulting affliction, families need,
9 first and foremost, adequate shelter:

10 At the very least and as part of a minimally adequate
11 effort to address a homeless family's immediate
12 crisis, access to safe, clean, and stable emergency
13 shelter is absolutely essential. Without adequate
14 shelter, a family has a very poor chance of even
15 finding and arranging for any permanent housing. With-
16 out adequate shelter, other services that homeless
17 families may require, such as mental health services,
18 education, health care, day care, or counseling will
19 be either inaccessible or ineffective.

20 Declaration of Marybeth Shinn, Ph.D., ¶ 15. See also Declara-
21 tion of Elizabeth S. Cole, M.S.W., ¶ 10; Second Declaration of
22 Martha C. Dilts, M.S.W. ¶¶ 4.2, 4.3; Declaration of Ronald L.
23 Oldham, ¶ 6 (Acting Executive Director and Director of Housing
24 Management of the Seattle Housing Authority); Declaration of
25 Kurt Creager, ¶ 10 (Director of Vancouver Housing Authority).
26 This self-evident need for shelter and housing is stated in any
27 of the declarations of homeless parents, including a mother
28 whose three year old daughter posed the pertinent question:

 The car was always cold. Elizabeth would wake up in
 the middle of the night crying because she was cold.
 She cried often while we lived in the car. She cried
 because she was hungry and kept asking me when we
 would have a house to live in.¹⁹

19

Declaration of Marie A. Stone, page 4.

1 effect on homelessness among Washington State families.²¹

2 DSHS has stipulated that it has no shelter or housing
3 program serving children because they are homeless:

4 DSHS has no program for families with children
5 for which homelessness is an eligibility require-
ment, except for the day care program.

6 Stipulation of Facts, ¶ 3. It has also stipulated that it "has
7 not conducted any studies and does not compile information or
8 data on the following:

9 the homelessness among families with children in
10 Washington State, the causes of homelessness among
11 families, its effects on children and families, or its
effects on the cost or accessibility of DSHS programs
for children and families;

12 the efficacy of DSHS's service delivery to homeless
13 families as a separate population in the State of
Washington;

14 Stipulation of Facts, ¶ 2.1, 2.2.

15 2. *Foster Care Cases*

16 In the foster care cases, DSHS has not provided its case-
17 workers with the housing resources when they or the dependency
18 court have determined it would be necessary and effective to
19 prevent or shorten a placement. The frequency of this default
20 is evident from extent of the problem. See above Section IIIB.²²

21 The professionals and practitioners also have their assessments:

22 The DSHS, however, has not equipped its child protec-
23 tive or child welfare services workers to provide
effective housing resources necessary to assist the

24 ²¹ Second Declaration of Martha C. Dilts, M.S.W., ¶ 4; Declaration of
25 Elizabeth S. Cole, M.S.W., ¶ 5; Declaration of Marybeth Shinn, Ph.D., ¶ 8;
Declaration of Ronald L. Oldham, ¶ 6; Declaration of Kurt Creager ¶¶ 7 - 10.

26 ²² As with the instances of placements that arise in whole or in part
27 from the families' lack of housing, a formal survey is unnecessary to determine
28 how frequently DSHS fails to provide the housing resources. It is enough to
know that it occurs.

1 family in dependency cases in finding adequate
2 housing. In opposing proposals in these cases that
3 the court order the provision of housing assistance,
the DSHS representative would uniformly assert that
the caseworker lacks the resources to do so.

4 Declaration of Terrence A. Carroll (retired judge) ¶ 8. Other
5 foster care practitioners, including CPS/CWS workers and defense
6 attorneys, report similarly.²³ DSHS has not compiled data or
7 conducted studies on the need for such housing assistance.²⁴

8 IV. STATEMENT OF ISSUES

9 A. DSHS Duties

10 1. Homeless Children:

11 a. Must the coordinated and comprehensive plan
12 that RCW 74.13.031 requires DSHS to devise and implement for
13 homeless children and the child welfare services that RCW 74.13
14 .020 and RCW 74.14A.020 require DSHS to provide to homeless
15 children be designed and administered to address their homeless-
16 ness effectively?

17 b. Must DSHS, as part of due process that it
18 owes to homeless children seeking assistance, have criteria and
19 procedures to govern determinations of who gets what assistance
20 and to avoid arbitrary and unfair denials?

21 2. Foster Care: In fulfilling its duties under Chaps.
22 13.34, 74.13. and 74.14A RCW to make reasonable efforts and to

23
24 ²³ E.g., Declaration of Janet Engle, (CPS worker) ¶ 10; Declaration
25 of Patricia Proebsting (public defender), ¶ 5 ("I have never represented a
26 parent for whom the CPS or CWS worker could offer any housing assistance more
27 than such a [letter stating that the children will be returned soon upon the
procurement of housing]."; Declaration of Kristin Silverton (CPS worker) ¶ 16;
Declaration of Laura L. Crawford (defense counsel), ¶ 12 ("Unfortunately, my
experience has been that DSHS workers are just not able to provide housing
assistance.").

28 ²⁴ Stipulation of Facts, 2.3, 2.4.

1 provide services to prevent or shorten foster care placements
2 and its due process duty to use the least restrictive alterna-
3 tive form of intervention, must DSHS equip its caseworkers with
4 shelter and housing resources for use when such assistance is
5 necessary and effective to prevent or shorten a placement?

6 B. Has DSHS failed to fulfill its duties because it has
7 no homelessness assistance program for homeless families and
8 fails to provide its caseworkers with the shelter and housing
9 resources needed in cases to prevent or shorten a foster care
10 placement?

11 C. Should the court give DSHS a reasonable amount of time
12 to submit a plan for its fulfillment of its duties?

13 V. EVIDENCED RELIED UPON

- 14 (1) Stipulation of Facts, dated September 1, 1993;
15 (2) Declarations and Affidavits:

- 16 • Terrence A. Carroll (retired judge);
- 17 • Elizabeth S. Cole, M.S.W.;
- 18 • Kurt Creager (Executive Director of Vancouver
19 Housing Authority);
- 20 • Martha C. Dilts, M.S.W. (first and second
21 declarations) (former shelter manager);
- 22 • Ronald L. Oldham (Acting Director and Director of
23 Housing Management, Seattle Housing
24 Authority);
- 25 • Lenore Rubin, Ph.D;
- 26 • Marybeth Shinn, Ph.D;
- 27 • portions of several of the declarations of social
28 service providers, foster care professionals, and
parents of homeless families filed previously in
this case.²⁵

²⁵ The defendants have objected to portions of the declarations that
the plaintiffs submitted in support of the class certification motion. Unless
otherwise noted, the plaintiffs do not refer in their motion to any portion to

1 VI. AUTHORITY

2 A. Governing Rules of Construction

3 Several rules of statutory and constitutional construction
4 favor the plaintiffs' motion for summary judgment:

5 1. *The Court Must Declare What the Law is.*

6 The judiciary is the final authority on issues of statutory
7 and constitutional construction. American Legion v. Walla
8 Walla, 116 Wn.2d 1, 5, 802 P.2d 784 (1991); Overton v. Economic
9 Assistance Auth., 96 Wn.2d 552, 555, 637 P.2d 652 (1981).

10 2. *Statutory Terms Must Receive Their Plain Meaning.*

11 Plain and unambiguous statutory terms are not subject to
12 modifying construction or interpretation ITT Rayonier v. Dalman,
13 67 Wash. App. 504, 509, 837 P.2d 647 (Div. II 1992); Green River
14 College v. HEP Board, 95 Wn.2d 108, 112, 622 P.2d 826 (1980).

15 Further, no deference is owed to an agency's interpretation if
16 the statutory language is plain and unambiguous. Fecht v. DSHS,
17 86 Wn.2d 109, 111, 542 P.2d 780 (1975) ("[I]f statutes are
18 unambiguous, . . . then there is no room for administrative
19 action to guide interpretation.") "Simply because the words of a
20 statute are not defined in the statute does not make the statute
21 ambiguous. If that were true, the majority of statutes would
22 suffer from ambiguity." Cowiche Canyon Conservancy v. Bosley,
23 118 Wn.2d 801, 814, 828 P.2d 549 (1992).

24 Absent a contrary statutory definition, courts must accord
25 a statute's words their usual and ordinary meaning. State v.

26 _____
27 which the defendants have objected. This restraint denotes, not the plain-
28 tiffs' agreement to the defendants' objections, but only a desire to get on
with the case.

1 Northshore School District, 99 Wn.2d 232, 244, 662 P.2d 38
2 (1983); Burlington Northern v. Johnston, 89 Wn.2d 321, 332, 572
3 P.2d 1085 (1977) (Court rejected the Department of Revenues inter-
4 pretation of the statutory term "general property" in favor of
5 the term's "obvious meaning".) Courts commonly use the dic-
6 tionary to determine the ordinary meaning of undefined statutory
7 terms. E.g., Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d
8 801, 814, 828 P.2d 549 (1992) (rejected the agency's interpreta-
9 tion of "alteration" in favor of the definition found in
10 Webster's Dictionary.)

11 3. *The Court Must Give Meaning To Every Statutory*
12 *Term.*

13 The court must give meaning to each word in the statutes so
14 that none are made superfluous:

15 A legislative body is presumed not to have
16 used superfluous words. Courts are bound to
accord meaning, if possible, to every word
in an ordinance or statute.

17 State v. Lunquist, 60 Wn.2d 397, 403, 374 P.2d 246 (1962).

18 "Where a statute is neither vague, nor ambiguous, nor irrational
19 on its face, a court cannot insert words that were omitted or
20 disregard words that were included." Murphy v. Department of
21 Licensing, 28 Wash. App. 620, 624, 625 P.2d 732 (Div. II 1981).

22 4. *The court's adjudication must favor the welfare*
23 *of children, especially if they are poor.*

24 The Washington Supreme Court's jurisprudence governing
25 children strongly favor the legal and factual findings that best
26
27
28

1 protect their welfare, both individually and generally.²⁶ This
2 rule prevails over even the most well-established rules of cons-
3 truction if, in the judgment of the court, they would require a
4 result that harms children. Courts are an independent branch of
5 government. As they adjudicate, they have an independent duty
6 to protect children's welfare. *Id.*

7 5. Remedial Legislation Must be Interpreted
8 Liberally

9 Remedial legislation should be liberally construed in order
10 to effectuate a humanitarian purpose. Yetter v. Commeau, 84
11 Wn.2d 155, 158, 524 P.2d 901 (1974) (Construing child support
12 statutes broadly.). "It is a recognized basic principle that
13 statutes concerning public health and safety should be liberally
14 construed." Snohomish County Builders Assoc. v. Snohomish Health
15 Dist. 8 Wash. App. 589, 595, 508 P.2d 617 (Div. I 1973). RCW
16 1.12.010 also states that "[t]he provision of this code shall be
17 liberally construed, and shall not be limited by any rule of
18 statutory construction." This rule fortifies the companion rule
19 that favors statutory relief for the poor and defenseless.²⁷

20 B. The Court Should Declare DSHS's Duties

21 The delineation of DSHS's statutory and constitutional
22 duties to assist the plaintiff families does not depend on the
23 resolution of any factual dispute. Those duties flow plainly

24 ²⁶ The plaintiffs have previously discussed this rule of construction
25 in Plaintiffs' Memorandum Opposing Defendants' Motion for Judgment on the
26 Pleadings, page 65 - 68. This rule is closely akin to the state's *parens*
patriae duty to assist children. See *Brief of Amici Curiae*. This duty fortifies
DSHS's statutory duty to assist homeless children.

27 ²⁷ The plaintiffs have also discussed this rule of construction in
28 Plaintiffs' Memorandum Opposing Defendants' Motion for Judgment on the
Pleadings, page 68.

1 and unambiguously from the statutes and well-established consti-
2 tutional principles. The court should declare that DSHS must do
3 what the law plainly requires.

4 1. *DSHS must devise and implement an adequate plan*
5 *for Washington State's homeless children.*

6 DSHS must devise and implement an effective plan to serve
7 homeless children. RCW 74.13.031(1) provides that "[t]he De-
8 partment . . . shall:

9 Develop, administer, supervise, and monitor a coordi-
10 nated and comprehensive plan that establishes, aids,
11 and strengthens services for the protection and care
12 of homeless, runaway, dependent or neglected children.

13 RCW 74.13.031(1) (emphasis added). The court should declare
14 DSHS's obligation to do this.

15 The court should also make clear that the plan must not be
16 a perfunctory exercise. Instead, the plan must provide a rea-
17 sonable basis to believe that it will be effective in achieving
18 the statute's goal of protecting children from homelessness.
19 This minimum requirement for such a plan is evident from the
20 language of the statute itself, as well as from opinions of the
21 experts in the field.

22 a. The plan must address all homeless children.

23 The plan must address all of Washington State's homeless
24 children. This is true for three reasons: First, an inclusive
25 reach is a necessary part of the definition of a "comprehensive"
26 plan. "Comprehensive" is defined as:

27 covering a matter under consideration completely or
28 nearly completely; accounting for or comprehending all
or virtually all pertinent considerations.

Webster's Third New International Dictionary (1967).

1 Second, the statute does not qualify or limit homeless
2 children in any way that would allow DSHS to exclude some from
3 the statute's protection. State agencies may not deny benefits
4 or services by creating additional eligibility criteria that are
5 "inconsistent with and not authorized by the statute." Fecht v.
6 DSHS, 86 Wn.2d 109, 110 (1975). "The legislative purpose is not
7 achieved by engrafting upon the statute an exception which is
8 not contained within its terms and by perpetuating that error
9 under the banner of *stare decisis*. Metro Seattle v. Labor and
10 Industries, 88 Wn.2d 925, 929, 368 P.2d 775 (1977). DSHS
11 attempted such a limitation in Fecht by adding an age require-
12 ment to the general assistance statute. The Court found the
13 limitation to be unlawful. The court reached a similar conclu-
14 sion in Hansen v. Dept. of Social Services when it found that an
15 agency, charged with the duty to serve homeless children, could
16 not limit its emergency shelter assistance only to children who
17 had been removed from their families. 238 Cal. Rptr. 232 (Cal.
18 App. 1987).²⁸ Any limitation in this case would be unlawful for
19 the same reason.

20 Third, DSHS may not exclude significant numbers of homeless
21 children without violating the requirement of RCW 74.08.090 that
22 Title 74 RCW "be administered uniformly throughout the state. .
23 . ." For these reasons, DSHS's plan must encompass all the home-
24 less children in Washington State.

25
26
27 ²⁸ See also, State ex rel Tiner v. Milwaukee County, 260 N.W.2d 393
28 (Wis. 1977) (An agency may not exclude all AFDC recipients from receiving
benefits under another general relief program.)

1 b. The plan must be reasonably expected to
2 address the homelessness of children in an
3 effective manner.

4 The statute clearly intends DSHS's plan to be a substantive
5 and effective effort to save children from homelessness. First,
6 RCW 74.13.031 requires a "plan" that "establishes, aids, and
7 strengthens services for the protection and care of homeless . .
8 . children." RCW 74.13.031 (emphasis added). These words show
9 the legislature's intent for responsive action.²⁹

10 Second, a minimal level of effectiveness derives from the
11 requirement that the plan be "comprehensive". Whatever else
12 this term denotes, it surely includes the rudimentary notion
13 that the services must adequately address the very homelessness
14 that triggers the statutory obligation.

15 Third, the law also envisions an active DSHS role. An
16 active role follows from the requirement that DSHS "shall devel-
17 op, administer, supervise and monitor" this plan. RCW 74.
18 13.031 (emphasis added). Less is not good enough. In the face
19 of a child welfare disaster of nearly seventy thousand homeless

20 ²⁹ "Plan" means an organized effort focused on a goal:

21 A method of achieving something; a way of carrying out
22 a design; a detailed and systematic formulation of a
23 large-scale campaign or program of action.

24 Webster's Third New International Dictionary (1967). "Establish" also denotes
25 effective action:

26 To make firm or stable; . . . to place, install, or
27 set up in a permanent or relatively enduring position
28 . . . to bring into existence, create, make, start,
 originate, found, or build usually as permanent or
 with permanence in view.

 Id. The court adopted a similar definition of the word "establish" in City of
Seattle v. Auto Sheet Metal Workers Local 387, 27 Wash. App. 669, 620 P.2d 119
(Div. I 1980) when interpreting a city ordinance that required the city to
"establish" uniform procedures for personnel matters.

1 children, Chap. 74.13 is not a call for yet another compilation
2 of existing services or still another study. The legislature
3 knows how to request those when it wants them.³⁰ For homeless
4 children, the law requires action.

5 Effective action, in the form of shelter, was the require-
6 ment that the Supreme Court of West Virginia imposed when inter-
7 preting an agency's duty to serve "incapacitated" adults that
8 was far less emphatic and specific than DSHS's duty for homeless
9 children.³¹ Hodge v. Ginsberg, 303 S.E.2d 245, 250, 251 (W.Va
10 1983). In Hodge, the court ruled that homeless adults were
11 "incapacitated" under the statute and ordered the state agency
12 to provide them with emergency shelter, relying on another
13 provision that required services "appropriate in the circum-
14 stances" and which "meet the individual's needs." DSHS must
15 respond likewise to its much more explicit obligation to home-
16 less children; if not, the court must do so.

18 ³⁰ E.g., RCW 18.50.150 (directing the Department of Health to report
19 recommendations concerning midwifery to legislative committees.); RCW 71.24.
20 035(19)(DSHS establish a task force to report to the legislature on the re-
21 cruitment, training and compensation of qualified mental health profession-
22 als.); RCW 72.09.050(DSHS and the Department of Corrections shall submit a
23 "joint report" to the legislature concerning juvenile rehabilitation.); RCW 74.
24 20A.035(DSHS shall report to the legislature concerning the use of private
25 attorneys for paternity actions.)

26 ³¹ The West Virginia statute merely stated the agency's responsibili-
27 ties to serve "incapacitated" and "neglected" adults:

28 The department may develop a plan for a comprehensive
system of adult protective services including social
case work, medical and psychiatric services, home
care, day care, counseling, research and others.

It shall offer such services as are available and
appropriate in the circumstances . . . to adults who
may request and be entitled to such protective servic-
es

303 S.E.2d at 248 - 250.

1 2. *DSHS must provide homeless children of Washington*
2 *State with child welfare services: Chaps. 74.13*
 and 74.14A RCW.

3 DSHS has additional obligations toward homeless children
4 under RCW 74.13.020 and Chap. 74.14A RCW, which the court also
5 found to confer a claim on the plaintiffs. Order on Defendants'
6 Motion for Judgment on the Pleadings, ¶ 7B. These statutes,
7 like the requirement for a plan, oblige DSHS to provide substan-
8 tive and effective services:

9 The Department **shall** have the duty to provide child
10 welfare services as defined in RCW 74.13.020
11 RCW 74.13.031(emphasis added). RCW 74.13.020 defines "child
12 welfare services" to include "homeless children":

13 As used in Title 74 RCW, child welfare services **shall**
14 be defined as public social **services**, including adop-
15 tion services which strengthen, supplement, or sub-
 stitute for, parental care and supervision for the
 purpose of: . . . (2) **protecting and caring for home-**
16 less, dependent, or neglected children.
17 (emphasis added). RCW 74.14A.020 plainly requires DSHS to
18 "address the needs" of the children enumerated in the statute.
19 It goes on to require services that are "**appropriate**", "**effec-**
20 **tive**" and "**adequate in availability**" for the problems identi-
21 fied. RCW 74.14A.020(2); 74.14A.020(4)(a)(emphasis added).
22 These statutes, like RCW 74.13.031(1), require DSHS to take
23 affirmative action to assist homeless children with services
24 because they are homeless and in a way that gives good reason to
25 think will effectively address their homelessness.

1 3. *DSHS must have adequate procedures and eligi-*
2 *bility criteria to determine who gets what assis-*
 tance.

3 The plaintiffs' have previously discussed why, as one ele-
4 ment of due process, the defendants must have adequate proce-
5 dures and eligibility criteria to govern the services that its
6 plan will provide. Plaintiffs' Memorandum Opposing Defendants'
7 Motion for Judgment on the Pleadings, pages 55 - 58. The court
8 should declare that, as part of its plan of services, the defen-
9 dants should provide these necessary elements of fairness and
10 due process, including: public criteria governing who gets what
11 services and how much; a fair procedure to apply this criteria
12 in individual cases, including notice requirements and an oppor-
13 tunity to be heard "at a meaningful time and in a meaningful
14 manner". Goldberg v. Kelly, 397 U.S. 254, 267, 90 S.Ct. 1011,
15 1020, 25 L.Ed.2d 287 (1967).

16 4. *DSHS must equip its caseworkers with shelter and*
17 *housing resources to use when necessary and*
 effective to prevent or shorten a child's foster
 care placement.

18 The plaintiffs are not asking the court to rule that
19 shelter and housing assistance are always a necessary part of
20 preventive or reunification efforts or that they are always
21 required even when the placement arose in whole or in part from
22 the family's lack of adequate housing. Instead, the court
23 should rule only that DSHS must equip its caseworkers in these
24 cases with shelter and housing resources for their use when in
25 their judgment or in the judgment of the dependency court such
26 assistance would be necessary and effective to prevent or
27 shorten the child's need for a placement. This requirement
28

1 follows from the statutory requirements and the standards of the
2 profession.

3 Chaps. 13.34 and 74.14A RCW require the defendants to
4 provide services to prevent or shorten the need for foster care
5 placements. See Plaintiffs' Memorandum Opposing Defendants'
6 Motion for Judgment on the Pleadings, pages 12 - 27. DSHS also
7 has a due process obligation to use the least restrictive alter-
8 native form of intervention. *Id.* at 51 - 55. These obligations
9 apply to those cases of the plaintiff class where a child's need
10 for placement arises or continues in whole or in part from the
11 family's lack of adequate housing. Indeed, the court has
12 already ruled that the plaintiffs in these cases have stated
13 claims both under Chaps. 13.34 and 74.14A RCW and under the due
14 process clauses. Order on Defendants' Motion for Judgment on
15 the Pleadings, ¶¶ 7B, 7C.

16 As with the DSHS's duties owed to homeless children in
17 general, its duties in the foster care cases require efforts
18 designed to be effective. The efforts must be designed to "pre-
19 vent or eliminate the need for removal of the child from the
20 child's home and to make it possible for the child to return
21 home;" RCW 13.34.060(6); RCW 13.34.130(1)(b).³² The

22
23 ³² The statute is strewn with ancillary provisions that make no sense
24 except as efforts to identify an effective response to the family's need. For
example, the DSHS caseworker must furnish the dependency court with a "social
study" that clearly contemplates that the family's needs will determine the
type of services: The "social study shall contain the following information:

25 (a) A statement of the specific harm or harms to the child that
26 intervention is designed to alleviate;

27 (b) A description of the specific programs, for both the parents
28 and child, that are needed in order to prevent serious harm to the
child; the reasons why such programs are likely to be useful; the
availability of any proposed services; and the agency's overall

1 court in In re Welfare of Churape, 43 Wash. App. 634, 638, 719
2 P.2d 127 (1986) made it clear that these statutory mandates for
3 services are to be taken seriously:

4 Legislative requirements contained in the 1977 enact-
5 ment of RCW 13.34 regarding dependency reviews and
6 plans are not merely hoops the parties must jump
7 through. They are the means provided to attempt to
8 alleviate, mitigate, or cure existing problems that
9 have required state intervention. RCW 13.34.130. The
10 legislative focus is on keeping the family unit
11 intact. RCW 13.34.020. Hence, reuniting the family
12 must be the principal goal of the Department of Social
13 and Health Services.

14 Under RCW 74.14A.020, DSHS has a duty of "ensuring" the provi-
15 sion of "appropriate" preventive and reunification services,
16 "developing and implementing comprehensive preventive and early
17 intervention social and health services which have demonstrated
18 the ability to delay or reduce the need for out-of-home place-
19 ments . . . ", and developing services "appropriate to the situa-
20 tion and effective".(emphasis added). This is a DSHS mandate to
21 provide its caseworkers with the shelter and housing resources
22 for use in those cases where it would be necessary and effective
23 to prevent or shorten foster care placements.

24 The plaintiffs have already reviewed the cases where courts
25 have required agencies to provide shelter and housing for
26 exactly this purpose under much weaker and more uncertain
27 mandates.³³ The Rhode Island Supreme Court, for example, made

28 _____
plan for ensuring that the services will be delivered; . . .

RCW 13.34.120(2). "The agency plan shall specify what services the parents
will be offered in order to enable them to resume custody," RCW 13.34.
130(3). See also, 42 U.S.C. § 671(a)(15).

³³ Plaintiffs' Memorandum Opposing Plaintiffs' Motion for Judgment on
the Pleadings, pages 32-36.

1 this point concerning cases where the parents lacked housing:

2 In such cases housing assistance is the precise type
3 of service contemplated by [the reasonable efforts
4 requirement] to resolve or ameliorate the problems
5 preventing discharge from foster care.

6 In re Nicole G., 577 A.2d 248 (R.I. 1990). DSHS's duty under
7 Washington law to provide this assistance is certainly no less
8 than Rhode Island's; in fact, under the provisions of Chap. 74.
9 13 and 74.14A RCW that emphasize the importance of appropriate
10 and effective services and that mention homelessness in particu-
11 lar, this duty in Washington is much clearer.

12 **C. DSHS has failed to fulfill its duties.**

13 No genuine dispute about material facts precludes the court
14 from also finding that DSHS has failed to fulfill its duties in
15 the following ways:

16 1. *DSHS lacks an adequate plan for homeless children
17 and fails to provide them with child welfare
18 services.*

19 a. DSHS has no plan for homeless children under
20 Chap. 74.13 RCW

21 DSHS has stipulated that, except for a day care program, it
22 lacks any program for families with children for which homeless-
23 ness is an eligibility criteria. Stipulation of Facts, ¶ 3.
24 There can be no clearer or more cogent statement of DSHS's
25 default than this.³⁴

26 ³⁴ This default also clearly illuminates the DSHS's denial of the
27 equal protection of the child welfare laws. See Plaintiffs' Memorandum
28 Opposing Defendants' Motion for Judgment on the Pleadings, footnote 7. These
laws oblige DSHS to serve homeless children, along with those who are runaway,
dependent and neglected. RCW 74.13.031; 74.13.020. DSHS's failure to serve
homeless children or even acknowledge a duty to do so unlawfully distinguishes
them from the other categories of children protected by the same statute.
Since this distinction also violates the statute, DSHS has no basis, rational
or not, that could justify it.

1 DSHS has written a document purporting to be a plan. It is
2 entitled "Department of Social and Health Services Comprehensive
3 Plan to Coordinate Services for Homeless Children and Families",
4 dated July 1993. (Exhibit D). On its face, this document is
5 deficient as a fulfillment of the "coordinated and comprehen-
6 sive" plan required under Chap. 74.13 RCW. This "plan" does not
7 denote any DSHS responsibility under Chap. 74.13 RCW. Instead,
8 it merely lists existing programs such as AFDC, food stamps, and
9 vocational rehabilitation services that are operated under inde-
10 pendent statutory obligations and have no particular relation-
11 ship to the problem of homelessness. See Stipulation to the
12 Admission of Exhibits for Summary Judgment, ¶ Exhibit D(1) -
13 (4). The "plan" is only an inventory of those other programs
14 and not a description of DSHS's own efforts to protect and care
15 for homeless children under Chap. 74.13 RCW.

16 In fact, the plan's only component remotely related to the
17 needs of homeless children would be continued referrals to these
18 pre-existing programs, such as public housing authorities, and
19 better coordination within DSHS.³⁵ This is not good enough under
20 the law. RCW 74.13.031 already presumes the existence of other
21 services which DSHS must "strengthen". The statute clearly
22 requires DSHS to "establish" its own services pursuant to a plan
23 that DSHS must "develop, administer, supervise and monitor".

24 Referrals to the efforts of other agencies is an abrogation
25

26 ³⁵ See, Section V: Proposed Enhancements". For this reason, the
27 "plan's" title may be more revealing than perhaps intended. It is not a "coor-
28 dinated and comprehensive plan" for homeless children, as required by the
statute. It is not even a coordinated plan for comprehensive services. It is
a "comprehensive plan to coordinate services".

1 of this responsibility. The court made this point in Robinson
2 v. Rhodes, 424 F.Supp. 1183 (N.D. Ohio 1976) when it found that
3 referrals of applicants to other programs did not fulfill an
4 agency's duty to engage in the "operation" and "administration"
5 of programs. This is especially the case when those referrals
6 are so plainly ineffective. See section b below.

7 Underscoring this default is DSHS's stipulated lack of
8 studies and its failure to collect the data or information that
9 a systematic effort will require either to address child home-
10 lessness in the state or even merely to assess the effect that
11 homelessness has on DSHS's other services. Stipulation of
12 Facts, ¶¶ 2.1, 2.2.

13 b. DSHS's "Plan" Doesn't Work: 67,000 children
14 are homeless, with nearly 50,000 of them
even without shelter.

15 More significantly, the "plan" will not protect and care
16 for homeless children as required. The pre-existing services
17 catalogued in the plan have left sixty-seven thousand children
18 in Washington State homeless yearly; nearly fifty thousand of
19 them lacking even shelter. In the face of this massive failure,
20 no professional agency, with an independent obligation to devise
21 and implement a plan to save children from homelessness, can be
22 found to have done its duty by merely compiling a list of
23 services that have proven to be inadequate.³⁶

24 DSHS's failure is confirmed by the assessment of some of
25

26 ³⁶ The plaintiffs do not assert that the defendants must save all
27 children from homelessness or that it must guarantee that each child will have
28 shelter or a place to live. Even the best of efforts will fail to save some,
perhaps even many, children because of difficulties that will prove impossible
to overcome. DSHS must make an effort, however, designed to be effective.

1 the state and nation's prominent professionals and experts. In
2 their view, DSHS's plan "will have little if any impact on
3 reducing levels of homelessness among families with children."

4 Declaration of Ronald L. Oldham, (Acting Executive Director and
5 Director of Housing Management of Seattle Housing Authority), ¶
6 6.

7 In my opinion, this document, even if it is fully
8 implemented, will confer no appreciable benefit on
Washington State's homeless families with children."

9 Second Declaration of Martha C. Dilts, (shelter director) ¶ 4.

10 It is very unlikely to provide any effective
11 assistance to these families that will save them from
homelessness.

12 Declaration of Marybeth Shinn, Ph.D., ¶ 16.

13 This plan is largely a list of some of the resources
14 that are presently available in the State. Some of
15 the listed resources pertain to homelessness assis-
16 tance; some do not. Because the plan will not propose
17 any significant increases, if at all, in the provision
of shelter and housing assistance to homeless families
with children, the plan will not have a tangible
impact on their numbers in Vancouver and Clark County,
or in other parts of the state.

18 Declaration of Kurt Creager, ¶ 7 (Executive Director of
19 Vancouver Housing Authority). See Also, Declaration of Betsy
20 Cole, M.S.W., ¶ 12 ("no appreciable effect").

21 2. *DSHS fails to fulfill its foster care duties.*

22 The record on this motion shows cases where DSHS fails to
23 provide housing resources necessary for preventive and reunifi-
24 cation purposes.³⁷ DSHS's efforts to refer parents to the inade-
25 quate resources of others is not any more acceptable in the

26
27 ³⁷ E.g. Declaration of Terrence A. Carroll, ¶ 8. See Also footnote
28 23 and accompanying text.

1 foster care cases then it is for homeless families in general.
2 Some courts expressly rejected such attempts to evade direct
3 responsibility.³⁸ In In re S.A.D., 555 A.2d 123 (Pa. Super.
4 1989), for example, the court rejected the caseworker's referral
5 efforts. Instead, the court required the agency to provide
6 rental subsidies even though other agencies or programs existed
7 for this purpose:

8 Under the reasonable efforts requirement, agencies can
9 be required to provide services that are normally the
province of other agencies.

10 *Id.* at 128. If referrals do not work, the child welfare agency
11 must respond.

12 Further, the federal regulations governing foster care
13 state that agency referrals to other service agencies, while
14 appropriate when effective, do not even count toward the state's
15 "reasonable efforts" obligation. Instead, they count merely as
16 "administrative expenses".³⁹

17 DSHS has failed to equip its caseworkers with the shelter
18 and housing resources for use when they are necessary to prevent
19 or shorten a foster care placement. Without those resources,
20 DSHS cannot fulfill its statutory and constitutional duty in
21 these cases.

22
23 ³⁸ Referrals are not good enough if they don't work. One court re-
24 versed a termination order in part because the caseworker had only referred the
mother to housing authorities and told her to read the newspaper and "keep her
eyes open". In re Victoria M., 207 Cal.App.3d 1317, 255 Cal.Rptr. 498 (1989).

25 ³⁹ (1) Non-public third party in-kind contributions may
26 not be used to meet the requirements of the non-
Federal share of the costs of programs funded under
this part.

27 45 C.F.R. § 1357.30(e)(1). "Referrals", instead, are counted as "allowable
28 administrative costs". 45 C.F.R. § 1356.60(c)(2)(i).

1 D. The court should give DSHS a reasonable amount of time
2 to submit a proposed plan for the court's approval.

3 The court, upon clarifying DSHS's duties, should give DSHS
4 a reasonable amount of time to draft an adequate plan, with full
5 consultation with the plaintiffs, and to submit it for the
6 court's review, along with an implementation schedule. The
7 plaintiffs propose a deadline of April 1, 1994.

8 VII. PROPOSED ORDER

9 The plaintiffs' proposed order is attached.

10 VIII. CONCLUSION

11 The court should give partial summary judgment to the
12 plaintiffs.

13 Dated: September 15, 1993

14 Michael Mirra
15 Michael Mirra, WSNB 10,877
16 Carol Vaughn, WSNB 16,579
Lori Salzarulo, WSNB 17,294

17 I certify that on September 15, 1993 I had a copy of this
18 document, along with attached declarations, delivered to Michael
19 Collins and Charlotte Clark Mahoney, defendants' attorneys, at
900 4th Avenue, Suite 2000, Seattle, WA.

20 Michael Mirra
21 Michael Mirra

22
23
24 a.52:HOMCHIL.209
25
26
27
28

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

WASHINGTON STATE COALITION FOR)
THE HOMELESS,)
et al.,)

Plaintiffs,)

vs.)

DEPARTMENT OF SOCIAL AND)
HEALTH SERVICES,)
et al.,)

Defendants.)

PROPOSED

No. 91-2-15889-4

PARTIAL SUMMARY JUDGMENT FOR
PLAINTIFFS AND ORDER DENYING
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT

Each party has moved for summary judgment. The court has
considered the following documents and other material:

Stipulation of Facts, dated September 1, 1993;

Plaintiffs' Motion for Partial Summary Judgment, and
supporting declarations and affidavits;

Defendants' Motion for Summary Judgment, and supporting
declarations and affidavits.

The court finds that there are no genuine issue as to any
material fact for the court to resolve in order to make the
following rulings or conclusions:

1. The court denies the defendants' motion for summary
judgment.

SUMMARY JUDGMENT - 1

PROPOSED

1 court and to the plaintiffs a plan for DSHS's fulfillment of its
2 duties described above. In drafting this plan, the defendants
3 shall consult fully with the plaintiffs. By April 22, 1994, the
4 plaintiffs may submit to the court any material in response to
5 the defendants' proposed plan. The court will hold further
6 hearings or require the submission of additional material as its
7 finds to be necessary for its determination of the plan's
8 adequacy. Nothing in this order shall be construed to prejudice
9 the necessity for assistance in any individual case.

10 4. The damage claims of the individual plaintiffs shall be
11 adjudicated pursuant to the rules of mandatory arbitration (MAR).

12 5. The plaintiffs may submit a motion for the award of
13 attorneys' fees and costs.

14 DONE IN OPEN COURT this ____ day of _____ 1993.

15
16 _____
Judge Ann Schindler

17 Presented by:

18
19 _____
20 Michael Mirra, WSNB 10,877
Carol Vaughn, WSNB 16,579
21 Lori Salzarulo WSNB 17,294

22 Attorneys for the Plaintiffs

23 Notice of Presentation Waived:

24 _____
25 Mike Collins, WSNB 19,375
Charlotte E. Clark-Mahoney,
26 WSNB 13,096

27 Attorneys for the Defendants

28 a.52:HOMCHIL.188

29 **PROPOSED**
SUMMARY JUDGMENT - 4

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