

**February 23, 2012**

**Question:**

Please clarify the intent of the following portion of COV §2.2.-5211 E: ***“Notwithstanding the provisions of this subsection, the court may make any disposition as is authorized or required by law. Services ordered pursuant to a disposition rendered by the court pursuant to this section shall qualify for funding as appropriated under this section...”***

**Answer:**

The entirety of this Section of COV §2.2-5211 is:

*E. In any matter properly before a court for which state pool funds are to be accessed, the court shall, prior to final disposition, and pursuant to §§ [2.2-5209](#) and [2.2-5212](#), refer the matter to the community policy and management team for assessment by a local family assessment and planning team authorized by policies of the community policy and management team for assessment to determine the recommended level of treatment and services needed by the child and family. The family assessment and planning team making the assessment shall make a report of the case or forward a copy of the individual family services plan to the court within 30 days of the court's written referral to the community policy and management team. The court shall consider the recommendations of the family assessment and planning team and the community policy and management team. If, prior to a final disposition by the court, the court is requested to consider a level of service not identified or recommended in the report submitted by the family assessment and planning team, the court shall request the community policy and management team to submit a second report characterizing comparable levels of service to the requested level of service. Notwithstanding the provisions of this subsection, the court may make any disposition as is authorized or required by law. Services ordered pursuant to a disposition rendered by the court pursuant to this section shall qualify for funding as appropriated under this section.*

Existing case law (*Fauquier County Department of Social Services v. Robinson* 20 Va. App. 143 (1995) and *S.G. v. Prince William County Department of Social Services* 25 Va. App. 356 (1997)) supports the authority of the Court to supersede service decisions made by the Family Assessment and Planning Team (FAPT) and approved by the Community Policy and Management Team (CPMT). Simply put, based on these Court of Appeals decisions, the Court's authority to order services over-rules the service decisions made by the FAPT and CPMT.

The CPMT is responsible for determining a youth's eligibility for CSA funding. **Pool funds can only be used for CSA- eligible children and youth.** A Court cannot order a child to be "mandated" or eligible for CSA simply by virtue of the Court's order for services. As the statute indicates, the services must be "ordered pursuant to a disposition rendered by the court." The court's disposition may (or may not) make the child or youth eligible or mandated for CSA funding. For example, a court's finding or disposition of "child in need of services" places that child in the CSA mandated population. (COV §16.1-228, §63.2-905, §2.2-5211)

**Conclusion:**

If the child or youth for whom the Court orders services is eligible for CSA funding, and the Court is requested to consider a level of service and recommendations not identified in the Individual and Family Services Plan (IFSP), then the Court and the FAPT/CPMT must (“shall”) follow the process outlined in COV §2.2-5211 E regarding development of a second report outlining a comparable plan of services. However, after following this process, the Court may still order services for the CSA-eligible child who is “properly before the Court” and for whom the Court has rendered a disposition pursuant to this section. The wording “as appropriated” added to this section in 2009 clarifies that:

- If the child or youth for whom the Court orders services is included in the mandated population, mandated funds are utilized for the services and the locality and the state shall ensure “sum-sufficient” funding.
- If the child or youth for whom the Court orders services is CSA-eligible, but not in the mandated population and non-mandated funds are available, the locality and the state should fund the services using non-mandated funds.
- If the child or youth for whom the court orders services is CSA-eligible, but not in the mandated population, and non-mandated funds are not available, the CPMT cannot authorize services using pool funds.

**NOTE:** The Office of the Attorney General has reviewed this OCS clarification of statute and confirmed its accuracy.