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Adoptive Parents Get \$200,000 in Back Benefits

By Susan McRae

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LOS ANGELES — When Donna Durando and her husband, James Durando, decided to start a family 25 years ago, they began by adopting a little boy, quickly followed by a baby girl.

Soon, they decided to adopt another boy. His sister needed dialysis, and, because Donna Durando is a registered nurse, she adopted the girl, as well. Then, they decided to adopt another boy and girl, who were Durando's patients when she worked at Children's Hospital.

Then came the sets of siblings.

In all, the Durandos adopted 12 children, eight boys and four girls now ages 10 to 28. Six of the children are severely disabled.

But whenever Donna Durando asked her social workers about getting an increase in benefits to pay for their special needs, she was put off or subtly warned that, if she complained too much, she might lose the children, she said.

"I trusted the social workers," Durando said recently.

"Also, I didn't go into the system for monetary gain," she said. "My husband and I both worked, so getting more money was not in my thought process."

But when one of her sons needed speech therapy, she decided to take a friend's suggestion and call Public Counsel for help. The Los Angeles nonprofit went to work on the case immediately.

It took three years and two court hearings, but the Durandos finally got not only substantial increases in their benefits but also, last week, a check for \$200,000, representing retroactive payments for the years they were underpaid.

Durando said she plans to use the money to set up a trust fund for three of the children, who are mentally retarded, and to begin providing special services for the other children, including hiring a private teacher.

She also hopes that going public with her settlement will help other adoptive and foster parents realize they need to make sure they are getting all the benefits they are entitled to receive.

Public Counsel President and CEO Daniel Grunfeld said that, unfortunately, cases like



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The Durando family, from left: front row, James, Kaebo and Shawn; center row, Karisa, John, Alyn and Timothy; back row, Richard, parents Donna and Jim, and Heather. Adoptive parents Donna and Jim recently won a settlement from the state Social Services Department for miscalculated support payments.

the Durandos are not that rare.

"We estimate 20 to 25 percent of the cases we deal with involve erroneous determinations of benefits to adopting families," Grunfeld said. "The problem is endemic."

In the Durandos' case, once Public Counsel got involved, Los Angeles County Department of Children and Family Services acknowledged the family had been underpaid for foster and adoptive support for nearly a decade, and the agency significantly increased the payments.

But the state Department of Social Services, citing an alleged lack of medical documentation and the untimeliness of Durando's request, refused to make up the difference for prior years. An administrative law judge upheld the decision.

Public Counsel enlisted the pro bono services of former staff attorney Lisa Jaskol, now a partner with Horvitz & Levy, who, along with associate Patricia Lofton, petitioned the Los Angeles County Superior Court for review on behalf of six of the disabled children. *Durando v. Boyle*, BS099170 (L.A. Super. Ct., filed Sept. 14, 2005).

The department agreed in August to a settlement, and the Durandos received a check for retroactive payments last week.

Department spokeswoman Shirley

Washington said she could not comment on the legal aspects of the case.

She added, however, that the "department is certainly aware of the needs of this family that adopted the children, and the settlement ensures they will be receiving the appropriate benefits to which they are entitled."

Grunfeld said Public Counsel provides brochures to families interested in foster care and adoption, which list some of the benefits they are entitled to receive. Titled "Quick Reference Guide to Foster Care/Adoption Assistance Program," it is available on Public Counsel's Web site: www.publiccounsel.org.

The firm also has worked with the L.A. County Department of Children and Family Services and other child advocacy organizations to help them become more aware of the benefits available for children with special needs.

However, Grunfeld said, much needs to be done in this area.

He also said he was troubled by the state's denying underpaid benefits retroactively.

"What does that say about true commitment to helping these kids?" Grunfeld asked. "To fight retroactivity under these circumstances was, from our perspective, extremely questionable from a legal and moral point of view."