

ISSUE

DHS argues that they cannot be ordered by a juvenile court operating under Title 19 jurisdiction to pay for certain placements or services because those placements or services do not meet certain criteria or use of those placements or services fall under the jurisdiction of a different title.

AUTHORITY

Under *People in Interest of T.W.*, 642 P.2d 16 (Colo. App. 1981) and *People in Interest of L.M.*, 910 P.2d 100 (Colo. App. 1995), a juvenile court operating under Title 19 jurisdiction can order DHS to pay for placements or services, even if DHS argues that those placements or services do not meet certain criteria or should be utilized through a statutory scheme under a different title.

“[T]he General Assembly intended to vest the courts with the authority to direct the local social services department to provide child welfare services, including reimbursement for the cost of private placement, when necessary to protect the welfare of the children.” *L.M.*, 910 P.2d at 101 (citing *People in Interest of J.H.*, 770 P.2d 1355, 1357 (Colo. App. 1989)). In *L.M.*, El Paso County DHS was ordered to make retroactive foster care payments to grandfather who was not certified as a foster care provider through DHS. DHS asserted a separation of powers argument to support its claim that it could not be ordered to make such payment because payment for foster care to a non-certified provider violates DHS regulations. The court ruled that a dependency and neglect court, operating under Title 19, is not bound by DHS regulations and can order the expenditure of DHS funds even when such expenditure violates DHS’ own regulations. “[T]o interpret the statutory and regulatory provision in the manner argued by the department would frustrate the fundamental public policy which is to provide for the welfare and best interests of the child.” *L.M.*, 910 P.2d at 102.

L.M. provides a good argument to use when DHS is arguing that services or placement cannot be ordered because DHS does not contract with that program, another funding source has not been exhausted, or the juvenile or the family do not meet certain criteria. These arguments are almost always based on DHS policy and regulations which are not binding legal authority because a juvenile court in Colorado is not bound by DHS policy and regulations.

In *T.W.*, state DHS was ordered to pay its 80% share of funding for a juvenile's placement in an out of state facility (through the Interstate Compact for Placement of Children). State DHS argued that, per State Department rules and regulations, the placement of the juvenile at the out of state facility required approval of the executive director of state DHS and because that had not been obtained prior to the placement, state DHS could not be ordered to pay for the placement. The court ruled that the authority to determine the placement of a child is for the juvenile courts to decide and DHS may not use its rules and regulations as justification not to pay for a placement that a court has ordered. "It is within the exclusive jurisdiction of the court to determine the placement of a child adjudicated neglected, dependent, or delinquent... [W]hile the State Department has the authority to prescribe procedures for handling requests and applications for social services through its rules and regulations...it may not encroach upon the authority exclusively placed with the court." *T.W.*, 642 P.2d at 17.

Similar to *L.M.*, *T.W.* provides a solid argument for situations where DHS does not want to pay for something that a juvenile court has ruled is in the juvenile's best interest. The rules, regulations, and contracts of DHS do not bind a juvenile court when it is making decisions regarding the best interests of a dependent, neglected, or delinquent juvenile. If DHS argues that a different statutory scheme must be followed for a specific placement (e.g. Mental Health Commitments under Title 27) instead of a juvenile court order for placement, *L.M.* and *T.W.* are good case law to argue that absent an express statutory provision to the contrary, a juvenile court is not limited in the types of placements it can order DHS to fund, and the presence of a different

potential statutory option for the same placement does not change the authority placed in a juvenile court to order the placement.