IOWA DEPARTMENT OF EDUCATION
(Cite as D.o.E. App. Dec. 227)

IN RE: Joseph S. Ray and Janet S. Appellants, v. Clarion-Goldfield Comm. School Dist. and Arrowhead AEA 5 Appellees.	ADMIN. DOC SE-117 SUPPLEMENTAL ORDER

A motion for clarification of costs and expenses to be reimbursed in the above captioned matter was heard on February 28, 1995 by phone before the undersigned Administrative Law Judge (ALJ). Jurisdiction for this matter was assumed by the ALJ in the interests of justice pursuant Iowa Code § 256B.6 (1993), Iowa Code 281 (1993), attending rules, and the U.S. Code and regulations of the United States Department of Education implementing the Individuals with Disabilities Education Act (IDEA), (formerly Education of All Handicapped Children Act) 20 U.S.C. §§ 1400-1485; 34 C.F.R. § 300 (1993).

The request for clarification was made by Appellee Arrowhead Education Agency (AEA), represented by Attorney Dean Erb and accompanied by Frederick Krueger, AEA Special Education Director. Also present by phone was Robert Malloy, attorney for Clarion-Goldfield School District. Appellants, Ray and Janet S., were represented by attorney Evelyn Ocheltree. Both Ms. Ocheltree and Janet S. were present by phone.

The original hearing decision of October 18, 1994 stated that the "parents are entitled to receive an independent evaluation of the child at public expense pursuant to 34 C.F.R. § 300.503 (1993)." The decision then ordered the District/AEA to pay for the comprehensive independent evaluation Joseph received at the University of Iowa, Division of Developmental Disabilities in January of 1994. There is no dispute that insurance through the Appellants' employment paid most of the evaluation charges. The AEA requested clarification of the bill, and questioned whether the AEA should pay for the policy deductibles, the entire bill, the amount unpaid by insurance and the personal transportation and meal expenses the parents incurred in obtaining the evaluation.

The purpose of the evaluation at the University of Iowa in January 1994 was specifically to address Joseph's behavior problems which became evident in his school program. School personnel provided data identifying Joseph's level of functioning, discussed his program with the evaluators and attended a closing session at the University of Iowa to discuss recommendations. No evidence was submitted to show that the University of Iowa charges for the evaluation were not for an <u>educational</u> evaluation.

The evidence, (three statements by the insurance company and one itemization by the University of Iowa), verifies that the insurance company paid nearly all of the University of Iowa charges, specifically: $616.50 of $717.00 charged, $302.40 of $436.00 charged, and $5,030.20 of $5,421.50 charged. The statement also discloses that the $100.00 individual deductible amount was satisfied, presumably by the individual insured.

The law on this issue, in the federal regulations, states:

> (a)(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child...
>
> (3) For the purposes of this part:
> ...
> (ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.301.
>
> 34 C.F.R. § 300.503 (1993)
>
> (a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part....
>
> (b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.
>
> 34 C.F.R. § 300.301 (1993)

The regulations specifically provide that an insurer is not relieved from an otherwise valid obligation to provide or to pay for services provided to a child with a disability. Most of the evaluation charges have been paid by the insurer and are, and were obviously viewed as, a valid obligation. [1]

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[1] The parents' insurance provides a lifetime maximum for each insured, which is reduced by the amount of each claim paid. In one sense this might be construed to be a "cost" to the parents since the account of funds remaining for Joseph's use has been reduced. For the purposes of this decision, however, the future need and use of this account is speculative and reliance on probabilities or possibilities for future need or use is inherently unreliable. Therefore, this decision addresses the cost of the January 1994 evaluation exclusively.

Therefore, the costs to the parents are those above and beyond the charges paid by their insurance. This appears to include $100.50 on statement one, plus $133.60 on statement two, plus $391.30 on statement three, for a total of $625.40 in evaluation charges by the University of Iowa which were not paid by insurance.

Mileage and meal expenses incurred by the parents in connection with the evaluation were submitted to the AEA in the amount of $769.65. The costs for meals and travel are reasonable. There were no motel expenses because Mrs. S. stayed in the in-patient room with Joseph. These expenses must be at no cost to the parents. None of these expenses were paid by insurance. Notwithstanding the AEA policy requiring receipts for these expenses, the parents in this instance need not provide said receipts since the order for payment is far after the time in which the expenses were incurred.

ORDER

The AEA is only required to pay the amount of the education evaluation not covered by the insurance of the parents, which appears to be a total of $625.40. In this case, the AEA is also required to pay the individual deductible amount of $100, thus assuring that the educational evaluation was at no cost to the parents. The AEA is not required to pay the charges for the educational evaluation which were paid by insurance.

The AEA is required to reimburse the parents for the reasonable transportation and meal expenses, as submitted, in the amount of $769.65.

No further documentation is required and payment is to be made by the AEA directly to Ray and Janet S. as soon as possible and no later that thirty (30) days from the date of this decision.

March 3, 1995
DATE

Kathy Skinner
KATHY MACE SKINNER, J.D.
ADMINISTRATIVE LAW JUDGE