

FIRST CIRCUIT COURT FOR THE STATE OF HAWAII

A state court authorized this notice. This is not a solicitation from a lawyer.

**NOTICE OF AMENDED SETTLEMENT IN THE STATE LAWSUIT
ABOUT FOSTER BOARD PAYMENTS, PERMANENCY ASSISTANCE,
ADOPTION ASSISTANCE, AND HIGHER EDUCATION PAYMENTS**

In 2017, a notice was sent to Hawaii foster care providers, legal guardians/permanent custodians, adoptive parents of children with special needs, and higher education payment recipients about a settlement in a state class action lawsuit over Hawaii's board payments. The 2017 settlement would have provided a \$2.3 million fund to be used to make payments to those class members who received payments from the Hawaii Department of Human Services (DHS) between July 1, 2013 and June 30, 2014 (payment recipients); to pay court-appointed lawyers for investigating the facts, litigating the case, and negotiating the settlement; and to pay certain costs to administer the settlement. The 2017 settlement failed because the Hawaii Legislature did not provide the money needed to fund the settlement.

In March 2018, the Parties agreed to amend the settlement by extending the deadline for the Legislature to fund the settlement to June 30, 2018. This 2018 settlement will still include the \$2.3 million fund, and payments will still be made to class members who are payment recipients. The Legislature is not required to provide money for the settlement. If the Legislature chooses not to fund the settlement again, the lawsuit will continue.

**DHS' RECORDS INDICATE YOU ARE NOT A PAYMENT RECIPIENT, THEREFORE
YOU WILL NOT RECEIVE A PAYMENT UNDER THE SETTLEMENT.**

Your options in response to the proposed 2018 settlement are as follows:

- 1) You may do nothing. If you do nothing, you will be part of the settlement, which means you are giving up any claims you could have brought against the State that were made part of this lawsuit.
- 2) You may object to the 2018 settlement if you disagree with any of the terms. The deadline to postmark your objection letter is **May 29, 2018**. You may also tell the court your objections in person at the fairness hearing scheduled for **June 15, 2018**. You must tell the court in advance that you intend to come to the hearing by sending a notice of intent to appear postmarked by **May 29, 2018**.
- 3) You may exclude yourself from (opt out of) the 2018 settlement. This is the only option that allows you to ever be part of any other lawsuit against the State about the legal claims made in this case. The deadline to postmark your exclusion letter is also **May 29, 2018**.

If you sent in an objection letter or an exclusion letter for the 2017 settlement, you don't have to send another letter for the 2018 settlement.

Your legal rights are affected whether or not you act. Read this notice carefully.

PLEASE DO NOT CALL THE COURT WITH YOUR QUESTIONS

QUESTIONS? CALL 524-1800 OR VISIT <http://hawaiiiclassaction.com/fostercare>.

Differences Between this Lawsuit (the State Lawsuit) and the Federal Lawsuit

This lawsuit (in state court) focuses on the adequacy of board payments made in the past. There is a separate federal lawsuit that focuses on how much DHS should be paying for foster care in the future. *If* you are also part of the federal lawsuit, you will receive another notice describing that settlement. **Your legal rights and options in the state lawsuit and the federal lawsuit are different.** If you receive both notices (state and federal), please carefully note the differences.

BASIC INFORMATION

1. What is this state lawsuit about?

Plaintiffs filed this lawsuit claiming that the State did not pay enough for monthly foster care maintenance payments, permanency assistance, adoption assistance, and higher education payments. They claimed that the payments were too low under federal law, under state law, under DHS' administrative rules, and under the terms of agreements between resource caregivers and DHS. Plaintiffs believe they are entitled to payment for damages they suffered, equal to the shortfall between the amounts DHS should have paid, and the amounts DHS actually paid.

The State denies that its payments were inadequate or that it owes Plaintiffs any compensation.

The name of this lawsuit is *Sheehey v. State of Hawaii*, Civ. No. 14-1-1709-08 VLC. Judge Virginia Lea Crandall, of the First Circuit Court, State of Hawaii (the State Court), is currently overseeing this case.

WHO IS IN THE SETTLEMENT

2. Who are the Members of the Settlement Classes?

There are two settlement classes:

Settlement Class 1 – Parent Settlement Class: (a) all licensed resource caregivers in Hawaii (foster parents) who received monthly foster care maintenance payments from DHS from August 7, 2012 through March 20, 2018; and (b) all legal guardians and permanent custodians who received monthly permanency assistance from DHS from August 7, 2012 through March 20, 2018; and (c) all adoptive parents of children with special needs who received monthly adoption assistance payments from DHS from August 7, 2012 through March 20, 2018.

Class Representatives of the Parent Settlement Class are Patrick Sheehey, Patricia Sheehey, Raynette Nalani Ah Chong, Sherry Campagna, Michael Holm, and Tiare Holm.

Settlement Class 2 – Higher Education Settlement Class: all individuals who received monthly higher education payments from DHS from August 7, 2012 through March 20, 2018.

The Class Representative of the Higher Education Settlement Class is Brittany Sakai.

All Class Members will be bound by the settlement unless they exclude themselves. The process for excluding yourself from the settlement and the lawsuit, also called "opting out," is described below. *Not all Class Members will receive payments under this settlement.*

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3. What Class or Classes am I a member of?

If you were a resource caregiver (foster parent), an adoptive parent of a former foster child, or a legal guardian/permanent custodian, who received payments from DHS between August 7, 2012, and March 20, 2018, then you are a member of Settlement Class 1 – the Parent Settlement Class.

If you are a former foster youth who received higher education program benefits between August 7, 2012, and March 20, 2018, then you are a member of Settlement Class 2 – the Higher Education Settlement Class.

DHS' records show that you are a member of at least one of these classes. Therefore, if you received this notice, you will be part of the Settlement unless you opt out.

The Class Members who are also entitled to a payment are called Payment Recipients. **DHS' RECORDS INDICATE THAT YOU ARE NOT A PAYMENT RECIPIENT.**

4. Who is entitled to payments under the Settlement?

To be entitled to a monetary payment, a Class Member must be in Settlement Classes 1 or 2, **and** must have received one or more of these types of payments from DHS during the time period July 1, 2013 to June 30, 2014:

- monthly foster board payments for foster children in their care
- monthly adoption assistance for their adoptive children with special needs
- monthly permanency assistance for children in their legal guardianship/permanent custody
- monthly higher education board allowance (must have been an eligible former foster youth)

THE SETTLEMENT BENEFITS

5. What does the Settlement provide?

The State has agreed to provide \$2,341,103.10 (Total Settlement Amount) to be divided among the Payment Recipients and to pay for Class Counsel's attorneys' fees and costs and the administrative costs for carrying out the settlement.

The \$2,341,103.10 is based on \$35 per month per foster child, child in permanent custody/legal guardianship, adoptive child with special needs, and former foster youth in the higher education program, for whom DHS made monthly payments for the time period July 1, 2013 to June 30, 2014, pro-rated for actual days in care. The time period represents the one-year period right before the foster board rates were raised in July 2014. The \$35 figure was negotiated in the settlement, and represents a compromise figure agreed to by the Class Representatives and the State.

The amount that each Payment Recipient will receive will be calculated by subtracting the amount of the costs involved in administering this settlement (for example, copying and mailing this notice to, and locating Class Members) and the attorneys' fees and costs awarded by the Court from the Total Settlement Amount of \$2,341,103.10 to arrive at a Net Settlement Amount. This Net Settlement Amount will then be distributed to Payment

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Recipients based on the number of days each eligible child was in care between July 1, 2013 and June 30, 2014.

6. Will I receive a payment under the Settlement?

Based on DHS' records, **you do not meet the criteria in Question 4 and are NOT a Payment Recipient.** Thus, you will not be receiving a payment under this settlement. *Please be advised* that the Notice sent in 2017 may have incorrectly identified you as a Payment Recipient.

7. Why won't all Class Members receive a payment?

This settlement is a compromise between the Plaintiffs and the State. The State strongly believes it has no liability to any of the Class Members and does not owe any of them any money. The State believes its position is supported by court rulings in the federal lawsuit. But the State is willing to provide some money to some of the Plaintiffs as a way to bring an end to the case rather than continue to litigate. Plaintiffs strongly believe the State should be paying more to all of the Class Members, but also understand there are serious risks in continuing to litigate this case, including the possibility that none of the Class Members may get anything. Based on the federal court's rulings, and the risks inherent in any lawsuit, both the Class Representatives and Class counsel agreed to the settlement. Both the Federal Court and State Court preliminarily ruled in 2017 that the compromise is fair.

8. Are there any conditions to this Settlement?

This settlement will not become final until the Court approves this settlement, the federal court approves the settlement of the federal lawsuit, and the Hawaii Legislature approves the money that will be needed to pay for both settlements. If the Legislature does not approve the money needed to pay for both settlements, the settlement will not go forward, and the Plaintiffs in the federal lawsuit will go to trial.

BEING PART OF THE SETTLEMENT

9. Do I need to do anything to be a part of the Settlement?

No. You do not have to do anything to be part of the Settlement Classes.

10. When will payments be made to the Payment Recipients?

The Court will hold a Fairness Hearing on **June 15, 2018**, to finalize the settlement. If the presiding Judge approves the settlement, after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them takes time, perhaps more than a year. The Hawaii Legislature must also approve the funding for the payments. The legislative process lasts several months.

11. Do I give up anything if I am part of the Settlement?

Yes. Unless you exclude yourself, you are staying in the Class and will be part of the settlement even if you don't get a payment, which means you can't sue, continue to sue, or be part of any other lawsuit against the State about the legal issues in *this* case. It also means that all of the Court's orders will apply to you and legally bind you.

THE LAWYERS REPRESENTING YOU

12. Do I have lawyers in the case?

Yes. The Court has appointed lawyers to represent you and other Class Members. These lawyers are called Class Counsel. Their names are:

Paul Alston Anderson Meyer Claire Wong Black Alston Hunt Floyd & Ing 1001 Bishop Street, Suite 1800 Honolulu, HI 96813	Victor Geminiani Gavin Thornton Hawaii Appleseed Center for Law and Economic Justice 119 Merchant Street, Suite 605 Honolulu, HI 96813
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You will not be charged personally for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own personal expense.

13. How will the lawyers be paid? Do the Class Representatives get paid?

Class Counsel’s fee agreement allows them to ask for up to 25% of any recovery on behalf of the Class Members. However, Class Counsel will ask the Court to approve payment of 20% of the Total Settlement Amount to them for attorneys’ fees and costs. The fees and costs would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. The Court may award less than these amounts. The attorneys’ fees and costs will be deducted from the \$2,341,103.10. The State has agreed not to oppose these fees and costs.

The Court is not bound by any agreed upon or requested amounts. You may object to Class Counsel’s request for attorneys’ fees and costs. After considering the objections of Class Members, the Court will determine the amount of attorneys’ fees and costs in accordance with controlling law.

DHS’ expenses to administer the settlement (for example, the cost to mail out this notice) will also be deducted from the \$2,341,103.10. It is estimated that the administrative expenses will be approximately \$6,500.

Class Counsel reserved the right to provide Service Awards for the Class Representatives. These Service Awards are intended to recognize the Class Representatives for the extensive services they performed for the class, the time they spent on this case, and the risks they assumed in connection with this litigation. The amount of the Service Awards, if any, will be deducted from any award of attorneys’ fees and costs by the Court to Class Counsel. In other words, the Service Award will reduce the amount of money going to Class Counsel, **NOT** the amount of payments to Class Members.

OBJECTING TO THE SETTLEMENT

14. How do I object to the Settlement?

You may object to the settlement if you don’t like any part of it. This includes the attorneys’ fees and cost request for Class Counsel. The Court will consider your views.

To object, you must send a letter saying that you object to *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC. Be sure to include your name, address, telephone number, your signature, the date, and the reasons you object to the settlement. Mail your objection to the following address postmarked no later than **May 29, 2018**:

Sheehey Objections
Clerk of the Court
First Circuit Court, State of Hawaii
Kaahumanu Hale
777 Punchbowl Street
Honolulu, HI 96813

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. How do I get out of the Settlement?

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from or opt out of this case. Be sure to include your name, address, telephone number, your signature, and the date. Include the name of the case, *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC. You must mail your exclusion letter postmarked no later than **May 29, 2018** to:

Sheehey Exclusions
c/o Alston Hunt Floyd & Ing
1001 Bishop Street, Suite 1800
Honolulu, HI 96813

If you ask to be excluded, you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue the State in the future.

16. If I don't exclude myself, can I sue the State for the same thing later?

No. Unless you timely exclude yourself, you give up any right to sue the State for the claims that this settlement resolves. If you have a pending lawsuit that asserts the same or similar claims, speak to your lawyer immediately. You must exclude yourself from *this* Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **May 29, 2018**.

THE COURT'S FAIRNESS HEARING

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing, called a Fairness Hearing, to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to. The Court will hold the **Fairness Hearing at 9:00 a.m. on June 15, 2018**, at the **Circuit Court for the First Circuit, 777 Punchbowl Street, Honolulu, Hawaii, in Courtroom 11**. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing may be moved to a different date, time, or

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courtroom without additional notice, so it is a good idea to visit Class Counsel's website for updates: <http://hawaii.classaction.com/fostercare>.

18. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer questions the Judge may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend on your behalf, but it's not necessary.

19. May I speak at the Fairness Hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Sheehey v. State*, Civ. No. 14-1-1709-08 VLC." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than **May 29, 2018**, and be sent to the Clerk of the Court at the address in Question 14 above. You cannot speak at the hearing if you excluded yourself from the settlement.

IF YOU DO NOTHING

20. What happens if I do nothing?

If you do nothing, you will be part of this lawsuit, and you won't be able to be part of any other lawsuit against the State about the legal issues in *this* case, ever again. Because you are not a Payment Recipient, you will not receive any payment from the Settlement.

GETTING MORE INFORMATION

21. Are there more details about the Settlement?

This notice summarizes the proposed settlement. More details are in an Amended State Lawsuit Class Action Settlement Agreement. You can get a copy of the Settlement Agreement at: <http://hawaii.classaction.com/fostercare>. You may also send questions in writing to Class Counsel c/o Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, Hawai'i 96813.

22. How do I get more information?

You can call (808) 524-1800; write to Class Counsel at Alston Hunt Floyd & Ing, 1001 Bishop Street, Suite 1800, Honolulu, Hawai'i 96813; or visit the website: <http://hawaii.classaction.com/fostercare> where you will find other information about the State Lawsuit, Federal Lawsuit, and the settlement.

April 12, 2018

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