



Department of Public Safety and Correctional Services

Inmate Grievance Office

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STATE OF MARYLAND

LAWRENCE J. HOGAN, JR.
GOVERNOR

BOYD K. RUTHERFORD
LT. GOVERNOR

STEPHEN T. MOYER
SECRETARY

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ASSISTANT SECRETARY
PROGRAMS AND SERVICES

SCOTT S. OAKLEY
EXECUTIVE DIRECTOR

June 16, 2015

Jonathan Sharp, #415061
MCIJ

Re: IGO No. 20131614

Dear Mr. Sharp:

At the request of the Secretary I am enclosing a copy of the Order of the Secretary affirming in part and modifying in part the enclosed Proposed Decision and Order of ALJ Dargan in the above-referenced Inmate Grievance Office matter.

You are entitled to judicial review of this final administrative decision by filing a Petition for Judicial Review in the Circuit Court of the County in which you are confined, within 30 days of the date of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Oakley".

Scott S. Oakley
Executive Director

SSO/dbm/encl.

JONATHAN SHARP, #415061,

GRIEVANT

v.

THE MARYLAND DIVISION

OF CORRECTION

* BEFORE LATONYA B. DARGAN,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH Case No.: DPSC-IGO-002V-14-38713

* IGO Case No.: 20131614

* * * * *

PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On or around September 16, 2013, Jonathan Sharp, #415061 (Grievant), filed a grievance against the Maryland Division of Correction (DOC) with the Inmate Grievance Office (IGO), which the IGO summarized as follows:

This grievance is an "appeal" from the disposition of ARP-ECI-1689-13, which is incorporated by reference herein. In essence, the Grievant complains that he was improperly "flagged" as a member of a Security Threat Group (STG).¹

I conducted a hearing via video-conference on November 6, 2014 and February 5, 2015. Md. Code Ann., Corr. Servs. § 10-207(c) (2008). I was located at the Office of Administrative Hearings (OAH) in Hunt Valley, Maryland. The Grievant, who represented himself, participated from Maryland Correctional Institution-Jessup (MCIJ), a facility under the DOC's

¹ "Security Threat Group" is the formal designation the DOC and its correctional facilities use to identify what common parlance would refer to as a "gang".

jurisdiction. Sgt. Gregory Ward, Inmate Grievance Coordinator, represented the DOC and participated from Eastern Correctional Institution (ECI), another DOC facility. Florence Foster, MCIJ Correctional Case Management Specialist, observed the proceedings.²

The contested case provisions of the Administrative Procedure Act, the General Regulations of the IGO, and the OAH Rules of Procedure govern this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 12.07.01 and COMAR 28.02.01.

ISSUES

1. Did the DOC arbitrarily and capriciously, or, in a manner inconsistent with the law, designate the Grievant as a member or associate of an STG; and, if so,
2. What is the appropriate remedy?

SUMMARY OF THE EVIDENCE

Exhibits

A complete exhibit list is attached as an appendix.

Testimony

The Grievant testified on his own behalf and presented the following witnesses: Florence Foster, Correctional Case Management Specialist, MCIJ; Lt. William Clayton, ECI Intelligence Coordination Unit; Lt. Ronel LeGrand, Jessup Correctional Institution (JCI) Intelligence Coordination Unit.

Sgt. Ward presented argument on behalf of the DOC.

² Ms. Foster observed the proceedings on behalf of MCIJ, the facility which currently houses the Grievant, but she did not act as a party representative at any time during the hearing.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to this matter, the Grievant has been in the custody of the DOC and housed in a correctional facility under the DOC's jurisdiction. The Grievant was initially housed at JCI, subsequently transferred from JCI to ECI, and most recently transferred from ECI to MCIJ, where he is currently housed.
2. The DOC has a process by which inmates in its custody may be identified as members of an STG. The process to determine whether an inmate is an STG member or associate, a designation made by the members of a correctional facility's Intelligence Coordination Unit (ICU), involves the use of a points-based validation worksheet. Various characteristics of an inmate are considered and scored, and if an inmate receives a sufficient number of points, the ICU will designate the inmate as an STG member or associate;³ the designation is logged or "flagged" in the inmate's DOC base file.
3. For reasons related to DOC and/or institutional security, the ICU officers are not authorized to tell an inmate the bases for an STG designation.
4. STG validation information, including the validation worksheet, is classified by the DOC.
5. An STG designation, once made, is valid for a five-year period. If, during that five-year period, no new information is received by the DOC about a particular inmate's STG ties, then the STG flag is removed from the inmate's base file.

³ Neither party explained to me the distinction between an STG member and an STG associate, except for the DOC's indication that an inmate's STG designation can be "downgraded" from member to associate.

6. STG designations are periodically reviewed during the five-year period after validation is made.
7. At any time during the five-year period an STG designation is valid, an inmate can have the flag removed by initiating the renunciation process.
8. An inmate who is designated as an STG member or associate is not automatically subject to any kind of segregated housing; STG designees may be housed with the general population of an institution.
9. At some time during the Grievant's tenure at JCI, he was designated by the JCI ICU as a member of the specific STG known as Dead Men Incorporated (DMI). The members of DMI are typically white, span a range of ages, and typically espouse a white supremacist ideology. Some DMI members have tattoos which specifically represented their affiliation with the group.
10. The STG designation was placed in the Grievant's base file on or around July 18, 2013.
11. During the Grievant's tenure at JCI, he was never interviewed by any members of the JCI ICU about any possible affiliation or connection he had with DMI or any other gang or white supremacist group.
12. The Grievant was never aware, during his time at JCI, that he had been designated as a member of an STG.
13. When the Grievant was transferred from JCI to ECI, the STG designation in his base file was already in place. ECI's ICU did not conduct a subsequent independent review of the Grievant's history to confirm the accuracy of the STG designation at any time during or after his transfer to ECI.

14. The Grievant became aware that he was flagged as an STG member while at ECI, during an August 6, 2013 meeting with a member of his case management team.
15. The Grievant had no prior involvement with the criminal justice system before the incident which led to his current incarceration.
16. Prior to his incarceration, the Grievant worked with a defense contractor firm. He was assigned to the National Security Agency (NSA) from approximately January 2010 through January 2013. The Grievant successfully passed all the prerequisite criminal and security background checks necessary to have clearance to work on NSA grounds.
17. The Grievant held a sanitation detail job while at ECI. At MCIJ, he has a job as a Library Aide.
18. At some time between August 6, 2013 and the date of the hearing before the OAH, the Grievant's STG designation was downgraded from "member" of DMI to "associate".

DISCUSSION

In an inmate grievance concerning an institutional administrative decision, the grievant bears the burden of proving by a preponderance of the evidence that the DOC's action was arbitrary, capricious, or inconsistent with the law. COMAR 12.07.01.08C(1). An Administrative Law Judge (ALJ) may determine that an administrative decision is arbitrary and capricious or inconsistent with the law if:

- (a) The decision maker or makers did not follow applicable laws, regulations, policy or procedures;

- (b) The applicable laws, regulations, policy or procedures were intended to provide the grievant a procedural benefit; and
- (c) The failure to follow applicable laws, regulations, policy or procedures prejudiced the grievant.

COMAR 12.07.01.08C(2). For the reasons articulated below, I find that the Grievant has satisfied his burden. As relief, the Grievant seeks the removal of the STG designation from his file, and the reimbursement of the \$425.00 in fees he incurred by hiring an advocate to assist him in having the STG designation removed.

The dispute between the parties in this matter is straight-forward. The Grievant adamantly maintained that he is not and has never been a member of DMI or any other gang. According to the Grievant, the DOC's actions are faulty for the following reasons: (1) the designation of him as an STG member was done in a manner that did not afford him due process before the designation was made; (2) there is no way to determine if the DOC followed the process for an STG validation because the directives and policies on which the DOC relied to make the designation are classified for security reasons and, thus, are not subject to review by a neutral third party; (3) as a result of the STG designation, the Grievant has been housed on units particularly prone to violence and he is placed at risk of harm if other inmates believe he is a member of a white supremacist gang; and, (4) the STG designation could impede not only his advancement through the institution (i.e., by keeping him from job or other institutional assignments which accrue diminution credits at a high rate), but also his chances for parole, if the information that he is allegedly a gang member is made known to the parole board.

The DOC, for its part, asserted the Grievant was properly investigated as part of the intake process at JCI, and at the time information about the Grievant was reviewed, he had the requisite number of points on the validation worksheet to be designated as an STG member. The

DOC further argued that the Grievant has not undertaken the renunciation process which, from the DOC's perspective, would be the most unequivocal indicator he is not gang-affiliated.

It must be noted the DOC did not produce anything from which I could make a determination it properly followed the procedures for designating an inmate as an STG member. I am mindful that the burden of proof in this matter rests with the Grievant. He has, however, consistently maintained, since filling out his initial request for administrative remedy at ECI, all the way through his appeal to the IGO and to the hearing before me, that he is not and never has been a member of DMI or any other gang. Additionally, included in the IGO file, which is incorporated into the record in its entirety, is information about the Grievant's life and history before his involvement with the criminal justice system. (*See generally*, IGO Exs. 21 and 33.) That information demonstrates the Grievant held a security-sensitive position with the NSA for approximately three years, the clearance for which would not have been granted had the Grievant not managed to successfully pass the criminal and security background checks. It is arguable – given the NSA is a federal-government agency which handles sensitive matters of domestic security – the security-clearance process for the NSA is *at least as* stringent and diligent as an investigation the DOC would have done of the Grievant's background, if not more so. The Grievant offered this information to support the assertion he does not have any gang affiliations, as it is not likely that if he *did* have such affiliations he would have been able to attain the necessary clearance to work at the NSA.

I find the Grievant's position in this regard to be persuasive. His uncontroverted testimonial and documentary evidence demonstrates he did not have any prior criminal justice system involvement until the incident which led to his current incarceration. It is also uncontroverted he was able to obtain the necessary clearance to work at the NSA, a fact which

supports his assertion he does not have any criminal or gang associations in his background or history. It is, of course, difficult to prove a negative, but the burden of proof in this matter is preponderance of the evidence; this means the Grievant need only demonstrate it is "more likely than not" the DOC improperly designated him as a gang member. Once the Grievant produces *prima facie* evidence to support his burden, the DOC must produce *something* to contradict that evidence.

The DOC argued the directive which guides ICU officers (Division of Correction Directive (DCD) 110-35, Subsection .04B, effective December 15, 2010), as well as the validation worksheet itself, are classified documents for security purposes. The DOC maintained, however, that Lt. LeGrand acted in accordance with DCD 110-35 at the time he validated the Grievant as a member of DMI. According to Lt. LeGrand, the DOC follows a point system set forth in DCD 110-35, *i.e.*, DOC personnel complete a worksheet listing various criteria. Each of the validation criteria listed on the worksheet represents a certain number of points. If an inmate's score reaches the requisite number of points, the inmate will be validated as an STG member and designated as such in his base file. For security reasons, Lt. LeGrand did not elaborate on the Grievant's score during the hearing, but he noted that based on a recent periodic review, the Grievant's status was downgraded from being a member of DMI to an associate.

I am mindful of the security considerations which go into the efficient running of a correctional facility, and that there are certain aspects of the inner workings of a correctional facility which cannot—and probably should not—be revealed to or in the presence of inmates. However, in a matter such as this, the DOC must provide *something* from which I can evaluate how it arrived at its conclusion, and whether that conclusion was reached in a reasonable

manner. On January 14, 2015, the Acting Secretary of the Department of Public Safety and Correctional Services (DPSCS), in an unrelated matter, issued an Order of the Secretary (Order),⁴ which provided some helpful guidance about the type of information the DOC can provide to an ALJ to assist the ALJ in determining whether the designation of an inmate as an STG member was properly made.⁵ The Order provides, in pertinent part, as follows:

○AH shall have access to photographs of tattoos; items, or descriptions of items, found during a cell search, including STG documentation, photographs and letters; self-admission forms; court documents; and memoranda or other reports from correctional staff or Intelligence Officers regarding the observation of STG activity related to the inmate.

Order of the Secretary, January 14, 2015.

In this case, the DOC did not present any evidence demonstrating the Grievant's alleged membership/affiliation with DMI. There were no photographs of any tattoos the Grievant might have along with an explanation of how, if at all, the tattoos reflect DMI affiliation. No evidence was presented that any DMI-related paraphernalia was ever found in the Grievant's cell during random or routine searches/inspections. There was no evidence presented to me of any admission the Grievant may have made to DOC representatives about his alleged affiliation with DMI or any other STG. The DOC did not produce memoranda or other reports from correctional officers at ECI, JCI, or MCIJ regarding any STG-related activity on the Grievant's part. Quite frankly, I have nothing by which to judge whether the validation conducted in this matter was done so properly or in a manner that can be characterized as reasonable. The DOC has essentially asked me to uphold the determination the Grievant is affiliated with DMI without providing any significant evidence whatsoever.

⁴ A copy of the Order was provided to me by Sgt. Ward and I provided a redacted copy of the Order to the Grievant.

⁵ The Secretary of DPSCS anticipates the guidance contained in the Order will eventually be formalized into a statement of policy.

Presumably, the procedures established by DCD 110-35 were designed to provide correctional officers with some objective bases for determining if a particular inmate was an STG member or associate. I can only infer, based on what the directive governs, the directive it was designed, at least in part, to weed out any biases, both subtle and overt, on the part of institutional representatives around the issue of which inmates are or might be gang members. Based on that reasonable inference, I further infer DCD 110-35 was at least partially designed to confer a benefit on inmates, namely to prevent them from being identified as gang members on the basis of individual biases held by correctional officers

In the absence of information from which I can determine how the DOC reached its conclusion, I cannot determine that the DOC acted reasonably, and in a manner consistent with the controlling DCD, when it flagged the Grievant as a member/associate of DMI. I will not simply rubber-stamp the DOC's assertion its validation of the Grievant as an STG member was reasonable or proper, particularly given that the Grievant *has* produced evidence to demonstrate it is more likely than not that he is *not* affiliated with any gangs.

Given that (1) the Grievant has produced evidence supporting his assertion he is not a member of or in any way affiliated with DMI or any other gang, and (2) the DOC has not produced any credible or significant evidence to refute the Grievant's assertion, I find the DOC's designation of the Grievant as an STG member/associate was arbitrarily and capriciously made. The Grievant has been able to obtain and maintain institutional jobs at ECI and MCIJ despite being flagged in the system as an STG member/associate. I nevertheless find it reasonable to conclude such a designation *could* have a detrimental effect on the Grievant's eligibility for certain institutional job or housing assignments, as well as any request on his part for deference from the parole board. Additionally, it is potentially unsafe for the Grievant to be designated as

an associate of a white supremacist group, particularly inside a correctional facility, which often has a demographically-diverse inmate population. It is, quite simply, not appropriate for the Grievant to be subject to the potential negative consequences and stigma of an STG designation when such a designation was not reasonably applied to him in the first place.

Having determined the DOC arbitrarily and capriciously designated the Grievant as an STG member/associate, I now turn to the issue of what relief should be granted. The Grievant requested the following: (1) The STG designation be expunged from his base file, including any references in his base file and any and all DOC/DPSCS databases which rely on information contained in his base file; (2) DOC be ordered to change the STG flagging procedure to provide inmates with the opportunity for a hearing to refute any allegations of gang affiliation before the STG validation is finalized; and, (3) \$425.00 to cover the costs of challenging the STG designation, which include the hiring of an advocate and the \$125.00 filing fee with the Circuit Court for Somerset County after the IGO administratively dismissed the appeal. My authority in this matter extends to requests (1) and (3). The focus of my analysis in this case is whether the DOC acted properly in its institutional administrative decisions with respect to the Grievant and the Grievant alone. Accordingly, I give no weight to and make no recommendation on request (2). As to requests (1) and (3), I find there is a reasonable basis for relief given the facts of this case, and I will propose the DOC grant the Grievant the requested relief.

CONCLUSION OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Division of Correction's validation of the Grievant as a Security Threat Group member was arbitrary, capricious, and inconsistent with law. COMAR 12.07.01.08C(1).

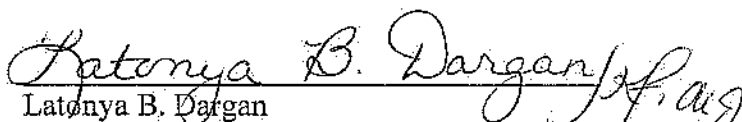
PROPOSED ORDER

Having concluded that this grievance is meritorious, I **PROPOSE** that it be **GRANTED**.

I further **PROPOSE** that the Grievant's validation as an STG member/associate be reversed, rescinded, and expunged from his base file, including all references to the STG designation contained in his base file and in any and all DOC/DPSCS databases which rely on information contained in his base file.

I further **PROPOSE** that the Grievant be awarded \$425.00, to be placed in his inmate account, as compensation for the costs of challenging the erroneous STG designation.

May 6, 2015
Date Decision Mailed



Latonya B. Dargan
Administrative Law Judge

#155632
LBD/kkc

JONATHAN SHARP, #415061,

GRIEVANT

v.

THE MARYLAND DIVISION

OF CORRECTION

* BEFORE LATONYA B. DARGAN,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH Case No.: DPSC-IGO-002V-14-38713

* IGO Case No.: 20131614

* * * * *

APPENDIX

The entire IGO file was incorporated into the record and it consisted of the following documents:

IGO Ex. 1: The September 10, 2013 Grievance

IGO Ex. 2: October 2, 2013 Letter from the IGO to the Grievant

IGO Ex. 3: The Grievant's October 8, 2013 Letter to the IGO

IGO Ex. 4: The IGO's October 22, 2013 Letter to the Grievant

IGO Ex. 5: The Grievant's October 25, 2013 Letter to the IGO

IGO Ex. 6: The IGO's November 5, 2013 Letter to the Grievant

IGO Ex. 7: The Grievant's November 25, 2013 Letter to the IGO, with attachments

IGO Ex. 8: The IGO's December 16, 2013 Letter to the Grievant

IGO Ex. 9: The Grievant's December 27, 2013 Letter to the IGO

IGO Ex. 10: The Grievant's January 30, 2014 Letter to the IGO

IGO Ex. 11: The Grievant's October 18, 2013 Administrative Remedy Appeal to the Commissioner, with attachments

IGO Ex. 12: The IGO's February 25, 2014 Letter to the Grievant

IGO Ex. 13: Stuart A. Hindman's April 23, 2014 Memorandum to Scott S. Oakley

- IGO Ex. 14: June 24, 2014 Certificate of Record, filed in the Circuit Court of Maryland for Somerset County
- IGO Ex. 15: September 8, 2014 Remand Order, Circuit Court of Maryland for Somerset County
- IGO Ex. 16: September 23, 2014 Pre-Hearing Order
- IGO Ex. 17: Notice of Hearing
- IGO Ex. 18: Sgt. Gregory Ward's October 2, 2014 Memorandum to Scott Oakley
- IGO Ex. 19: The Grievant's October 2, 2014 Request for Postponement
- IGO Ex. 20: October 22, 2014 Supplemental Pre-Hearing Order
- IGO Ex. 21: The Grievant's October 17, 2014 Letter to Scott Oakley, with attachments
- IGO Ex. 22: October 27, 2014 Second Supplemental Pre-Hearing Order
- IGO Ex. 23: Transmittal, date-stamped received at the OAH on October 29, 2014
- IGO Ex. 24: Notice of Presiding ALJ
- IGO Ex. 25: The Grievant's October 29, 2014 Response to Supplemental Pre-Hearing Order (facsimile)
- IGO Ex. 26: The Grievant's October 29, 2014 Response to Supplemental Pre-Hearing Order (original)
- IGO Ex. 27: November 6, 2014 Continuance Form
- IGO Ex. 28: Electronic Mail Correspondence between Sgt. Gregory Ward and Scott Oakley
- IGO Ex. 29: December 4, 2014 Notice of Rescheduled Hearing
- IGO Ex. 30: The Grievant's December 1, 2014 Letter to Scott Oakley
- IGO Ex. 31: OAH Register of Actions, printed December 3, 2014, with attachment
- IGO Ex. 32: The Grievant's January 14, 2015 Letter to Scott Oakley, with attachments
- IGO Ex. 33: Supplement to the Grievant's January 14, 2015 Letter
- IGO Ex. 34: January 23, 2014 Third Supplemental Pre-Hearing Order

IGO Ex. 35: Transmittal, date-stamped received at OAH on January 28, 2015

IGO Ex. 36: Notice to Presiding Administrative Law Judge

I admitted the following exhibit for the Grievant:

Grievant Ex. 1: Sarah Motley's January 21, 2015 Letter addressed to "To Whom It May Concern"

The DOC did not submit any exhibits.

JONATHAN SHARP, #415061,

GRIEVANT

v.

THE MARYLAND DIVISION

OF CORRECTION

* BEFORE LATONYA B. DARGAN,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

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JONATHAN SHARP, #415061

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DEPARTMENT OF PUBLIC SAFETY

v.

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AND CORRECTIONAL SERVICES

THE MARYLAND DIVISION

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OAH No: DPSC-IGO-002V-14-38713

CORRECTION

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IGO No: 20131614

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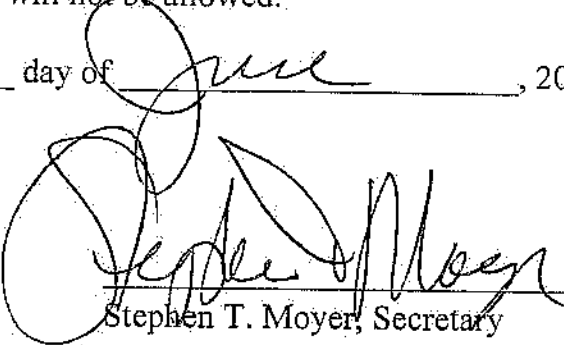
ORDER OF THE SECRETARY

The grievant, Jonathan Sharp, an inmate in the Maryland Division of Correction (DOC), alleges that he was improperly “flagged” as a member of a Security Threat Group (STG). A hearing was conducted by the Office of Administrative Hearings and on May 6, 2015 Administrative Law Judge (ALJ) Latonya B. Dargan issued a Proposed Decision concluding that that Mr. Sharp’s designation as an STG member was not supported by any evidence presented by the DOC representative and that all references to the STG designation should be removed from DOC records. ALJ Dargan also proposed that Mr. Sharp be awarded \$425.00, comprised of a \$125.00 filing fee in the Circuit Court for Somerset County which remanded this case to OAH for a hearing on the merits and \$300.00 for the hiring of an “advocate” who apparently helped Mr. Sharp with his grievance.

I shall AFFIRM the Proposed Decision in part and MODIFY it in part. The portion of the Proposed Decision ordering that the STG designation should be removed from DOC records will be AFFIRMED as will the award of \$125.00 for the filing fee in the Circuit Court for Somerset County. The portion of the monetary award for the

“advocate” will not be allowed since there is no authority for what is basically the functional equivalent of an award of attorney’s fees. Generally, unless there is a specific provision in the governing statute which would allow an award of such fees, as in the case of federal civil rights case, the award of fees to a prevailing party is not allowed. There is no such authority in the content of an inmate grievance and thus the \$300.00 award to cover the cost of an “advocate” will not be allowed.

SO ORDERED this 6 day of June, 2015.



Stephen T. Moyer, Secretary

