



Villamanta Disability
Rights Legal Service Inc.

Villamanta Disability Rights Legal Service Inc. Information Sheet

Updated September 2008

Department of Human Services (DHS) Office for Children (Child Protection)

What is this information sheet about?

This information sheet is for parents with an intellectual disability and it explains what happens when the *Department of Human Services* (DHS) wants to move your children to live somewhere else. The DHS only deals with children under the age of 18. It explains what you can do about it, and how Villamanta can help.

Who is the DHS?

The Department of Human Services (DHS) is a government department which does all sorts of things including providing disability support services and many other community services. There are several different divisions within the DHS, and these divisions each deal with different things. The division that deals with children, and who can decide whether or not to move your children to live with someone else, is called the *Office for Children*. The office for children is sometimes called 'Child Protection' by some people. In this information sheet, DHS means the office for children.

Why would DHS want to move my children?

The DHS may move your children because a Court says that the children could be harmed by remaining in your care. Sometimes this is only temporary, and your children will be returned after a time. Sometimes it is permanent. Usually, the Court is the one who makes the decision about whether or not your children should be moved to live somewhere else. If the DHS thinks that your child is in some kind of crisis, they have the power to remove them immediately without asking the Court first. After they have removed your children, the DHS must then go and tell the Court, who will decide if the children will be returned. So the court has the final power to decide whether the children will be removed whether they can live with you.

IMPORTANT NOTE!

Remember - this Information Sheet has been produced only for use in Victoria, Australia. Some of the laws mentioned in this Information Sheet will be different in other places.

If the Court thinks that your child is *in need of protection*, then they may be moved to live with someone else. If any one of these things happens, then the child is in need of protection:

- If a child has suffered, or is likely to suffer harm in the form of:
- physical harm; or
- sexual abuse; or
- psychological harm
- The child's physical or psychological development is likely to be damaged
- The child has been abandoned by their parents
- The child's parents are dead or incapacitated

The Court looks at a lot of different facts when they are deciding whether or not they should move your children, for example, the rights of your child to be safe and what might happen to your child if they are separated from you. In every case Court says that the 'best interests' of the child are the most important thing. This means that when the Court is deciding, whatever is best for the child is the most important thing which they will look at.

If the DHS wants to move your children to live somewhere else, it means that after the Court has looked at your situation, they have decided that the best thing for your child is to move the child to live somewhere else. If you do not agree with what the Court says, there are things which you can do.
(See 'So what can I do?' below)

What are the 'best interests' of my children?

There are many things which the DHS and the Court will think about when they are considering the 'best interests' of a child. Here is a list of just some of them:

- The parent and child should be separated only where necessary
- The parent and child's relationship should be kept
- What the child wants should be listened to, if possible
- Any possible harm (physical or mental) to the child should be prevented
- Stability in the child's life should be promoted
- The ability of the parents to care for the child should be thought about
- The possible harm of waiting before doing something should be considered

Clearly there are lots of different things which the Court will think about when deciding what to do. They are all to try and make sure the child is kept safe and healthy. Although these things may seem hard to understand, they basically mean that the Court will do what is best for the child.

All of these things are considered by the Court, but sometimes the Court will say that some of the things are more important than others. For example, if a child wanted to stay with their parents, but the Court thought that they might be harmed in some way if they stayed with their parents, then the Court could move the child even though that wasn't what the child wanted.

Why is the DHS allowed to move my children?

The law says that the DHS can take away your children if the Court thinks that it is in the best interests of the children. Even if you think that your children should stay with you, the DHS can still take your children if they think it is in their best interests. If somebody reports you to the DHS, the DHS must come and investigate. Anybody can report you to the DHS if they believe that you can't look after your children properly or have been mistreating them. For example a neighbour or your child's school teacher may report to the DHS if they believe that something bad is happening to the child. This does not necessarily mean that you have done something wrong, but it does mean that the DHS will come and investigate.

Where the DHS wants to move children away from their parents, they do this using a *Protection Order*. There are various types of protection orders, and each of them is different. The DHS asks the Court to make a protection order, and the Court then decides whether or not they will make a protection order. Some of these protection orders allow the DHS to move your children into somebody else's care, sometimes temporarily, sometimes permanently. Whenever the Court makes a protection order, they will also make a *Case Plan* for you and your children.

What is a Case Plan?

A case plan is a plan which is prepared by the DHS. It writes down what needs to be achieved and what will be done to achieve it. Often a case plan will be made with the aim of getting you and your children back together at some stage, although not always. The case plan is very important, as it is used by the DHS when they are deciding what to do with your children.

As the parent, you will usually be able to have some sort of say in the plan, and you can ask to be included in meetings while the case plan is being made. If there are certain things which you want for your children, you can ask for them to be included in the case plan. What you say will be taken into consideration, but it may be that not everything which you ask for is included in the final plan. If you do not agree with the case plan, there are things which you can do about it (see "So what can I do?")

If you are taking part in making the case plan, the law says that the DHS must run meetings and other proceedings in a way that you can understand them. If you do not understand what is being said, it is important that you ask someone to explain it to you so that you can have a proper say in the decisions made.

So what can I do?

If the DHS wants to move your children or has already moved your children, and you are unhappy about their decision to do this, you should talk to Villamanta on 1800 014 111 or Victoria Legal Aid on 1800 677 402. This is a complicated area of the law, and you should talk to Villamanta or Victoria Legal Aid first so that we can help you deal with the DHS.

It is important to get help as soon as you think there is a problem. The sooner you get legal advice, the better. It is better to deal with the DHS and work through any problems as soon as possible. If you wait too long, things can sometimes get worse and be harder to sort out.

If you disagree with the DHS, you can ask them to review their decision through an *internal review*. This means that the DHS will look at your case again and see if your children should be moved somewhere else or kept in your care. Sometimes after the internal review the DHS will decide that you should care for your children, while other times they may decide that somebody else should care for them. You might not always agree with what the internal review says.

If you disagree with an internal review, you can go to the Victorian Civil and Administrative Tribunal (VCAT) to ask for an independent appeal to try and get them to change what the case plan says. Sometimes VCAT will say that the case plan DHS made was wrong and should be changed, and other times they will agree with DHS and will not change the case plan.

You can also go to court to try to get them to change the decision of DHS. The court will look at the case and see whether or not your children can come and live with you. Keep in mind that the court will always say that the best interests of the child are the most important thing to think about. If you are thinking of going to VCAT or to Court, it is very important that you talk to Villamanta or another legal organisation first to get legal advice.

The DHS must look at different support services available to you before they can take away your children. You can ask the DHS for some support in caring for your children. For example, if the DHS says that you are unable to care for your children, you may be able to attend parenting classes or receive some in home help to help you care for your children. So even if you are unable to care for your children, it is important to see if there is any help available. With this help you may be able to care for and keep your children.

Sometimes the DHS does not look at these support programs which may be available to you to help care for your children, even though they should have. If this happens, it is important that you challenge the DHS about their decision, and there are also more things which you can do, discussed above. It is important that the DHS has thought about whether you are able to care for your children with some kind of assistance.

What happens if I am still not allowed to care for my children?

If you are not allowed to care for your children any more even after you have dealt with the DHS, there is still a good chance that you will be allowed to visit your children.

You do not need to be able to look after your children in order to be allowed to visit them. This means that usually you should be able to visit your children and spend time with them. However, where the DHS says that it would not be in the best interests of the children for you to see them, then you might not be allowed to visit.

If you believe that you cannot care for your own children, it might be better to ask the DHS to allow you to visit your children instead of asking for them to come back to live with you. Of course, this depends on whether you are happy with somebody else caring for your children, but you should think about talking to the DHS about visiting your children.

Some useful phone numbers

**Victoria Legal Aid: (03) 9269 0234 or
Free call 1800 677 402**

**Villamanta Disability Rights Legal Service Inc.
Free call 1800 014 111**

Helpful Hint:

This Information Sheet should be read together with the Villamanta Disability Rights Legal Service Inc. Information Sheets on Guardianship, Appointing an Enduring Guardian and Capacity and Consent.

Looking for More Information?

If you want more information about having an administrator, you can phone:
*The Guardianship List of the Victorian
Civil and Administrative
Tribunal.*