

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF HUMAN SERVICES**

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IN THE MATTER OF:

██████████,

Claimant

SOAHR Docket No. 2008-28415 REHD
DHS Reg. No: 2008-28324
Case No: ██████████

_____ /

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 24.287(1) and 1993 AACRS R 400.919 upon the request of the Department. The undersigned Administrative Law Judge reviewed all documentary evidence, the hearing recording, the Decision and Order, and the Request for Reconsideration.

ISSUE

Did the Administrative Law Judge err in his decision, that the Department of Human Services did not act in compliance with policy, when it denied Claimant's Title IV-E funding?

FINDINGS OF FACTS

This Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material facts:

1. On July 8, 2008, Administrative Law Judge (ALJ) William Sundquist issued a Decision and Order in which he found that Title IV-E eligibility was not required to be newly established for Claimant after placement with his natural father from ██████████. Although he made this finding, ALJ Sundquist's Decision and Order failed to explicitly affirm or reverse the Department's denial of Title IV-E funds for Claimant.
2. On August 15, 2008, the State Office of Administrative Hearings and Rules, Administrative Hearings for the Department of Human Services (Department or DHS) received the Department's Request for Rehearing/Reconsideration. The reason for the reconsideration request was that ALJ Sundquist misapplied state and federal law and policy, resulting in an incorrect decision

3. On September 11, 2008, the State Office of Administrative Hearings and Rules, Administrative Hearings for the Department of Human Services issued an Order of Reconsideration.
4. ALJ Sundquist's three (3) Findings of Fact from the Decision and Order mailed July 8, 2008, are incorporated by reference.
5. In or around [REDACTED], the Claimant was removed from his natural father's home and placed into out-of-home foster care. (Ex 2, p 1)
6. Claimant was eligible for and received Title IV-E foster care funding for his care while out-of-home from [REDACTED].
7. Claimant was returned to his natural father's home on [REDACTED].
8. A Dispositional Review/Permanency Planning hearing was held on [REDACTED] [REDACTED], in the [REDACTED]. (Ex 2, p 1) A court order was issued that same day. (Ex 2, p 4)
9. The [REDACTED], Order following hearing stated:
 11. a. *Reasonable efforts were made to preserve and reunify the family to make it possible for the child to safely return to the child's home.*
 12. *Progress toward alleviating or mitigating the conditions that caused the child to be placed or to remain in temporary foster care was made...*
 13. *The child's continued placement is no longer necessary or appropriate.*
 14. *Reasonable efforts have been made to finalize the court-approved permanency plan of return to the parent for the child...*
 17. *The child is continued in the temporary custody of this court, and...remain home with or is released to (father). (Ex 2, pp 2, 3)*
10. The [REDACTED], Order contained no written specification that Claimant's return to his father's home was on a temporary or trial basis. (Ex 2)

11. Claimant's Title IV-E funding eligibility ended when he returned to his father's home on [REDACTED]. (Ex 7)
12. On or about [REDACTED], a Petition for Removal of (Claimant) from Home and Determination of Incurrable Status was filed with the [REDACTED].

The Petition for Removal stated, in part:

2. (Claimant) was returned to the family home comprised of (his sister, his father and Claimant) in [REDACTED].

4. In [REDACTED], the actions of (Claimant) began to revert to his prior demeanor.

- *Petitioner requests that this Honorable Court find (Claimant) to be incorrigible and to remove him from the family home.*

(Petition)

13. On [REDACTED], a Preliminary Hearing was held pursuant to the Petition for Removal. (Ex 2)
14. The [REDACTED], Order following hearing stated:

12. b. It is contrary to the welfare of the child to remain in the home because Respondent father...admits he cannot control his son's behavior and he is afraid that his son will harm his daughter as evidenced on [REDACTED] when (Claimant) assaulted her with a bicycle part that required her to go to the emergency room.

17. Conditions of custody in the home and with the individual with whom the child resides...b). are not adequate to safeguard the child from the risk of harm to the child's life, physical health, and mental well-being.

No provision of service or other arrangement except removal of the child is reasonable available to adequately safeguard the child from the risk of harm

to the child's life, physical health and mental well-being.

Conditions of custody at the placement away from the home and with the individual with whom the child is placed are adequate to safeguard the child's life, physical health, and mental well-being.

IT IS ORDERED:

21. *The petition is authorized.*
23. *The child is placed with the department of Human Services for care and supervision and continued referral.*

(Ex 3 pp. 1-3)

15. Claimant was removed from his father's home and placed into foster care on [REDACTED]. No determination of Title IV-E eligibility was performed when Claimant entered foster care on [REDACTED].
16. On February 4, 2008, a new determination of Title IV-E eligibility was performed for Claimant by DHS. During the new determination it was learned that Claimant's father was receiving a military disability pension of [REDACTED] per month. (Ex 1) The military disability pension income of [REDACTED] was included in the February 2008 determination; it was not included in the 2006 determination. (Ex 1)
17. On or before February 8 2008, the Claimant was denied Title IV-E funding for out-of-home care. (Ex 4) DHS sent written notice of denial indicating reason as "The family has assets exceeding the former ADC program's standards." (Exs 1, 4, 7).
18. On [REDACTED], Claimant's Guardian Ad Litem appealed the denial of Title IV-E funding for out-of-home care. (Ex 6)

CONCLUSIONS OF LAW

The federal Social Security Act provides for the states to make foster care maintenance payments on behalf of each child removed from the home of a relative. 42 USCA Sec. 670. The Social Security Act's Title 7, Subchapter IV, Part E directs states on how to allocate funding to cover the cost of foster care placement and therefore is referred to as Title IV-E funding. Title IV-E foster care payments must comply with the Social Security Act, the Code of Federal regulations, the state plan, and state law and policy.

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The CFR governing foster care maintenance funding is found at 45 CFR 1356. The federal Department of Health and Human Services Administration for Children and Families, publishes a Child Welfare Policy Manual to provide guidance to interested parties regarding implementation of the provisions of the Social Security Act and the CFR.

The CFR sets forth strict eligibility criteria that must be met in order for a child to be eligible for payment under Title IV-E. The Department's children's foster care policy mirrors the federal requirement. In general terms, criteria which must be met in order to be eligible for Title IV-E funding include: 1. Judicial determinations that "reasonable efforts" were made to prevent unnecessary removal of the child from his home, and that it is "contrary to the welfare" of the child to remain in his home; 2. AFDC eligibility, including establishment of financial need and deprivation; 3. living with and removed from the same AFDC specified relative; 4. under age 18; and 5. legal jurisdiction; a family or tribal court order gives DHS placement and care responsibilities. 45 CFR 1356.21; State of Michigan DHS Children's Foster Care Manual (CFF) 902, 902-1, 902-2, page 1, and 902-3.

In Claimant's case, he was deemed eligible for and received Title IV-E foster care funding for his care while out-of-home from [REDACTED], to [REDACTED]. When Claimant was returned to his natural father's home on [REDACTED], his Title IV-E placement episode ended and consequently so did his Title IV-E funding.

On [REDACTED], Claimant was removed from his father's home for incorrigible behavior and for potential harm to his sister as a result of his behavior. On February 4, 2008, DHS processed a Title IV-E funding application for Claimant's new [REDACTED] out-of-home placement. During the new eligibility determination process DHS discovered that Claimant's father was receiving a military disability pension of [REDACTED] per month. (Ex 1) The military disability pension income of [REDACTED] was included in the February 2008 determination and as a result the family assets exceeded AFDC program standards. (Exs 1 and 4) The DHS denied Title IV-E funding for the [REDACTED] out-of-home placement because Claimant did not meet the required Title IV-E criterion of AFDC eligibility standards.

Claimant's Guardian Ad Litem (GAL) appealed the denial. In his appeal letter and during the hearing the GAL did not appeal based on the denial's actual reason of exceeding AFDC eligibility standards. Instead, the GAL argued that a new determination should never have been made in February 2008. The GAL's argument, in effect, asserts that if a new determination was never made, it would not have been discovered that Claimant was not eligible for Title IV-E funding in [REDACTED] due to excess assets. The GAL supported his assertion by claiming that Claimant's return to home was merely a "trial visit" and as such there was no need to perform a new [REDACTED] Title IV-E eligibility determination after Claimant's removal from his father's home for being incorrigible. The GAL provided no evidence that a "trial visit" determination had

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been made prior to Claimant's return to his father's home. Instead the GAL relied on comments made in a proceeding that occurred after the February 4, 2008, DHS denial. The GAL also made statements during the hearing inferring that the Department's policy might not be consistent because it does not allow "trial visits." The statements are misleading because the issue in this case is not whether DHS forbade a trial visit. Neither does Department policy nor has DHS ever asserted that trial visits are prohibited.

The issue in Claimant's appeal was the denial of funding in because his family's assets exceeded AFDC standards. The July 8, 2008, "Hearing Decision" issued by ALJ Sundquist contained several errors of fact and law. First, the ALJ failed to include a specific order provision indicating whether he affirmed or denied the Department's actions.

ALJ Sundquist's Hearing Decision further erred by finding that Claimant's return to his father's home in was a trial visit. The CFR provisions related to foster care maintenance payments make it abundantly clear that judicial determinations regarding foster care placement and planning must be explicitly documented. 45 CFR 1356.21(d). There can be no dispute that the federal regulations at 45 CFR 1356.21 require documentation of judicial determinations and the determination must be explicit and on a case-by-case basis stated in the court order prior to Title IV-E foster care funding eligibility.

45 CFR 1356.21(d) states:

(d) Documentation of judicial determinations. The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

(1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

The same CFR section mandates a strict enforcement of denying Title IV-E funding if written documentation is not included. 45 CFR 1356.21

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In the [REDACTED], Court Order following Claimant's return to his father, there is no mention of the return being temporary or for a trial visit. Instead, the Court Order includes explicit documentation that the return to home is to finalize return to the parent:

13. *The child's continued placement is no longer necessary or appropriate.*
14. *Reasonable efforts have been made to **finalize** the court-approved permanency plan of return to the parent for the child...*

(Ex 2, p 2; emphasis by undersigned ALJ)

The evidence in Claimant's case demonstrates that the judicial determination was an expectation of **permanent placement**, not a trial visit.

It was also clear error for ALJ Sundquist to decide that no new placement application was required after Claimant's return to foster care in [REDACTED]. The U.S. Department of Health and Human Services, Administration for Children and Families publishes a Child Welfare Policy Manual, to assist states in interpreting the foster care maintenance payment sections of the Social Security Act and CFR. Section 8.3A.10 of Child Welfare Policy Manual states:

If the child is discharged from foster care and returned to his own home (the home from which he was removed), he could not be considered to be in foster care status, even if the State agency maintains a supervisory role with the child and family...Short trial visits to a child's home would not be considered interruptions in foster care status. In the event the child returns home (for what is expected to be a permanent period), but is later returned to foster care, a new determination of eligibility based on circumstances at the time of that placement would be required...Of course, Federal financial participation is allowed only during the time the child is in a licensed or approved foster care facility.

(Interpreting the Social Security Act 42 USC – Section 472. Underline emphasis added by undersigned ALJ)

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The Department's policy is consistent with the Social Security Act, CFR and Child Welfare Manual:

EPIISODE

A new initial determination of eligibility must be completed for each new placement episode regardless of whether a new petition is filed with the court.

A placement episode begins:

- When a child moves from an own home living arrangement,
 - 01 - own home.
 - 03 - legal guardian.
 - 22 - out-of-state parent.
- To an out-of-home living arrangement, or
- When a case is opened with the living arrangement noted as out-of-home.

The placement episode ends when the child is:

- Returned home.
- Placed with the non custodial parent.
- Placed with a legal guardian.
- Discharged from wardship.

(DHS Children's Foster Care Manual, CFF 902, page 1 of 2, PR –
Financial determinations, 6-1-07)

Applying the evidence in this case to Department policy demonstrates that Claimant's Title IV-E placement episode ended when he was returned to his father's home in [REDACTED]. Therefore, the Department's new eligibility determination for Title IV-funding in January 2008 was proper.

The Department must adhere to the federal law and state policy. The Department properly followed federal law and Department policy when it required a Title IV-E determination for after Claimant was removed from his father's home and placed in foster care in [REDACTED]. ALJ Sundquist is bound by the Department's policy. ALJ Sundquist erred when he found that no new determination was required after Claimant's removal from his father's home in [REDACTED].

[REDACTED]
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DECISION AND ORDER

The undersigned Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department properly performed a new determination and denied Claimant Title IV-E funding. Pursuant to Department policy, The ALJ's July 8, 2008, Decision and Order is reversed.

IT IS THEREFORE ORDERED that:

1. The Administrative Law Judge's decision dated July 8, 2008, is REVERSED.
2. The Department of Human Services February 8, 2008, denial of Claimant's Title IV-E eligibility is AFFIRMED.

/s/

Martin D. Snider
Administrative Law Judge
for Michigan Department of Human Services

cc:

[REDACTED]

Date Signed: 2/11/09
Date Mailed: 2/12/09

*****Notice*****

The Claimant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.