

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 2009-17938
Issue No. 6033
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date:
July 7, 2010
Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Landis. Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MSA 16.409 and MCL 400.37; MSA 16.437 upon the Claimant (Petitioner) request for a hearing. After due notice a telephone hearing was held on March 11, 2010. The Petitioner was represented by [REDACTED]

ISSUE

Whether the Department properly determined that claimant's Title IV-E funding payment for out of home care should be cancelled/denied under the circumstances?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) The Child is [REDACTED], herein after known as 'the Child', [REDACTED]
- (2) The child was residing with his aunt [REDACTED] and uncle [REDACTED] at all times relevant to this hearing.
- (3) On July 12, 2006, the child was removed from the aunt and uncle's home as a result of an Emergency Interim Order. The Interim Order Placing Child with Michigan Department of Human Services (Child Protective Proceedings) indicates that due to exigent circumstances the child was removed from the home because the Child [REDACTED] was found with abrasions around wrists and ankles and indicated he was tied up and beaten by his aunt [REDACTED] Police investigated. Parents of the child and other child [REDACTED]

were not available. The child [REDACTED] indicated that he was not being fed properly and was very thin. Investigation was done between 12:01 and 1:00 a.m. (Exhibit # 1 and 2).

- (4) The Interim Order also states that reasonable efforts were made prior to the placement of the child in foster care, to prevent or eliminate the need for removing the child from the child's home and reasonable efforts were made to preserve and unify the family to make it possible for the child to return safely to the child's home and that placement/continuation of the child's residence in the home of **respondent – parents** is contrary to the welfare of the child because Petitioner has previous history with family members based on previous protective services cases and the parents of either child were not immediately available and no other relatives were available or appropriate. (Exhibit # 1 and 2). (emphasis added)
- (5) The child was found to be initially eligible for Title IV-E funding.
- (6) On February 12, 2009, the Department caseworker notified the child's representative that Payment for out of home care for the child, funded through the Tile IV-E Federal Program was being cancelled/denied because the home from which the child was removed does not meet former ADC program's deprivation standard. (Exhibit #5).
- (7) On February 20, 2009, the child's representative filed a request for a hearing to contest the department's negative action.
- (8) The hearing was held July 1, 2010.

CONCLUSIONS OF LAW

Legal authority for the Department to provide, purchase or participate in the cost of out-of-home care for youths has been established in state law: the Probate Code Chapter XII-A, Act 288, P.A. of 1939; the Social Welfare Act. Act 280, P.A. of 1935; the Michigan Children's Institute Act, Act 220, P.A. of 1935; the Michigan Adoption Code, Act 296, P.A. of 1974; and the Youth Rehabilitation Services Act P.A. 150, of 1974. These laws specify the method of the Department involvement in these costs. The legislature has established a system whereby:

- (1) the local court may provide out-of-home care directly and request reimbursement by the state (Child Care Fund), or
- (2) the court may commit the youth to the state and reimburse the state for care provided (State Ward Board and Care).

In the instant case, the facts are not at issue. The child was staying with his aunt and uncle. He was placed into protective custody by law enforcement on July 12, 2006. An Interim Order Placing the child with the department was entered by the Berrien County Trial Court-Family Division on July 12, 2006. (Exhibit #1)

Current Department policy states as follows:

PLACEMENT EPISODE

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.

The “closing” of a case on SWSS FAJ because the child was placed for adoption, transferred from foster care to juvenile justice or vice versa, should be ignored for this definition of “placement episode”. Transfer to the other children’s services program may or may not affect the definition of a placement episode; it depends on whether the child was at home/with a legal guardian or in out-of-home care at the time the transfer occurred.

- If the youth is in his/her own home at the time of

- acceptance, regular redeterminations are not necessary until the youth is placed in out-of-home care.
- Redeterminations of appropriate funding source for youth in out-of-home placements are to be completed every six months, or more frequently if the department becomes aware of a change which may effect funding source eligibility. Title IV-E and State Ward Board and Care payments must also be reauthorized within SWSS FAJ every six months.
- SWSS FAJ maintains a historical record of each determination. Individual determinations can be printed as needed.
- Once a child has been returned home and remains there, redeterminations are not necessary. (FOM 902, page 1-2.)

All parties agree that there has been only one placement of the child. This fact is not at issue in this case.

Title IV-E is a funding source. To be eligible for payment under Title IV-E, children must, by Family Court or Tribal Court order, be under DHS supervision for placement and care or committed to DHS.

- All youth are to be screened for Title IV-E eligibility at the time of acceptance. Even though an initial placement may be in a placement where Title IV-E cannot be paid (e.g., unlicensed relatives, detention, training school, camp), eligibility may exist in subsequent placements.
- If a youth has been initially determined not eligible for Title IV-E funding (based on ineligibility of the family for the former AFDC grant program or the judicial determinations do not meet the time requirements detailed in FOM 902-2, Required Judicial Findings), **s/he will never be eligible for Title IV-E funding while in this placement episode.** Therefore, SWSS FAJ will not request the information for title IV-E eligibility when regular redeterminations of appropriate foster care funding source are conducted. (See FOM 902, FINANCIAL DETERMINATIONS for information on placement episodes.) FOM 902-1, page 1. (emphasis added)

TITLE IV-E

ELIGIBILITY REQUIREMENTS

Title IV-E eligibility begins with a determination of the child and family's ability to qualify for the former Aid to Families with Dependent Children (AFDC) grant under the state plan which was in effect on July 16, 1996. The child and family's eligibility for the Family

Independence Program (FIP) cash assistance grant **does not** equate to automatic eligibility for Title IV-E funds....

Local office staff must determine Title IV-E eligibility using SWSS FAJ. (CFF 902-2, p.1). A determination is to be made regarding the appropriate funding source for out-of-home placements at the time the youth is accepted for services by the Department regardless of actual placement.

Removal Home for Title IV-E Eligibility

When determining Title IV-E eligibility, the first step in the process is to identify the child's removal home. Correctly identifying the "removal home" is critical.

The following criteria must be considered in identifying the removal home:

- The removal home (parent or specified relative) is the home for which the court makes the judicial finding that it is "contrary to the welfare" for the child to remain.
- Although the child may have been out of the parent/specified relative home at the time court action was initiated, the child must have lived in the removal home (i.e. the home with the "contrary to the welfare judicial finding") during the six months preceding the court action to remove the child.
- If the child is physically removed from a relative's home, and judicially removed from a parent, the parent's home is the removal home. The child is not Title IV-E eligible if he/she has lived with the relative more than six months.
- **For children under six months of age, "lived with" is also interpreted as "born to" in reference to the removal home requirement even if the child has not lived with the mother since birth.**
- Note: The removal home, and the home the court finds it is "contrary to the welfare" of the child to remain in, must be the same home. In almost all cases that would be the parent's home, even though the child is physically removed from a different home. FOM 902-2, page 6

Constructive Removal

The child can be considered removed when a "constructive removal" (non-physical removal) takes place. A constructive removal occurs when all of the following apply:

- The child resides with a non-parent interim caretaker who is not the legal custodian or guardian of the child.
- The child is court-ordered into the custody of the department.
- The child remains in the home of the caretaker who serves as the out-of-home care provider to the child after the department is awarded custody.
- The child lived with a parent or stepparent within the past six months prior to court jurisdiction. FOM 902-2, page 6.

Deprivation

In cases of **temporary** wardship (including juvenile justice wards) the situation of the child in relationship to the parent or relative home from which he/she was removed will determine eligibility. Deprivation **must exist** initially and continue thereafter for title IV-E eligibility.

The deprivation factor may change; however, one deprivation factor must always exist to be title IV-E reimbursable. If the deprivation factor changes, a redetermination must be completed within SWSS FAJ.

Reasons for Deprivation Are

- Continued absence of a parent from the removal home (examples are separation, divorce or death).
- If the child had been removed from the home of a relative rather than from the parent(s)' home, the relative's home is reviewed at the time of redetermination to establish continuing deprivation of parental support and care. If either or both parents are not in that home at redetermination, then the child is deprived based on continued absence of the parent(s) from that home.
- Incapacity of a parent is defined as unemployable due to incapacity for 12 months or longer. Workers cannot determine incapacity. Persons who are incapacitated often receive RSDI or SSI based upon their disability. If the parent is not receiving RSDI or SSI, a doctor's statement verifying that the parent is unable to work for at least 12 months is necessary.
- Unemployment of a parent. The unemployed parent is defined as the parent who earned the greater amount of income in the previous 24 month period. A parent who is presently unemployed may or may not have unemployment as a deprivation factor.
- To be considered the unemployed parent, that parent must have worked less than 100 hours in the calendar month of the removal, and

- **Receive unemployment benefits (UB).**

Or

- Received UB in the last 12 month period prior to the child's removal from the home.

Or

- Worked at least six quarters of the last three and one quarter years preceding the filing of the petition. Document one and a half years of work history within the past three and one quarter years in SWSS FAJ. FOM 902-2 page 7.

AFDC Income

Income examples include:

- For a child removed from the parent(s), the income of the **parent(s)**, stepparent(s) and sibling(s) under age 18, must be considered only in the initial eligibility determination. Income of the non-parent adult or living together partner must not be considered.

For a child physically removed from a specified relative:

- The child has been with the relative less than six months.
- "Contrary to the welfare" is found against the parent(s).
- The AFDC eligibility is based on the parent(s) income and assets.

For a child physically and judicially removed from a specified relative:

- "Contrary to the welfare" is found against the relative.
- The income and assets of the relative are NOT counted in AFDC eligibility determination.
- The AFDC eligibility is based on the child - only his/her income and assets are counted.

For a child removed from an unrelated guardian:

- When the child has been with an unrelated guardian more than six months prior to removal, the child is not eligible for title IV-E funding.

When the child has been with an unrelated guardian **less than six months**, “contrary to the welfare” must be against the parents as the removal home for the child to be eligible for title IV-E, the income and assets of the parent(s) must be counted for AFDC eligibility. FOM 902-2, page 9.

Living With Specified Relative

The child lived with a specified relative at the time of, or within six months prior to, the initiation of court action. A specified relative is one of the following:

- Parent.
- Aunt or uncle.
- Niece or nephew.
- Any of the above relationships prefixed by grand, great or great-great
- Stepparent.
- Sister or brother.
- Stepsister or stepbrother.
- First cousin.
- First cousin once removed (i.e., a first cousin's child).
 - The spouse of any person above, **even** after the marriage is ended by death or divorce.

The above includes relationships established by adoption. FOM, 902-2.

In the instant case, this Administrative Law judge finds that the child was removed from the home of his aunt and uncle. He had been continuously staying with the aunt and uncle from a date uncertain. Both of his parents were absent from the relatives' home. The child was removed from the relatives' home on an emergent basis because the child had been tortured.

The department representative argues that the child was living with a relative and not with his parents and the original court documents removed the child from the custody of the parents rather than the aunt and uncle, where the child was staying. The child's father was residing in prison. The whereabouts of the child's mother was unknown at the time of the removal. The child was receiving SSI. Since the child was living with a relative for at least 6 months prior to removal, the child was not eligible for Title IV-E funding.

The Interim Order placing the Child with Department of Human Services dated July 12, 2006, removes the child from the home of the aunt and indicates that the mother was unavailable, and the Order After Preliminary hearing Child removed from the home dated July 13, 2006, indicates that "it is contrary to the welfare of the child to remain in the home of the because the mother left the child in the custody of an individual who neglected to keep the child clean and allegedly seriously physically abused the child by tying the child up and whipping him and not properly feeding him. The mother's whereabouts were unknown at the time of the emergency removal and there needs to be further investigation of her with regards to the protective service history and whether she still has legal custody of the child and a criminal history check and a home study completed. The father of the child is in prison." (Exhibits #1-3)

The evidence in the record clearly indicates that the removal was from the aunt and uncle's home, but the department provided no information that indicated that the mother retained custody of the child at any time. There was no information contained in the record as to who had legal custody of the child at the time of the removal. The court order clearly states that the child should have no further contact with his aunt or uncle. The order reserves parenting time of the father as he was incarcerated and requires supervised visits only with the mother at the discretion of the Department. There is little evidence contained in the record that indicated how long the child had been staying with his aunt and uncle. It is clear that the removal order was written with the intent to remove and to protect the child from both the parents and the aunt and uncle, pending further investigation.

In addition, the department's allegations on the record are not consistent with the notice of case action contained in the case file. (Exhibit #5) The case file notice indicates that the reason for the denial/cancellation of Title IV-E funding was that the home from which the child was removed does not meet the former ADC program deprivation requirements. However, the child was a recipient of SSI and did meet the deprivation standard. The department representative conceded on the record that the child met the deprivation standard. This Administrative Law Judge finds that deprivation does exist pursuant to department policy.

There was no notice to petitioner that the contrary to the welfare findings had not been made in the appropriate court order. Nor was there notice to the petitioner that the court removed the child from the parental home rather than the aunt's home. The department representative argued on the record that both of these reasons would preclude the child from being Title IV-E eligible, but failed to provide sufficient evidence of the allegations. The department failed to provide adequate notice to the petitioner of the reason for the cancellation of the Title IV-E funding to the petitioner, which violates department hearing policy.

BAM 600, page 1, states that a petitioner must be given notice of the reasons for the denial. Pertinent policy dictates:

The application forms and each written notice of case action inform clients of their right to a hearing. These include an explanation of how and where to file a hearing request,

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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