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

IN THE MATTER OF: Reg. No. 2009-17939
Issue No. 6033
[redacted] Case No. [redacted]
Load No. [redacted]
Hearing Date:
July 8, 2010
Cheboygan 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; M SA 16.437 upon the Petitioner's request for a hearing. After due notice a telephone hearing was hel d on July 8, 2010. The Petitioner was represented by [redacted] as Guardian ad Litem (GA L). Petitioner had two separate companion cases which were held on the same day (Register numbers 2010-33880 and 2010-41412).

ISSUE

Whether the Department of Human Services (the Department) properly determined that the Child [redacted] was no lon ger eligible to receive Ti tle IV-E funding was 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],DOB March 6, 1995, hereinafter known as the Child.

2. The Child was at all times relevant to this hearing a ward of the State of Michigan.

3. A Child Welfare Funding Specialist was completing a Title IV-E read on the child's case in January 2009 and noticed that there was not a Permanency Planning Hearing held in April 2008.

4. The Funding specialist determined that the child's Title IV-E funding should have ended May 1, 2008.

5. On January 13, 2009, a DHS 176 Notice of Case Action was sent to the [redacted] and the child's GAL, notifying them that the child's Title IV_E funding was being cancelled/denied as of January 1, 2009, because there was no court order resulting from a hearing in the past twelve months that contains a finding with case specific documentation that reasonable efforts have been made to finalize the permanency plan.

6. At the same time a DHS-3205 was also sent to the court indicating that the state ward was changing to county funds.

7. On January 13, 2009, a memo was sent to the Probate Court notifying them that the case would be sent to reconciliation and recoupment as the child was not paid out of the correct funding source from 5/01/08-12/31/08.

8. On February 25, 2009, the GAL filed a request for a hearing to contest the department's negative action.

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). Under option #1, the court may request that the Department provide casework services (placement and care) through a placement care order.

Title IV-E funding must be denied or cancelled based upon the following factors:

- Child is not a US Citizen or Qualified Alien; (See FOM 902-2, US CITIZENSHIP/QUALIFIED ALIEN STATUS.)
- Family is not former ADC eligible; (See FOM 902-2, MET FORMER ADC PROGRAM ELIGIBILITY REQUIREMENTS.)
- Child does not continue to meet former ADC eligibility; (See FOM 902-2, Continued former ADC Eligibility.)

- DHS is not in receipt of a valid court order that grants DHS placement and care responsibility; (See FOM 902-2, LEGAL JURISDICTION)

- Specifications in court orders - If a family court orders dual or co-supervision of the case by DHS staff together with court/private agency staff, or, if the court orders specific selection and/or control of the foster care placement or payment of rates not appropriate in the given case or orders Title IV-E payment be made on behalf of a child, then, Title IV-E is to be denied or terminated. (See FOM 902-2, SPECIFICATION IN COURT ORDERS)

- No "contrary to the welfare" judicial determination within the first court order; (See FOM 902-2, "Continuation in the home is contrary to the child's welfare" Determinations)

- No "reasonable efforts to prevent removal" judicial determination within 60 days of removal; (See FOM 902-2, "Reasonable Efforts" Determinations)

- No "reasonable efforts to finalize a permanency plan" every 12 months; (See FOM 902-2, "Reasonable Efforts" Determinations)

- Child not living in an eligible living arrangement. (See FOM 902-2, ELIGIBLE LIVING ARRANGEMENT) (FOM, Item 902-5, page 1)

The SWSS FAJ generated DHS-176, Client Notice, must be sent to the Juvenile Court when Title IV-E is denied or cancelled, except in cases of children committed to the Department of Human Services under Act 150 of P.A. 1974, as amended, or Act 220 of P.A. 1935, as amended. In other words, a DHS-176 is to be sent on all cases in which the court retains jurisdiction and on which the Department of Human Services has made the decision that the case is ineligible for Title IV-E funding, or the Title IV-E funding is to be terminated. The form is to be filled out to indicate that "...assistance under the Title IV-E in Foster Care program has been denied or cancelled because..." (42 USC 608, as amended.)

Notification is to be given to the court, in those cases in which it retains jurisdiction, as it is applying for assistance on behalf of the child. This will assure compliance with the federal regulations governing the Title IV-E program.

The notice given the court must be adequate notice. According to federal regulations, adequate notice is a written notice, sent not later than the date a case action is effected (not pended), which specifies all the following:

- The action being taken by the Department.
- The reason for the action.
- The specif ic manual item referenced (or regulations) supporting the action being taken.
- An explanation of the right to request a hearing.
- The circumstances under which assistance is continued if a hearing is requested.

The Judge cannot request an administrative hear ing for Title IV-E funding denia l or cancellation. The c ourt can appoint the c hild's lawyer-guardian ad litem to request a hearing. The Program Administrative Manual (PAM 600) states:

- "An author ized hearings repr esentative (AHR) is the person who stands in for or r epresents the client in the hearing process and has the le gal rights to do so. T his right comes from one of the following sources:
- Written authorization, signed by the client, giving the person authority to act for the client in he hearing process.
- Court appointment as a guardian or conservator.
- The representative's status as legal parent of a minor child.
- The representative's status as attorney at law for the client."

An AHR has no right to a hearing, but rather exercises the client's right. Someone who assists, but does not stand in for or repres ent the client in the hearing proces s need not be an AHR. (FOM, 902-5, page 2)

The supervising agency must make reasonabl e efforts to prevent removal and fina lize another permanency plan except under def ined c ircumstances. The child's health and safety must be of par amount concern. (See FOM 722-6, Reasonable Efforts for more information.)

In order to be eligible for title IV-E funding, the court must make two separate reasonable efforts determinations. These determinations must be:

- Explicit and made on a case by case basis.

- Made at a court hearing where the parents and child(ren) have the opportunity to attend the hearing.

- Contained in writing in the court order. It is not enough that efforts were described to the court. The court must actually decide that reasonable efforts were made.

To Prevent Removal

The first determination, "the agency has made reasonable efforts to prevent removal from the home," must be made at a court hearing held within 60 days of the child's removal from his/her home. Title IV-E eligibility cannot begin until the reasonable efforts judicial determination has been obtained.

As a minimally acceptable standard for abuse/neglect wards the court order must contain:

- The child's correct name, and

- A checked box indicating the court has found that reasonable efforts were made to prevent the removal of a child from the home, based on the petition. DHS report and/or testimony.

Title IV-E foster care payments may begin from the first day of placement provided the "reasonable efforts to prevent removal" finding has been made at a court hearing that calendar month.

If the finding is not made in the calendar month of removal, title IV-E eligibility begins the first day of the month in which all eligibility criteria are met, provided that is within the 60 day time frame.

The child's case is ineligible for title IV-E funding for the current foster care episode if:

- The judicial finding is not made within the 60 day time frame;

- The court refuses to make this finding; or

- The court finds that reasonable efforts to prevent removal were not made.

The "reasonable efforts to prevent removal" finding must be made for each placement episode within 60 days of removal, regardless of whether a new petition is filed. See FOM 902, **Financial Determinations** for information on placement episodes.)

The date the order is signed or received in the office is not relevant in terms of meeting the 60 day time frame. A subsequent order (e.g., a nunc pro tunc order) amending the original order cannot be used to establish compliance with this requirement.

For a child removed prior to 03/27/00 - The judicial determination of reasonable efforts to prevent removal does not need to be made within 60 days of removal.

Finalize the Permanency Plan

The second determination, "the agency has made reasonable efforts to finalize the permanency plan," is required within 12 months from the date of removal.

The determination must be based upon the permanency plan identified in the USP (court report). Acceptable permanency plans are:

- Reunification (return home/maintain own home).
- Adoption.
- Legal guardianship.
- Placement with a fit and willing relative.
- Placement in another planned permanent living arrangement.
- Permanent Foster Family Agreement.
- Emancipation by age 19.

This determination must also be made every 12 months as long as the child remains in out-of-home care. (Emphasis added)

This includes children placed in adoptive supervision placements in which the adoption has not been finalized within 12 months. The CY-460 report is sent to DHS agencies and the CY-463 is sent to private agencies who are supervising adoptive placements that have been open for 10 months, 22 months, 34 months, etc.

The adoption placement agency (either DHS or the private agency) must file a motion for a "reasonable efforts permanency planning review hearing" with the court in which the adoption petition was filed. The motion must request a hearing to be held within 12 months of the adoption placement date.

After the permanency planning hearing, the adoption placement agency must send a copy of the PCA 321, "Order of adoption," or the PCA 351, "Order Following Hearing on review of Adoption Placement (Title IV-E Eligibility Compliance)," to the DHS Adoption Subsidy Office as documentation of the judicial review and determination.

The child becomes ineligible for title IV-E funding at the end of the month in which the judicial determination was required to be made, and remains ineligible until the first of the month a determination is made. (Emphasis Added)

The child is **ineligible** for title IV-E funding until an order from a new hearing is issued which contains this finding. (FOM, Item 902-2, page 16-17)

A subsequent order amending the previous order (e.g., a nunc pro tunc order) cannot be used to retroactively establish compliance with this requirement.

The effective date for reinstatement of title IV-E eligibility based on this finding is the first day of the month in which a court order containing the reasonable efforts statement was received.

The 12 month time frame for the next required finding of reasonable efforts to finalize the permanency plan begins with the date the last finding was made.

The court is to conduct a permanency planning hearing within 30 days after there is a judicial determination that reasonable efforts to reunite the child and family are not required. Reasonable efforts to reunify the family must be made in all cases except in those situations listed above. This 30 day hearing requirement does not effect title IV-E eligibility. (FOM, Item 902-2 pages 16-17)

In the instant case, the evidence in the record shows that an Order Following Dispositional Review/Permanency Planning Hearing was signed on November 11, 2008 and that the last permanency planning hearing had been held April 19, 2007. The order was signed by Judge Michael J. Anderegg. (Exhibits #4-6) Additional Orders were signed on August 14, 2008, January 28, 2008, and October 27, 2007. All three Orders indicated that the last Permanency Planning Hearing had been held on April 19, 2007. (Exhibits #7-17)

This Administrative Law Judge finds that there evidence in the record indicates that there was no Order entered following a Permanency Plan within the past twelve months. The discovery was made in January 2009, and notice of the change in funding was sent to the Marquette County Probate court and the child's GAL on January 13, 2009. In accordance with Department policy, there was no permanency planning hearing held since April 19, 2007.

The petitioner's grievance centers on dissatisfaction with the department's current policy. The petitioner's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

> Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, and overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

The Administrative Law Judge has no equity powers. Therefore, the Administrative Law Judge finds that the department has establis hed by the necessar y competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that the child was not eligible to received T itle I V-E funding because there was no permanency plan heari ng conducted sinc e April 19, 2007 and a permanency plan hearing must be conducted every t welve months in acc ordance with Department policy.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, dec ides that the D epartment did dec ided by the necessary competent, material and subst antial evidence on t hat record that it was acting in accor dance wit h Department policy and did appropriately det ermine that the child did no longer meet the eligibility standards for Title IV-E e ligibility because there was no permanency pla n hearing conducted s ince Apr il 19, 2007 and a per manency plan hearing must be conducted every twelve months in accordance with Department policy

Accordingly, the Department's decision is AFFIRMED.

/s/
Landis Y. Lain
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 15, 2011

Date Mailed: February 16, 2011

NOTICE: Administrative Hearings may or der a rehearing or reconsideration on either its own motion or at t he request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hear ings will not orde r a rehearing or reconsideration on the Department's mo tion where the final decis ion 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.

LYL/alc

cc: [redacted]