

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2009-22629
Issue No: 6033
Case No: [REDACTED]
Load No: 1 [REDACTED]
Hearing Date:
May 12, 2010
Cheboygan County DHS

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2009-22627
Issue No: 6033
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 12, 2010
Cheboygan County DHS

IN THE MATTER OF: [REDACTED]
Claimant

Reg. No: 2009-22628
Issue No: 6033
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 12, 2010
Cheboygan County DHS

BY: [REDACTED],
Guardian Ad Litem

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimants' request for a hearing. After due notice, a telephone conference hearing was held on May 12, 2010.

ISSUE

Did the department properly determine claimants were not eligible for Title IV-E funding?

FINDINGS OF FACT

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

(1) On November 20, 2008, the [REDACTED] presided over an emergency child protection proceeding which sought placement outside the home for the three minor children at issue in this case.

(2) On November 20, 2008, this sitting judge signed an Order After Preliminary Hearing with full authority to do so (Department Exhibit #1, pgs 5-9).

(3) This Order specifically states reasonable efforts to prevent the removal of the children from their home were not made prior to this hearing (Department Exhibit #1, pg 6).

(4) Additionally, at no time within 60 days of the children's date of removal (11/20/08) did the Court conduct a hearing to determine whether the department, in fact, made a reasonable effort to prevent removal, as required by the department's policy at CFF 902-2, pgs 12 and 15 in order for Title IV-E eligibility to attach (Department Exhibit #2, pgs 21-25).

(5) Nevertheless, the local office erroneously approved all three children eligible for said funding until the mistake was discovered in February 2009, pursuant to a mandatory, federal government compliance review of every active Title IV-E case in [REDACTED]

(6) When this error was discovered the local office notified the children's court-appointed Guardian Ad Litem (GAL) their funding would be terminated; consequently, the GAL filed a hearing request dated March 27, 2009, to protest the issue.

(7) The hearing was held on May 12, 2010.

(8) At the hearing, the GAL argued it would be unfair and against the children's best interests to uphold the department's Title IV-E revocation, given the exigent circumstances and apparent oversight which occurred in this case.

CONCLUSIONS OF LAW

Title IV-E is a funding source that may be used by the county to cover the cost of foster care placement of a child. Title IV-E foster care payments may begin on the first day of placement in the month in which **ALL** eligibility criteria are met.

Federal Title IV-E law provides that the presiding judge must make a finding in the first court order removing the child from the home that "continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest of the child." In addition, federal regulations require a court finding within 60 days of a child's actual removal that reasonable efforts have been made to prevent that child's removal. 45 CFR 1356.21(c). The findings "contrary to the welfare" and "best interest" of the child(ren) must be based on an actual judicial inquiry and a demonstration of what would be contrary to the welfare of the child(ren) and in the best interests of the child(ren). 45 CFR 1356.21(d); 65 FR 4055-56. The applicable

departmental policy referenced herein is consistent with these regulations (Department Exhibit #2).

The evidence of record is clear. The required judicial finding was never made before the period for doing so lapsed. Consequently, no basis exists in fact, law or policy to reverse the department's revocation of Title IV-E funds.

The children's GAL made a strictly equitable argument which 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, 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).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimants were not eligible for Title IV-E funding.

Accordingly, the department's action is AFFIRMED.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 24, 2010
Date Mailed: May 25, 2010

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 receipt 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.

MBM/db

cc:

