

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg No: 200926997

Issue No: 6033

[REDACTED]

Hearing Date:

November 10, 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; MSA 16.437 upon the Claimant (Petitioner) request for a hearing. After due notice a telephone hearing was held on November 10, 2010. The Petitioner was represented by [REDACTED], former Guardian ad Litem (GAL).

This hearing was originally held by Administrative Law Judge Jana Bachman. Judge Bachman is no longer affiliated with the Michigan Administrative Hearing System, Administrative hearings for the Department of Human Services. This hearing decision was completed by Administrative Law Judge Landis Y. Lain by considering the entire record.

ISSUE

Whether the Department of Human Services (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 K.M., hereinafter known as 'the Child', [REDACTED]
2. The child was removed from her mother's care and custody on 12/29/2000, under a Child Protective Services Case 2000-1258 and has never physically resided with her mother, S.M., at any time thereafter.

3. On July 3, 2001, the child was placed with V.G., her grandmother, and resided with her for several years under a limited legal guardianship agreement.
4. On November 5, 2005, [REDACTED] discharged V.G. as the child's guardian and appointed T. L. and R.L. as successor limited co-guardians of the child.
5. On May 20, 2008, T.L. and R.L. filed a petition to terminate their limited co-guardianship after the child ran away and refused to return to their home and care.
6. On or about May 20, 2008, the child was placed into detention on a delinquency petition filed after she ran away from the home and care of her limited co-guardians and refused to return.
7. On July 8, 2008, the Court discharged T.L. and R.L. as the co-guardians for the child. (Client Exhibit A)
8. The child remained in out-of-home placement with services and out-of-home placement through [REDACTED] until she aged out of the programs. No other relative placements or limited guardian successors were available.
9. The child's mother, S.M., did not meet conditions of the limited guardianship plan at any time relevant to this case. (S.M. reported to the department that she continues to drink alcohol daily, has continuing mental health issues, and has been homeless for over two years. S.M. indicated to the department that she was unable to care for the child.)
10. On July 10, 2008, a petition was filed for the removal of the child from the mother's home. The petition stated: It is contrary to the welfare of the child to return to her mother, who has been unable to provide a safe, stable home and adequate supervision due to continuing mental health and substance abuse problems and homelessness. The Department respectfully requested that the child be placed in out-of-home placement pending adjudication. (Department Exhibit #17)
11. On July 17, 2008, a preliminary hearing was held. "Reasonable efforts" and "contrary to the welfare" findings were made at the hearing for the respondent-mother, S.M.
12. On July 23, 2008, an Order After Preliminary Hearing placing the child with the department was entered by the [REDACTED] (Department Exhibits # 9-14)

13. The child was found to be initially eligible for Title IV-E funding.
14. On March 9, 2009, a Title IV-E case reading review was completed by the children's services supervisor. (Department Exhibit # 3-6)
15. It was determined that an error had been made and that the child was not eligible for Title IV-E funding for out-of-home placement because the contrary to the welfare findings were made, but not for the house the child was removed from. The notice indicated that the child was removed from a guardianship home and that the "contrary to the welfare" finding is for the mother's home. (Department Exhibit #1)
16. On March 16, 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 court's removal order does not contain a statement with case specific documentation that it is contrary to the child's welfare to remain in the home. Contrary was in Order, but not for the house the child was removed from. She was removed from a guardianship home and contrary finding is for her mother's home." (Department Exhibit #1).
17. On May 28, 2009, the child's representative filed a request for a hearing to contest the department's negative action.
18. The hearing was held November 10, 2010.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 removed from her mother's care and custody in 2000. The child was placed in the care and custody of the [REDACTED] (the department) first, then placed with her guardian and grandmother, V.G., and then, her co-guardians, T.L. and R. L. When the child ran away from T. L. and R. L. and refused to return to their home, the child was returned to the care and supervision of the department and placed in detention on a delinquency petition filed after she ran away from her co-guardians and refused to return to their home.

The Department representative argues that the child had not resided with her mother in at least seven years and the removal home could not be the mother's home for purposes of Title IV-E funding for out-of-home placement. The removal home was the co-guardians'.

The GAL argues that the original removal from the mother's home was in 2000. The child was subsequently placed with two separate parties under limited guardianship agreements. Once the second limited guardianship agreement was terminated the child was technically returned to the legal guardianship of the mother S.M., because guardianship was not renewed and a successor guardian was not named. Thus, the GAL argues, the removal home was that of her mother's, even though the child had not resided in the physical custody of her mother for years.

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.)

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. (FOM, 902-2, page 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.

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 her mother's home in 2000. She was placed in two separate guardianship arrangements. The first guardian was the child's grandmother, a specified relative. The second co-guardians were not specified relatives according to the Title IV-E case reading form. (Department Exhibits #3-5) The child ran away from the second guardianship arrangement and refused to return. She was placed into detention as a runaway who refused to return to her guardianship situation. Both of her parents were absent from the co-guardians' homes.

The department representative argues that the child was living with a relative or guardian, and not with her parent(s). The child's father is unknown. The child's mother was unable to care for the child. The original court documents made "contrary to the welfare findings" against the mother rather than the guardian(s). The department representative argues that since the child was living with a relative or guardian for at least 6 months prior to removal, the removal order should have been from the guardians' home, not the mother's home. Subsequently, the child was not eligible for Title IV-E funding for out-of-home placement.

This Administrative Law Judge finds that the evidence in the record clearly indicates that the department intended that removal was from the co-guardians' home and not the mother's home. The Allegations in the July 10, 2008 Petition state:

“I request the court to issue an order removing the child Section 2(b) (1) whose parent or other person legally responsible for the care and maintenance of the child, when unable to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. (2) Whose home or environment by reason of neglect, cruelty, drunkenness, criminality, or depravity, on the part of a parent, guardian or other custodian is an unfit place for the child to live in.”

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 guardians pending further investigation. Moreover, the Petition, dated July 10, 2008, concluded that

“It is contrary to the welfare of the child to return to her mother, who has been unable to provide a safe, stable home and adequate supervision due to continuing mental health and substance abuse problems and homelessness. The Petitioner (the department) respectfully requests that the child be placed in out-of-home placement pending adjudication”. (Department Exhibit #17)

It is clear from the Petition that the department recognized that the removal home was not that of the mother’s, since it used the word “return” instead of removal.

The July 23, 2008 Order After Preliminary Hearing indicates in pertinent parts that:

11. The court finds that the juvenile has been detained since May 17, 2008 pursuant to a companion delinquency proceeding that is currently pending. The respondent mother placed her denial to the petition’s allegations on the record.

12b. It is contrary to the welfare of the child to remain in the home because: The respondent mother has been unable to provide the child with a safe, stable home and adequate care and supervision due to continuing mental health and substance abuse issues and homelessness.

13b. Reasonable efforts to prevent removal of the child from the home. Those efforts include: Limited Guardianship with extensive services plan, including substance abuse treatment and mental health services, parenting classes, and obtaining adequate housing.

23. The child is placed with the Department of Human Services for care and supervision, (Department Exhibit # -14)

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in accordance with Department policy when it notified the petitioner that Title IV-E funding should be cancelled based upon the fact

that Policy clearly states: 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 s/he has lived with the relative more than six months. The department's decision must be UPHeld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did appropriately determine that the child did not meet the eligibility standards for Title IV-E eligibility.

Accordingly, the Department's decision is AFFIRMED.

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

Date Signed: May 27, 2011

Date Mailed: May 27, 2011

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.

LYL/db

cc:

