

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED],
Petitioner

Reg. No. 2009-28200
Issue No. 6033
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date:
March 11, 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's request for a hearing. After due notice a telephone hearing was held on March 11, 2010. The Claimant was represented by [REDACTED] 541 South Hill Island Road, Cedarville, Michigan 49719 as Guardian ad Litem.

ISSUES

- (1) Whether there has been more than one placement episode of the child for purposes of Title IV-E assessment?
- (2) Whether the Initial Determination that the Child was ineligible to receive Title IV-E funding was correct under the circumstances?
- (3) Whether the department appropriately re-determined that the child was not eligible for Title VI-E funding once the child was moved to residential placement?

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] hereinafter known as the Child.
- (2) The Child is [REDACTED] Child shoes family was originally involved with the [REDACTED].
- (3) The child was removed from the parental home during an abuse/neglect case and placed with her grandparents on September 10, 2008. She was moved to her other grandmother's and remained with the grandmother from September 19, 2008 through May 14, 2009.
- (4) The removal was done through the [REDACTED] and the Department of Human Services was given care and supervision of the child. An initial assessment by the department caseworker indicated that the child had been determined ineligible to receive Title-IVE funding on October 6, 2008, because her parent's income was too high based on AFDC Standards. (Agency Exhibit #8)
- (5) During the initial placement with the grandmother, a petition was filed with the Mackinac County Circuit court Family division for delinquency.
- (6) The delinquency case was also referred to the Department of Human Services for care and supervision of the child. At that point as of November 6, 2008, the child became a dual ward (neglect/abuse and delinquent)
- (7) Physical placement of the child continued with the grandmother.

(8) The child escalated her behavior and a petition for jurisdiction was filed on November 6, 2008, with the Mackinac County Circuit Court Family division, and placed her into detention pending residential placement.

(9) The court made contrary to the welfare findings in regards to the grandparent's home.

(10) Reasonable efforts to prevent removal findings were also made at the same hearing on April 23, 2009.

(11) The Court removed the child from the grandparent's care and child went to detention and was eventually placed into a residential treatment facility on May 14, 2009.

(12) Court jurisdiction of both the [REDACTED] and Mackinac County Circuit Court Family division was continued at the time of the child's placement into detention.

(13) On May 20, 2009, the neglect/abuse case closed once the child was placed into residential placement under her delinquency case.

(14) The department caseworker conducted a redetermination of eligibility once the child was moved to residential placement and determined that the child had properly been determined ineligible to receive Title-IVE funding on October 6, 2008 because her parent's income was too high. The parent was receiving \$746.00 in monthly unemployment compensation benefits and the child was receiving \$437.00 in monthly SSI benefits which made the household ineligible for Title IV-E funding at the time of the removal and placement with the grandmother. (The SSI amount was disregarded under AFDC standards) (Agency Exhibit #9)

(15) The income limit for Title IV-E for a two person household was \$428.00
ADFC – Family Independence Program (FIP).

(16) The AFDC Standard of Need Chart as of July 16, 1996 indicates that a
group size of two persons in Chippewa County had an income limit of \$416.00 for
purposes of Title IV-E eligibility. (Agency Exhibit #7)

(17) On November 5, 2009, the department conducted a funding
redetermination and maintained that there was only one removal of the child which was
continuing until the child was placed into residential treatment because she never
returned home to her parent in the interim.

(18) The request for a hearing was made on June 3, 2009.

(19) Department of Human Services Guidelines require that a hearing to held
within 65 days of receiving the hearing request.

(20) Hearing was held March 11, 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).

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

In the instant case, the department contends that the child was only removed from the parental home once. She never returned to the parental home and thus there was only one removal episode beginning September 10, 2008. At that time an initial determination was made that the child did not qualify for Title IV-E funding because of excess family income. The Department contends that the one and only removal of the child was ordered and carried out under the jurisdiction of the [REDACTED]. The Department further contends that a placement episode begins when a child moves from an in-home (parental) living arrangement where they are living with a legal custodian to an out of home living arrangement. Third, the Department contends that the initial placement episode ends when the child is returned home, placed with a non-custodial parent, placed with a legal guardian or discharged from ward ship. Last, the department contends that at the time of the removal there was no concern about placement.

The child, through her Guardian ad Litem (GAL) agrees with the Department that this is an initial placement. The GAL contends that the child should have met Title IV-E funding standards because she was the [REDACTED] old child of divorced and unemployed parents on the date of removal which qualifies her under the deprivation standard. The GAL contends that the child has insufficient income and assets compared

the daily board rate of care in her placement. The child's sole income is in the amount of \$463.84 per month and her placement care is \$148.79 per day, which allows her to meet the needs standard for Title IV-E funding. The GAL finally contends that this hearing has not been conducted within the 65 day standard of promptness and therefore must give up the right to continue to deny the child Title IV-E funding.

Regarding Issue 1, 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 only 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)

Based upon the department policy, there was only one placement episode, when the child was removed from the parental home. Even though she was moved from the grandparent's home to residential treatment, the child was never returned to the parental home. Department policy also dictates that this was a continuation of the initial placement, and not a newly generated placement of the child. The child was initially determined to be ineligible to receive Title IV-E funding. Therefore, she can never be determined to be eligible for Title IV-E funding while in the same placement episode.

Regarding Issue 2. Pertinent Department Policy reads as follows:

Youth come within the jurisdiction of the Family Division of the Circuit Court due to delinquency or neglect situations as defined in the Juvenile Code MCL 712A.1 et seq. The court may retain responsibility for the youth or may make the youth the responsibility of the Department of Human Services through either a "placement and care" order or a state ward commitment order. (See FOM 901-6 pages 1 and 2 for definitions of legal statutes.)

In providing services to youth, the Department utilizes the services of individual families, private agencies, private child care facilities, court operated facilities, DHS operated facilities, mental health facilities and other facilities such as general hospitals and nursing homes as are appropriate to the needs of an individual youth. A combination of the child's legal status, family financial circumstances and placement

needs strictly determines which funding source is used to pay for placement and other related services. Sections in this manual describe in detail how to pay for these services. FOM, Item 901

This section describes the different funding sources available for Child Placement Services. Title IV-E is the most common funding source but several federal regulations must be followed for its use. These requirements are described in detail within this section. Other funding sources such as State Ward Board and Care, County Child Care funds, and Limited Term and Emergency Foster Care funding are also listed within FOM 901-8 with instructions for their use.

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.) FOM 902-5, page 1.

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.

Deductions

The SWSS funding determination process automatically applies the following income deductions:

- Income disregards only if the parent whose income at the initial determination received FIP in the last four months.
- Child care expenses. Enter the amount paid for the actual child care expenses, not the DHS allowable amount.
- Child support paid for a child who is not living within the removal home. Enter the amount paid by the parent, not the ordered amount.

YOUTH'S INCOME

The income available to the youth must be considered initially and at each redetermination in determining eligibility for title IV-E. If a youth's available net income is less than the board rate being paid for care, the youth continues to be eligible on the basis of need.

If a youth's available net income exceeds the board rate, eligibility may still exist since the needs of a youth include items other than basic maintenance. These cases are to be referred through supervisory channels to Reconciliation and Recoupment Section in central office for analysis of eligibility. See FOM Item 902-12, **Government Benefits and Other Benefits**, for procedures. FOM 902-2, page 10.

The child must meet all eligibility requirements for the former AFDC program, except that of living with an acceptable relative, in the month in which the court action that led to the child's removal occurred. A court action is defined as an order that removes the child from his/her home.

The eligibility requirements include age, deprivation, and need. Duration of residence is not included in the requirements. A reasonable effort to reconstruct the elements of eligibility at the time the court action occurred which led to removal is expected.

The following children are not former AFDC eligible as there are no facts upon which to base former AFDC program eligibility:

- Children, whose parents or other relatives cannot be identified.
- Children whose parents will not cooperate in the eligibility

determination process and DHS has no income or asset information on record.

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.

Based upon the appropriate policy, the child was not eligible for Title IV-E during the initial placement because she did not meet the requirements for ADFC. The child's custodial parent was receiving \$746.00 per month in Unemployment Compensation Benefits and the child as receiving \$437.00 per month in SSI benefits. The income limit for Title IV-E, two person home in claimant's county was \$416.00 at the time of the Child's initial out of home placement. Department policy indicates that unemployment of a parent may or may not be a deprivation factor. FOM 902-2, page 7. In this case

deprivation is not in existence because the child's parent was not eligible to receive AFDC(Family Independence Program) benefits because she did not meet the deed standard in place at the time.

The department's determination must be UPHELD.

Regarding Issue 3. The child did not meet the initial standard for Title IV-E eligibility. Department policy dictates:

There are two distinct types of title IV-E status - title IV-E eligible and title IV-E reimbursable. Both must occur concurrently before title IV-E payments can be issued. Definitions of the two types of title IV-E status are:

- Title IV-E eligible - When the child entered placement, the child met the AFDC standards in effect on July 16, 1996 and DHS has placement and care responsibility.
- Title IV-E reimbursable - Federal financial participation (FFP) is available for a child who meets all title IV-E eligibility requirements in FOM 902-2, PR - Title IV-E Eligibility Requirements and FOM 902-3, PR - Title IV-E Age Requirements and Exceptions. FOM 902-2, page 1.

This administrative Law Judge finds that even if the child had met the deprivation standard, she did not meet the income standards for ADFC eligibility. Department policy dictates that a child must meet all of the eligibility factors for eligibility. FOM 902-2, page 5. Department policy dictates that 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. FOM 902-1, page 1

Under the circumstances, the child cannot be determined eligible for Title IV-e funding because her initial determination was that she was not eligible and she remains in the original placement episode.

The allegation of that the hearing is not timely and therefore the department's decision must not stand because it is unfair is an equitable argument to excuse the child/placement from the department policy requirements.

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant'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 established by the necessary 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 receive Title IV-E funding because she had excess income and did not meet the standards for AFDC eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides 25 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 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 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.

cc:

