

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: 2009-4912
Issue No: 6033
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 26, 2009
Delta County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on February 26, 2009.

ISSUE

Was federal Title IV-E eligibility established?

FINDINGS OF FACT

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

(1) In or about October 2008 the minor claimants applied for funding under the Title IV-E foster care program and were denied on October 23, 2008 pursuant to CFF 902-2 and 902-5 for the following reason(s): the [REDACTED] hearing indicated that it was contrary to the welfare of the children to "remain in the home at [REDACTED], [REDACTED] because it was deemed uninhabitable by the city of [REDACTED] building inspector and they were required to

move out.” The children then went to the maternal grandmother’s home along with their mother. In this case, it technically was NOT contrary to the children’s welfare to remain in their mother’s home (to remain in her care) as the court allowed the mother to live in that very same home.

(2) On September 12, 2008 the DHS petitioned the circuit court for removal of the claimants from their home based on their home declared uninhabitable by the [REDACTED] city building inspector.

(3) On [REDACTED] the court ordered the appointment of an attorney/GAL for the claimants.

(4) On [REDACTED] (continued later to [REDACTED]) the court conducted a hearing on the DHS petition and issued an order, in pertinent part, as follows:

Item 3. Removal date: children remain with the mother.

Item 12b. It is contrary to the welfare of the children to remain in the home because: their home located at [REDACTED] [REDACTED] was deemed uninhabitable by the city of [REDACTED] building inspector and they were required to move out of the house.

Item 13b. Reasonable efforts were made to prevent removal of the children from the home. Those efforts include: Arrangements were made for [REDACTED] and her children to reside at the home of [REDACTED] mother, [REDACTED]. Other services including, [REDACTED], [REDACTED] and Delta County DHS, [REDACTED], [REDACTED], [REDACTED].

Item 17b. Conditions of custody in the home with the individual with whom the children reside are not adequate to safeguard the children from the risk of harm to the children’s life, physical health, and mental well-being.

No provision of service or other arrangement except removal of the children is reasonably available to adequately safeguard the children from the risk of harm to the children's life, physical health, and mental well-being.

Conditions of custody at the placement away from the home and with the individual with whom the children are placed is adequate to safeguard the children's life, physical health, and mental well-being.

Item 23. The children are placed with the Department of Human Services for care and supervision, and-----.

Item 29. The court recommends continued placement (of the claimants) with their grandmother with the mother living with them.

(5) The DHS placed the claimants and their mother in the grandmother's home.

(6) Reimbursement for expenses of the claimants' placement with the grandmother

have never been requested, nor paid under the foster care program.

CONCLUSIONS OF LAW

Federal foster care funding is subject to the conditions of Title IV-E of the Social Security Act, 42 USC 670-679b. Pursuant to congressional mandate, the U.S. Department of Health and Human Services (HHS) promulgated regulations to implement Title IV-E. These regulations are now codified at 45 CFR 1355, 1356, and 1357. Introductory materials and comments for Title IV-E, commonly known as the *Preamble*, are set forth in the Federal Register at 65 FR 4020-4093. Further guidance has been provided from HHS through a variety of publications including the *Title IV-E Foster Care Eligibility Review Guide* and the *Child Welfare Policy Manual*.

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.” 45 CFR 1356.21.

The claimants argued, in essence, that the court order removing them from their home because it was uninhabitable qualified them for Title IV-E funding. The DHS argued, in essence, that the court order does not remove the claimants from their mother, but in essence transfers the family’s home (claimants and their mother) to a different location (grandmother’s home); and that the home was not a licensed foster home for Title IV-E funding. This ALJ agrees with the DHS’s decision and here’s why.

CFF 902-2, page 9, states in pertinent part:

Jurisdiction of the eligible child must be taken under either the neglect or delinquency section of the juvenile code.

There is nothing in the court order stating that the claimants’ mother neglected them by keeping them in an uninhabitable home.

The September 12, 2008 court order does not separate the claimants from their mother, but requires them to remain together in any DHS placement. Clearly, the court does not indicate any neglect/abuse of the claimants by their mother.

The eligibility requirements for Title IV-E include age, deprivation, and need. CFF 902, page 4. Deprivation must exist initially and continue thereafter for Title IV-E eligibility. Reasons for deprivation include the continued absence of the parent from the parental home. CFF 902, page 6.

In this case, the court order states the parent remains with the claimants. Therefore, the court has not determined the parent of the claimants is neglectful or abusive.

CFR 902-5, page 1, states in pertinent part:

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

- DHS is not in receipt of a valid court order that grants DHS placement and fair responsibility (See CFR 902-2, legal jurisdiction).
- Child not living in an eligible living arrangement (See CFR 902-2, eligible living arrangement).

As already discussed above, this ALJ does not find the court order removed the claimants from their mother's home. Instead, in essence, it kept the claimants home with their mother in a different location (grandmother's home).

Let's assume the court order removed the claimants from their mother. The claimants offered no evidence that the grandmother was a licensed foster care home for any retroactive Title IV-E payments.

CFR 902-2, page 17, regarding eligible living arrangements states in pertinent part:

- Relatives/unrelated caregiver homes (e.g., aunt, uncle, niece, nephew, brother, sister, grandparent or first cousin) must be licensed as foster family homes if Title IV-E is to be paid.
 - If a child who is otherwise eligible for Title IV-E has been placed in an unlicensed home, payments cannot be made until the home is licensed. Once licensed, retroactive payments can be made back to the effective date of the license as long as no FIP or county childcare fund payments were issued for the same time period.

Therefore, this ALJ is not persuaded that the claimants have established eligibility for Title IV-E funding by a preponderance of the evidence.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Title IV-E eligibility was not established.

Accordingly, Title IV-E denial is UPHELD.

/S/

William A. Sundquist
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 27, 2009

Date Mailed: April 28, 2009

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.

WAS/vmc

cc:

