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

IN THE MATTER OF:

[redacted]

Reg. No: 201037333
Issue No: [redacted] 6033
[redacted]
Hearing Date: November 24, 2010
Iron County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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, a 3-way telephone hearing was held on November 24, 2010. Claimant was represented by [redacted], for the minor child—claimant.

ISSUES

1. Did the DHS properly deny claimant Title IV-E funds from April 13, 2009 to December 15, 2009?

2. Is there jurisdiction for this Administrative Law Judge to proceed on a Title IV-E funding issue for the period from April 1, 2006 to December 31, 2006 where the Guardian Ad Litem did not ask for a timely hearing as he had no right to notice under DHS policy?

FINDINGS OF FACT

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

ISSUE 1

1. On March 19, 2010, SOAHR received a hearing summary from the Iron County DHS indicating that claimant's Guardian Ad Litem requested a hearing on March 10, 2010 pursuant to a negative action notice of March 4, 2010.

2. On March 4, 2010, DHS issued a notice to Judge Schwedlar regarding claimant which informed the Iron County Court that there was a misissuance of Title IV-E funds on behalf of claimant during the time period from April 13, 2009 to December 15, 2009. The misissuance is identified as a result of the court order which states that the permanency plan is "long term foster care" and not "permanent foster care agreement."

3. The DHS stipulated at the administrative hearing that the department instructed the court to state in its order "long term foster care."

4. The department stipulated at the administrative hearing that the two phrases are substantively the same.

5. There is no evidence on the record that long-term foster care and a permanent foster care agreement was different other than form over substance in terms of the language.

6. The department argued at the administrative hearing that the language must be identical to the language in policy pursuant either verbal or possibly some written instructions the department has received from the federal government.

ISSUE 2

7. Claimant's GAL also requested a review of a misissuance determination for the period from August 1, 2006 through December 31, 2006. DHS policy does not require notice to the juvenile court when Title IV-E is denied or cancelled where the child is committed to the DHS under Act 150 of PA 1974, as amended, or Act 220 of PA 1935, as amended. Unrefuted evidence is that the child at issue herein falls under Act 150 of PA 1974.

CONCLUSIONS OF LAW

The Child Development and Care program is established by Titles IVA, IV-E and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (DHS or department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Title IV-E eligibility begins with a determination of the child and family's ability to qualify for the former Aid to Families of Dependent Children (ADC) grant under the state plan which was in effect July 16, 1996. The child and family's eligibility for the FIP cash assistance grant does not equate to automatic eligibility for Title IV-E funds.

Title IV-E eligibility requirements and eligibility criteria during the time period at issue herein is found was then identified as the Children's Foster Care Manual (CFF). These items go from CFF 721 through CFF 960. Specific Title IV-E policy begins at CFF 902-1.

ISSUE 1

Specific to the Issue 1 herein, CFF 902-2 pg 15 identifies the finalization of the permanency plan. This item states in part:

> The determination is to 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 plan permanent living arrangement
>
> Permanent foster care agreement
> Emancipation by age 19
>
> CFF902-2 pg 15

As noted in the Findings of Fact, the department instructed the court in its progress evaluation/Foster Care Structured Decision Making Updated Services Plan under Section 9 which is the section where the "permanency plan decision guideline recommendation" is made. The department typed in response to this the following: "The plan at this time is for [claimant] to remain in foster care on a permanent basis. Exhibit B1.

Pursuant to the DHS instructions, the court order stated that "the permanency plan is long term foster care." However, as noted in the Findings of Fact, the DHS subsequently turned around and stated despite its instructions that the phrase which should have been used is "permanent foster care agreement."

Testimony on the record at this administrative hearing was in essence that there is no substantive difference in the two phases—the only difference is form over substance. However, the DHS argued at the hearing that it has been instructed by individuals conducting federal audits that Title IV-E funding does not exist unless the identical words and/or phrase found in policy under CFF 902-2 is not identically placed in the court order. The DHS stipulated that this identical language requirement is not in policy.

The purview of an Administrative Law Judge is to make a determination as to whether the department's actions were correct under policy and procedure. Under the Delegation of Hearing Authority signed by Director Maura D. Corrigan of the Department of Human Services on February 22, 2011. That delegation states specifically the following:

> Administrative hearing officers have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or overrule or make exceptions to department policy.

Even if the department were to produce a written letter or memorandum which may or may not exist, the undersigned could not take this into account in making a decision herein. Outside verbal instructions or potential memorandums cannot overrule department policy. The department's actions must be reversed.

ISSUE 2

With regards to a guardian ad litem's request for an administrative hearing as to a misissuance in 2006, the GAL contests the fact that the court was never given notice as to the alleged misissuance of Title IV-E funds for this time period. However, under the DHS policy and FON 902-5, the GAL and/or the court is not entitled to notice. The individual who received notice is the individual entitled to the administrative hearing. Thus, this Administrative Law Judge finds no jurisdiction to review the GAL's request for review from August 1, 2006 to December 31, 2006.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were

ISSUE 1

The department incorrectly denied Title IV-E funding on behalf of claimant April 13, 2009 to December 15, 2009.

Accordingly, the department's denial is hereby REVERSED and the department is Ordered to reissue any funds which were not paid under Title IV-E for the period of time.

ISSUE 2

There is no jurisdiction to proceed in a review of any misissuance determination from August 1, 2006 to December 31, 2006. On this issue, the department is UPHELD.

/s/
Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 23, 2011

Date Mailed: May 23, 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.

JGS/db

cc: [redacted]