

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 2010-38908
Issue No. 6033
Case No. [REDACTED]
Hearing Date:
May 11, 2010
Iron County DHS

ADMINISTRATIVE LAW JUDGE: Landis. Y. Lain for Jay W. Sexton

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 (Petitioner's), (hereinafter known as the child, DOB 1/14/93), request for a hearing. After due notice a telephone hearing was held on April 12, 2011.

This hearing was originally held by Administrative [REDACTED] is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services. This Hearing Decision and Order was completed by Administrative Law [REDACTED] by considering the entire record.

ISSUE

Whether the Department of Human Services (DHS or the Department) properly determined that petitioner was ineligible to receive Title IV-E funding 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) In preparation for an upcoming federal audit for Title IV-E children, the department's Child Welfare Funding Specialist conducted a complete case read of petitioner's case.
- (2) On November 12, 2003, the Iron County Circuit court held a hearing and issued an Order After Preliminary Hearing Removing the Child from Home

Case #03000053/Judge Schwedler) child was removed from his mother's care by the Iron County Circuit Court. The removal was based upon the child's behavior, under delinquency, rather than abuse and neglect.

- (3) On November 18, 2003, the Oder was signed which found it was contrary to the welfare of the child to remaining his mother's care but no placement could be readily found for the child.
- (4) On November 25, 2003, the department placed the child into foster care.
- (5) On November 25, 2003, a second removal order was issued.
- (6) The department originally determined that the child was Title IV-E eligible.
- (7) At the case read, the Title IV-E review team determined that the child had been incorrectly determined to be Title IV-E eligible from November 25, 2003 through December 18, 2009.
- (8) On March 4, 2010, the department caseworker sent notice to the [REDACTED] of the child and to Judge Schwedler that the child's Title IV-E funding was cancelled, because the best interest determination did not coincide with the child's removal, that the department had made an error in determining the child to be Title IV-E funding and that he would be notified by Reconciliation and recoupment in Lansing regarding the process of recoupment.
- (9) The hearing was held on April 12, 2011 before Administrative Law judge [REDACTED].

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).

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. (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

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.

FOM 902-2, page 7.

Department policy in effect at the time CFF 902-2 states that 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.

In the instant case, the Circuit Court Judge issued the order for removal on November 18, 2003, but the child was not removed from the mother's home to foster care until November 25, 2003.

This Administrative Law Judge finds that the judicial determination that results in the child's removal must coincide with (occur at the same time as) the department's action to physically or constructively remove the child, unless the court order specifies an alternative time frame for removal. 472 (a) (2) of the Social Security Act predicates a child's receipt of Title IV-E funds on the child's removal from the home as a result of either a voluntary placement agreement or a judicial determination that to remain in the home is contrary to the child's welfare. If a court makes a judicial determination that it is contrary to the child's welfare to remain at home without specifying an alternative time frame and the child does remain in the home and no removal occurs, the requirement for removal is not met and the child is ineligible for Title IV-E funds. 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 denied based upon the fact that the child did not meet the removal requirements necessary for Title IV-E funding eligibility.

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 children did not meet the eligibility standards for Title IV-E eligibility. The child did not meet the removal requirements necessary for Title IV-E funding eligibility.

Accordingly, the Department's decision is AFFIRMED.

/s/

Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 1/19/12

Date Mailed: 1/19/12

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/ds

■ [REDACTED]