STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:
Issue [redacted] Case
Load
Hearing
July

Reg. No. 2010-41412
No. 6033
No. [redacted]
No. [redacted]
Date:
8, 2010
Marquette 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; M SA 16.437 upon the Petitioner's request for a hearing. After due notice a telephone hearing was hel d on July 8, 2010. The Petitioner was represented by [redacted]

ISSUE

Whether the Department of Human Services (the Department) proper ly determined that the Child R. N. was no lon ger eligible to receive Ti tle IV-E funding was 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 [redacted], DOB [redacted] hereinafter known as the Child.
2. The Child was at all times relevant to this hearing a ward of the State of Michigan.
3. The child was initially determined to be Title IV-E eligible.

4. Per department policy a permanency planning hearing was required to be conducted for the child on a 12 month basis.

5. On January 27, 2010, the child's Title IV-E case came under review for a federal audit to be held in June 1010.

6. A Permanency Plan Order was signed on January 29, 2009.

7. The Order was sent to the Title IV-E review committee.

8. The committee determined that the Permanency Plan of "Institution" was not a federally acceptable plan.

9. The Order/report indicated that "DHS continues to work with Pathways Community Mental Health and the Manor foundation in an effort to identify permanent placing for the Child. At this time the child remains in a facility that can offer the child services and maintain his safety".

10. The Court did not hold another permanency planning hearing for the child until January 22, 2010.

11. It was determined that the Order from the January 22, 2010, hearing does meet federal requirement for Title IV-E funding.

12. On February 16, 2010, the Child welfare Funding specialist sent the Marquette County Probate Court Judge Anderegg a memorandum explaining the issues in the child's funding.

13. On February 16, 2010, the Department representative also sent the Court notice that the child would be ineligible for Title IV-E funding from January 1, 2009, to December 31, 2010, notifying the court that the child's permanency plan did not meet the federal requirements, because an institution is not a permanency plan for a child.

14. On May 12, 2010, the child's representative filed a request for a hearing to contest the department's negative action.

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.

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.)
- DHS is not in receipt of a valid court order that grants DHS placement and care responsibility; (See FOM 902-2, LEGAL JURISDICTION)
- Specifications in court orders - If a family court orders dual or co-supervision of the case by DHS staff together with court/private agency staff, or, if the court orders specific selection and/or control of the foster care placement or payment of rates not appropriate in the given case or orders Title IV-E payment be made on behalf of a child, then, Title IV-E is to be denied or terminated. (See FOM 902-2, SPECIFICATION IN COURT ORDERS)
- No "contrary to the welfare" judicial determination within the first court order; (See FOM 902-2, "Continuation in the home is contrary to the child's welfare" Determinations)
- No "reasonable efforts to prevent removal" judicial determination within 60 days of removal; (See FOM 902-2, "Reasonable Efforts" Determinations)
- No "reasonable efforts to finalize a permanency plan" every 12 months; (See FOM 902-2, "Reasonable Efforts" Determinations)
- Child not living in an eligible living arrangement. (See FOM 902-2, ELIGIBLE LIVING ARRANGEMENT) (FOM, Item 902-5, page 1)

The SWSS FAJ generated DHS-176, Client Notice, must be sent to the Juvenile Court when Title IV-E is denied or cancelled, except in cases of children committed to the Department of Human Services under Act 150 of P.A. 1974, as amended, or Act 220 of P.A. 1935, as amended. In other words, a DHS-176 is to be sent on all cases in which the court retains jurisdiction and on which the Department of Human Services has made the decision that the case is ineligible for Title IV-E funding, or the Title IV-E funding is to be terminated. The form is to be filled out to indicate that "...assistance under the Title IV-E in Foster Care program has been denied or cancelled because..." (42 USC 608, as amended.)

Notification is to be given to the court, in those cases in which it retains jurisdiction, as it is applying for assistance on behalf of the child. This will assure compliance with the federal regulations governing the Title IV-E program.

The notice given the court must be adequate notice. According to federal regulations, adequate notice is a written notice, sent not later than the date a case action is effected (not pended), which specifies all the following:

- The action being taken by the Department.
- The reason for the action.
- The specific manual item referenced (or regulations) supporting the action being taken.
- An explanation of the right to request a hearing.
- The circumstances under which assistance is continued if a hearing is requested.

The Judge cannot request an administrative hearing for Title IV-E funding denial or cancellation. The court can appoint the child's lawyer-guardian ad litem to request a hearing. The Program Administrative Manual (PAM 600) states:

- "An authorized hearings representative (AHR) is the person who stands in for or represents the client in the hearing process and has the legal rights to do so. This right comes from one of the following sources:
- Written authorization, signed by the client, giving the person authority to act for the client in he hearing process.
- Court appointment as a guardian or conservator.
- The representative's status as legal parent of a minor child.

- The representative's status as attorney at law for the client."

An AHR has no right to a hearing, but rather exercises the client's right. Someone who assists, but does not stand in for or represent the client in the hearing process need not be an AHR. (FOM, 902-5, page 2)

The supervising agency must make reasonable efforts to prevent removal and finalize another permanency plan except under defined circumstances. The child's health and safety must be of paramount concern. (See FOM 722-6, Reasonable Efforts for more information.)

In order to be eligible for title IV-E funding, the court must make two separate reasonable efforts determinations. These determinations must be:

- Explicit and made on a case by case basis.
- Made at a court hearing where the parents and child(ren) have the opportunity to attend the hearing.
- Contained in writing in the court order. It is not enough that efforts were described to the court. The court must actually decide that reasonable efforts were made.

To Prevent Removal

The first determination, "the agency has made reasonable efforts to prevent removal from the home," must be made at a court hearing held within 60 days of the child's removal from his/her home. Title IV-E eligibility cannot begin until the reasonable efforts judicial determination has been obtained.

As a minimally acceptable standard for abuse/neglect wards the court order must contain:

- The child's correct name, and
- A checked box indicating the court has found that reasonable efforts were made to prevent the removal of a child from the home, based on the petition. DHS report and/or testimony.

Title IV-E foster care payments may begin from the first day of placement provided the "reasonable efforts to prevent removal" finding has been made at a court hearing that calendar month.

If the finding is not made in the calendar month of removal, title IV-E eligibility begins the first day of the month in which all eligibility criteria are met, provided that is within the 60 day time frame.

The child's case is ineligible for title IV-E funding for the current foster care episode if:

- The judicial finding is not made within the 60 day time frame;
- The court refuses to make this finding; or
- The court finds that reasonable efforts to prevent removal were not made.

The "reasonable efforts to prevent removal" finding must be made for each placement episode within 60 days of removal, regardless of whether a new petition is filed. See FOM 902, **Financial Determinations** for information on placement episodes.)

The date the order is signed or received in the office is not relevant in terms of meeting the 60 day time frame. A subsequent order (e.g., a nunc pro tunc order) amending the original order cannot be used to establish compliance with this requirement.

For a child removed prior to 03/27/00 - The judicial determination of reasonable efforts to prevent removal does not need to be made within 60 days of removal.

Finalize the Permanency Plan

The second determination, "the agency has made reasonable efforts to finalize the permanency plan," is required within 12 months from the date of removal.

The determination must 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 planned permanent living arrangement.
- Permanent Foster Family Agreement.
- Emancipation by age 19.

This determination must also be made every 12 months as long as the child remains in out-of-home care. (Emphasis added)

This includes children placed in adoptive supervision placements in which the adoption has not been finalized within 12 months. The CY-460 report is sent to DHS agencies and the CY-463 is sent to private agencies who are supervising adoptive placements that have been open for 10 months, 22 months, 34 months, etc.

The adoption placement agency (either DHS or the private agency) must file a motion for a "reasonable efforts permanency planning review hearing" with the court in which the adoption petition was filed. The motion must request a hearing to be held within 12 months of the adoption placement date.

After the permanency planning hearing, the adoption placement agency must send a copy of the PCA 321, "Order of adoption," or the PCA 351, "Order Following Hearing on review of Adoption Placement (Title IV-E Eligibility Compliance)," to the DHS Adoption Subsidy Office as documentation of the judicial review and determination.

The child becomes ineligible for title IV-E funding at the end of the month in which the judicial determination was required to be made, and remains ineligible until the first of the month a determination is made. (Emphasis Added)

The child is **ineligible** for title IV-E funding until an order from a new hearing is issued which contains this finding. (FOM, Item 902-2, page 16-17)

A subsequent order amending the previous order (e.g., a nunc pro tunc order) cannot be used to retroactively establish compliance with this requirement.

The effective date for reinstatement of title IV-E eligibility based on this finding is the first day of the month in which a court order containing the reasonable efforts statement was received.

The 12 month time frame for the next required finding of reasonable efforts to finalize the permanency plan begins with the date the last finding was made.

The court is to conduct a permanency planning hearing within 30 days after there is a judicial determination that reasonable efforts to reunite the child and family are not required. Reasonable efforts to reunify the family must be made in all cases except in those situations listed above. This 30 day hearing requirement does not effect title IV-E eligibility. (FOM, Item 902-2 pages 16-17)

In the instant case, the evidence in the record shows that an Order Following Dispositional Review/Permanency Planning Hearing was signed on November 11, 2008 and that the last permanency planning hearing had been held April 19, 2007. The order was signed by Judge Michael J. Anderegg. (Exhibits #4-6) Additional Orders were signed on August 14, 2008, January 28, 2008, and October 27, 2007. All three Orders indicated that the last Permanency Planning Hearing had been held on April 19, 2007. (Exhibits #7-17)

This Administrative Law Judge finds that the evidence in the record indicates that there was an Order Following dispositional Review/Permanency Planning Hearing which

indicated that reasonable efforts have be en made to finalize the court-approved permanency plan of (e) placement in anot her planned permanent living arrangement, identified as "institutional", due t o the compel ling reasons that the child's special need s can best be met in this placement. The re asonable efforts made to finalize the court-approved permanenc y plan identified above in clude counseling, therapy groups, life skills training, psychiatric services, and educational services.

The petitioner's griev ance cent ers on dis satisfaction with the department's current policy. The petitioner's request is not withi n the scope of authority delegated to this Administrative Law Judge pursuant to a wr itten directive signed by the Department of Human Services Director, which states:

> Administrative Law J udges hav e no aut hority to make decisions on constitutional grou nds, overrule statutes, and overrule promulgated regulatio ns 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 establis hed by the necessar y 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 received T itle I V-E funding because the permanency plan in dicated that child should have a permanency plan as "institutional". "Institutional " plac ement of a child is not one of the appropriate permanency plan placements listed in policy.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, dec ides that the D epartment did dec ided by the necessary competent, material and subst antial evidence on t hat record that it was acting in accor dance wit h Department policy and did appropriately det ermine that the child did no longer meet the eligibility standards for Title IV-E eligib ility because the permanency plan Order listed "Institutional" as the permanency plan, and "Institutional" is not one of the listed appropriate placements in Department policy.

Accordingly, the Department's decision is AFFIRMED.

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

Date Signed: February 24, 2011

Date Mailed: February 24, 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/alc

cc: [redacted]