

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201051449
Issue No: 6033
Case No: [REDACTED]
Hearing Date: December 2, 2010
Alpena 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 December 2, 2010. Claimant is a minor and was represented by the Guardian Ad Litem (GAL)—[REDACTED] on behalf of the 26th Circuit Court, Family Division—Alpena County.

ISSUE

Does the undersigned Administrative Law Judge have equitable powers to apply the theory of detrimental reliance where the Department of Human Services (DHS) erred in making a Title IV-E funding determination?

FINDINGS OF FACT

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

- 1, On December 4, 2008, claimant minor child was removed from her mother's home by a 26th Judicial Circuit Court for Alpena County and placed by order of the court at [REDACTED] in [REDACTED]
2. The DHS is requesting reimbursement for Title IV-E funding from December 4, 2008 until March 18, 2010 when the minor child returned to the home.
3. Prior to the [REDACTED] placement and after, claimant's foster care was being paid by Title IV-E funding.
4. At the review hearing, the DHS foster care specialist recommended placement and completed paperwork indicating that the minor was and continued to be Title IV-E eligible.

5. On January 26, 2010, the case was reviewed as part of a Title IV-E reading project in preparation for a 2010 audit. The DHS determined from its review that the Title IV-E funding was in error and that the DHS County Foster Care Specialist (FCS) who testified at the review hearing as well as completed necessary paperwork made in error in determining Title IV-E funding.
6. On March 15, 2010, the DHS issued a Notice of Case Action (DHS-176) informing the GAL that payment for the minor by Title IV-E funds was being cancelled/denied because:

The court's removal order does not contain a statement with case specific documentation that it is contrary to the child's welfare to remain in the home. No contrary based on any behavior by the custodial parent. Juvenile justice case. Exhibit 1.
7. On April 3, 2010, the DHS received a timely hearing request. The department testified that the funding was continued pending the outcome of the hearing.
8. FOM 902-2 requires where a minor is removed by court order for juvenile justice wards that the finding by the court must be based on the parents' actions on not the youth's behavior. Policy states: "Evidence that only references the youth's behavior does not meet this requirement."
9. The Initial Determination of Appropriate Foster Care Funding Source Report completed by the department witness and foster care specialist on December 22, 2008 states that the minor child is eligible for continuing Title IV-E payments.
10. The department stipulated that the FCS who testified at the court hearing, was a sworn witness, and completed the department paperwork erred.
11. The court relied on the DHS Alpena County Foster Care Specialist's testimony and instructions in the Initial Determination of Appropriate Foster Care Funding Source Report.

CONCLUSIONS OF LAW

TITLE IV-E FUNDING DETERMINATIONS

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.)
- Voluntarily released children may be eligible for title IV-E funding if there is a court order terminating parental rights and making the State Agency responsible for the child's placement and care and if all other eligibility requirements are met.
- Secondly released children cannot be title IV-E eligible. A secondary release is defined as: a release of a child to DHS by a private child placing agency in which the child was previously released or committed to the private child placing agency. Upon a secondary release, the child becomes a state ward.
- Delinquent youth committed to the department under Act 150 by adult (circuit/recorder's) courts are not eligible for title IV-E funding.
- Title IV-E eligibility ends when a child is placed back in his/her own home or with a legal guardian. A new eligibility determination must be completed for each new placement episode.

TITLE IV-E ELIGIBILITY BEGIN DATE

Title IV-E foster care payments may begin from the first day of placement in the month in which all eligibility criteria are met. Eligibility criteria which must be met includes:

- Required judicial determinations of reasonable efforts” and contrary to the welfare” on a signed court order (see FOM 902-2).
- AFDC eligibility, including establishment of financial need and deprivation (see FOM 902-2).

- Living with and removed from same AFDC specified relative (see FOM 902-2).
- Age. A child must be under the age of 18, unless enrolled full-time in high school or an equivalent vocational or technical course and can reasonably be expected to complete the course prior to the nineteenth birthday (see FOM 902-3).
- Legal jurisdiction, by way of a signed court order from a family or tribal Court order that gives DHS Placement and care responsibilities (see FOM 902-2).

LEGAL JURISDICTION

A court order must exist which makes the Department of Human Services responsible for the child's placement and care.

- Court orders do not have to contain the exact words “placement and care;” substitute wording such as “care and supervision,” “placement and supervision” or “placed in foster care or with a suitable relative,” may be used without affecting title IV-E funding eligibility.
- A court order giving the DHS responsibility for placement and care acts as the application for title IV-E. For youth released under 1974 PA 296, the order terminating rights meets this requirement as long as the DHS is given responsibility for placement and care.
- Jurisdiction of the eligible child must have been taken under either the neglect or delinquency section of the Juvenile Code (but not under any criminal code or proceedings).
- Orders for state wards must include the words: “committed to the Michigan Department of Human Services.” The public act under which the youth is committed (i.e., the Youth Rehabilitation Services Act, 1974 PA 150 or the Michigan Children’s Institute (MCI) Act, 1935 PA 220) must be identified on the commitment order. Orders for temporary or permanent court wards must contain the words: “placed with the Michigan Department of Human Services for placement and care.” See MCL 400.55(H).
- The department cannot assume financial responsibility for a youth until it is in receipt of a court order delegating legal authority for a youth to the department. Therefore, the intake and acceptance procedures outlined in See FOM 722-1, COURT ORDERED PLACEMENTS and JJ2 Item 230, SERVICE PLANS, must be followed for any youth placed with the department for placement and care. Title IV-E funding must not be

authorized prior to the acceptance date, which is the day the court order is signed by the judge/ referee.

- Orders issued by tribal courts for Native American children have the same validity as court orders. These orders must make the department responsible for placement and care. Orders which stipulate that placement choices be limited to foster homes on the reservation are acceptable. Family foster care services for these children must be purchased from a Michigan Indian child welfare agency with which the department has a contract.

Specification In Court Orders

Orders which contain stipulations for dual or co-supervision by a court or another agency do not meet the federal requirements. Therefore, the youth is not eligible for title IV-E funding as long as that order remains in effect.

A “best practice” continues to be that the court orders indicate that any child be placed with DHS for care and supervision. The fact that a court order approves of, acknowledges, or agrees to, the DHS placement decision on the court order does not negate title IV-E eligibility for that youth.

Example: The DHS worker’s report to the court (USP) recommends “ACE child placing agency.” The court then “affirms” the child’s placement at the “ACE child placing agency.” The court has not assumed placement and care responsibilities. Therefore, the child could be title IV-E eligible and title IV-E funded. When the court orders a placement without considering recommendations of all parties, the child’s placement causes ineligibility for title IV-E funding as long as that court order remains in effect. If the court orders a placement not recommended by DHS, it must document on the order the reason for not accepting the DHS recommendation.

Note: Court orders may “recommend” a placement or “approve” the supervising agency’s placement selection without affecting title IV-E eligibility.

REQUIRED JUDICIAL FINDINGS

In order for a child to be title IV-E eligible the court order **must contain documentation of the evidence used by the court to make judicial findings.** Court orders may contain checkboxes for the finding, but the determinations must be explicit and made on a case by case basis. The order cannot be amended by a subsequent order, e.g., a nunc pro tunc order, which amends the original order to meet eligibility.

Other criteria include:

- Orders may reference the petition, court report or other reports available to the court as documentation of the evidence used for these findings. (See “Continuation In The Home Is Contrary To The Welfare” determination below for restrictions on references to the petition.) Copies of the petition or reports, not already contained within the case file, must be attached to the court order and contained within the child’s case file. (The court does not need to attach the ISP/USP or court report that was submitted by the supervising agency to the court order.)
- If a worker’s testimony is used to support the judicial findings, the court must either list the evidence used within the court order or attach a copy of the transcript to the court order. The entire transcript does not need to be attached to the court order.
- The court order may not reference state law for these determinations.

“Continuation In The Home Is Contrary To The Child’s Welfare” Determination

Regulations require the court to make a “contrary to the welfare” or “best interest” determination IN THE FIRST COURT ORDER REMOVING THE CHILD FROM HIS/HER HOME for title IV-E eligibility. The first court order is defined as the emergency removal order (e.g., JC 05) or the preliminary hearing order (e.g., JC 10 or JC 11a) if there was no emergency removal order.

The “contrary to the welfare” determination must also be made within the first court order for each new placement episode, regardless of whether a new petition is filed or not. (See FOM 902, **Financial Determinations** for information on placement episodes.)

The child is **ineligible for the current placement episode** if the finding is not made in the first order for **each** placement episode. The determination must be explicit and made on a case by case basis.

For abuse/neglect wards, the court order may reference the petition to document this finding. This is not acceptable for juvenile justice wards because the petition details the youth’s criminal behavior. Other juvenile justice criteria include:

- **The finding must be based upon the parents’ actions, not the youth’s behavior. Evidence that only references the youth’s behavior does not meet this requirement.**
- References to “removal is in society’s best interest” do not meet this requirement for juvenile justice wards.

- When the court finds “contrary to the welfare” and the child is not removed from the removal home on the date of the finding, the child is not title IV-E eligible.

In the instant case, department is requesting reimbursement for Title IV-E funding from December 4, 2008 until March 18, 2010 when the minor child returned to the home.

Policy specifically states under FOM 902-2 that for abuse and neglect wards, the finding of the court must be based upon the parents’ actions and not the youth’s behavior. The policy specifically states: “Evidence that only references the youth’s behavior does not meet this requirement.” FOM 902-2.

The evidence on the record indicates that the child was removed due to the child’s behavior—staying out all night, violation of the tether arrangements, assaultive behavior at school, assaultive and abusive behavior towards her mother. See 26th Judicial Circuit Review Hearing Transcript. Exhibit 3. Moreover, the placement order specifically states:

...Whereas it is contrary to the welfare of the juvenile to return to the home, a placement would be in the best interest of the juvenile, due to the assaultive behavior in the home and at school, and...Exhibit 4.

Clearly, the evidence shows that the determination was based upon the youth’s behavior. There does not appear to be any other language or discussion that it is based upon the mother’s and/or parents’ actions.

In this case, this Administrative Law Judge finds that the evidence clearly exhibits that Title IV-E funding was not correct as 902-2 requires the finding to be based upon the youth’s behavior.

It is noted that the department stipulated that its employee made an error. Specifically, the Foster Care Specialist did not follow his own policy in assisting the court in making its finding. As the court relied on the department’s representations as well as the findings by the worker which did not comply with the findings requirements in policy, the GAL argued detrimental reliance. The theory of detrimental reliance is an equitable device to make fair that which was inequitable. However, Administrative Law Judges have no equitable powers. Specifically, pursuant to the Delegation of Hearing Authority issued by M. Corrigan:

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. February 22, 2011, Maura D. Corrigan, Director Department of Human Services.

Furthermore, 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).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's proposed actions must be UPHELD.

Accordingly, the department's proposed denial of Title IV-E funding for the time period from December 4, 2008 through March 18, 2010 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

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