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

IN THE MATTER OF:

No: 2010-33880
No: 6033
No:
No:

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

ISSUE

Whether the Department of Human Services (the Department) properly 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 , DOB hereinafter known as the Child.

2. The Child was at all times relevant to this hearing a ward of th e State of Michigan.

3. The child was housed at the .

4. On August 12, 2009, the Child Welfare Funding specialist received an e-mail from Lansing, indicating that the Manor, Main Campus was put on a provisional license effective August 3, 2009.

5. The department caseworker determined that the child was no longer eligible for Title IV-E funding because per Policy CFF 902-2, Title IV-E funding cannot be paid to a foster family or child care institution that has a provisional license as a result of a licensing violation.

6. On August 26, 2009, the department caseworker completed a funding redetermination to reflect the change in funding status.

7. On August 26, 2009, the department caseworker sent the Marquette County Probate Court as notification of the change.

8. On September 17, 2009, a written request for an administrative hearing was received by the Marquette County Department of Human Services.

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 child must currently be in foster care in a licensed foster home, licensed private child caring institution, or a DHS child care treatment facility of 25 beds or less. (See FOM 721 for a definition of foster care.)

- Michigan can utilize title IV-E funds for placement with **for profit** private child caring institutions (residential care).
- If a court orders dual or co-supervision of the child by DHS staff and court or private agency staff, the child is not eligible for title IV-E funds. This ineligibility continues as long as that court order is in effect.

The effective date for reinstatement of title IV-E eligibility based on this requirement is the first day of the month in which a court order deleting the placement and/or

supervision specifications was received. (See Placement Specifications above for more information.)

Children of minor parents who are placed in the same foster care setting as the parent(s) are **not** eligible for title IV-E funding. Even though the court may have taken jurisdiction, these children have **not** been physically removed from the home of a parent. Foster care payments for these children must be included in the parent's foster care payment authorization as a ward child.

Relatives/unrelated caregiver homes (e.g., aunt, uncle, niece, nephew, brother, sister, grandparent or first cousin) must be licensed as foster family homes for title IV-E funding to be paid.

> **If a child who is otherwise eligible for title IV-E has been placed in an unlicensed home, title IV-E funding cannot be used 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 Child Care fund payments were issued for the same time period. (emphasis added)**
>
> Title IV-E payments cannot be authorized for any period of time covered by FIP or County Child Care Fund payments during completion of the licensing process.
>
> An administrative rate cannot be paid to the child placing agency using title IV-E funds when a child is placed with an unlicensed relative.
>
> State wards living with relatives are eligible to receive State Ward Board and Care payments (See FOM 902-8). Local Child Care Funds may also be used to fund these placements for temporary court wards according to county policy (FOM 902-7).

Title IV-E funds cannot be paid to a foster family home or child caring institution with a provisional license because of a licensing violation. This applies even though a corrective action plan may have been approved. Newly licensed foster family homes with the original provisional license are not included in this definition.

An administrative rate to a child placing agency cannot be paid from title IV-E funds for a ward placed in a foster home with a provisional license for a licensing violation. Payment must be made from County Child Care funds for temporary court wards and from State Ward Board and Care funds for state wards.

Independent living placements and private agency supervised independent living situations are not title IV-E eligible. An administrative rate cannot be paid from title IV-E

funds to a private child placing agency that is supervising a youth in an independent living arrangement.

Detention facilities, training schools, county juvenile justice facilities, youth camps or other facilities operated primarily for the detention of children who are determined to be delinquent are not eligible for title IV-E funding. These facilities are not included within the definition of "foster care". (See FOM 721 for a definition of foster care.)

Any residential facility that is classified as open medium, medium, or high security is not title IV-E eligible.

If a child is placed with a Native American family living on a reservation, that family must be licensed or approved by the tribal council based on tribal criteria. All services for children living on a reservation are to be purchased from a Michigan Indian child placing agency with which the department has a contract. FOM, Item 902-2, pages 17-19. (Former CFF, Item 902-2, pages 17-19)

The petitioner's grievance centers on dissatisfaction with the department's current policy. The petitioner's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

> Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, and overrule promulgated regulations 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 established by the necessary 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 Title IV-E funding because there was no permanency plan hearing conducted since April 19, 2007 and a permanency plan hearing must be conducted every twelve months in accordance with Department policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department did decided by the necessary competent, material and substantial evidence on that record that it was acting in accordance with Department policy and did appropriately determine that the child did no longer meet the eligibility standards for Title IV-E eligibility because the foster care facility where the

child was housed was no lon ger properly lic ensed by the Department of Human Services in accordance with 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 22, 2010_______

Date Mailed:_ February 22, 2010________

NOTICE: Administrative Hearings may or der a rehearing or reconsideration on either its own motion or at t he request of a party wit hin 30 days of the ma iling date of this Decision and Order. Administrative Hear ings will not orde r a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 Decis ion and Order or, if a ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LYL/alc

cc: