

- (5) On April 18, 2011, petitioner's representative filed a request for a hearing to contest the department's negative action.
- (6) The hearing was held June 22, 2011.

CONCLUSIONS OF LAW

The regulations governing the hearing and a 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).

In the instant case, the facts are not at issue. The child was eligible for Title IV-E funding upon his removal from the parental home in 2003. The child turned 18 on March 20, 2011. [REDACTED] the school that the child attends indicates in a letter dated April 21, 2011, that it is unlikely that the child will graduate by March 2011 because he had only completed nine credits at the time the letter was written. (Department Exhibit #D)

Current Department policy dictates that Title IV-E eligibility ends at age 18. An exception to this eligibility requirement may be granted if (See Program Eligibility Manual 240):

- The child is a full-time student in a high school or in the equivalent level of vocational or technical training, and

- Can be reasonably expected to complete high school or vocational or technical training before reaching age 19.

If both conditions are met, the worker needs to open a payment. (Refer to FOM 903-8).

The effective date of the payment is the last day of the month of the ward's 18th birthday. Eligibility continues as long as the wards stay in school/training and ends the last day of the month in which the ward graduates (example: graduation is June 7, the end date is June 30, 200_).

If youth is expected to graduate after age 19, Title IV-E eligibility ends at age 18.

Title IV-E funding is not available for other youth age 18 or older. However, wardship for both state wards and court wards may continue up to age 19. No later than fourteen (14) days before the youth's 18th birthday the following action is to be taken:

State Wards -

- Complete a Redetermination of funding source.
- Change the funding source code within SWSS FAJ Placement module with an effective date of the youth's birthday, and

If appropriate, authorize payments.

Court Wards -

- Close the payment within SWSS FAJ on the youth's 18th birthday.
- Refer the case for funding through the County Child Care Fund. (FOM, Item 902-3)

Petitioner's representative argues that a child who was a product of divorce would continue to receive child support until they graduated from high school or attained the age of 19½. The child, in this case may not graduate by his 19th birthday because he has had a series of foster home changes and has been in residential placement, with no parental involvement. He is doing much better, and has become interested in finishing high school and attending culinary arts school, and that to stop his Title IV-E funding before he completes high school will penalize the child and jeopardize his chances of completing high school.

The allegation that the child is being penalized through no fault of his own and therefore, the department's decision must not stand because it is unfair is an equitable argument to excuse the child from the department policy requirements.

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant'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 no longer eligible to receive Title IV-E funding because cancelled because the child turned 18 and was not expected to graduate high school by his 19th birthday.

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 child no longer met the eligibility standards for Title IV-E eligibility because he turned 18 and was not expected to graduate before age 19.

Accordingly, the Department's decision is AFFIRMED.

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

Date Signed: June 22, 2011

Date Mailed: June 22, 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.

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