

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

**IN THE MATTER OF:**

[REDACTED]  
[REDACTED] Hearing  
[REDACTED]

Reg. No. 2012-46280  
Issue No. 6033  
Case No. [REDACTED]  
Date: December 20, 2012  
Menominee County DHS

**ADMINISTRATIVE LAW JUDGE:** Landis. Y. Lain

**AMENDED 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 (Petitioner's) request for a hearing. After due notice a telephone hearing was held on December 20, 2012. Petitioner was represented at the hearing by [REDACTED] (GAL) ([REDACTED]). Appearing on behalf of petitioner was Honorable [REDACTED]. Appearing on behalf of the department were Assistant Attorney General [REDACTED], [REDACTED] Manager, [REDACTED] DHS, funding Specialist, [REDACTED] Child Protective Service Worker, [REDACTED] Child Protective Services Supervisor.

**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. The minor child, A. L. DOB 12/10/2004, will be referred to as "the child".
2. On January 26, 2012, a petition was filed requesting removal and placement of the child.
3. On January 26, 2012 Honorable Judge [REDACTED] wrote an Order to Place Pending Preliminary Hearing.
4. The CPS worker was unaware of the Order and did not pick up the child or remove the child from the parental home.

5. On January 27, 2012, a court hearing was held and [REDACTED] [REDACTED] found it contrary to the welfare of the children to remain in the mother's care. The Order was signed by the Judge's secretary.
6. The court determined that the child was to be taken into temporary family custody of the court and placed into foster care.
7. On January 27, 2012, the child was placed into Licensed Foster Care.
8. The department determined that the Order, signed on January 27, 2012, by the Judge's secretary was incorrectly issued, as it was not signed by the Judge pursuant to MCR 2.602(A)(1).
9. On February 14, 2012, the Amended Order signed by [REDACTED] [REDACTED] was issued.
10. The Federal Compliance office determined that the order could not be amended to gain federal Title IV-E funding.
11. On February 15, 2012, a DHS 176 Notice of Case Action was sent to Menominee County GAL advising of the denial of benefits.
12. On March 20, 2012, an amended DHS 176 was sent to the GAL and Judge Hupy explaining the reason for the denial.
13. On May 9, 2012, the Menominee County DHS received the hearing request contesting the department's negative action.

### **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, 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 90 2-2, 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 that 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, pages 8-9

Title IV-E funding must not be authorized prior to the acceptance date. 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. Once the court order is received, the acceptance date is the date that the court order is signed by the judge or referee; see FOM 722-1, Court Ordered Placements, and JJ2 230, Service Plans. FOM, 902, pages 3-4.

Per department policy, the contrary to the welfare determination must be made within the first court order for each new placement episode. The child is ineligible for the current placement episode if the finding is not made in the first order of each placement episode. The determination must be explicit. FOM 902, page 16. The Order to Place Pending Preliminary Hearing, signed January 26, 2012 by Family Court Judge [REDACTED] does indicate that it is contrary to the welfare of the child to remain in the home and that reasonable efforts were made to prevent removal. Thus, the Menominee Family court acted appropriately in this case. (Exhibit 2, page 9- 10) The department’s determination must be reversed.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not appropriately determine that the child did not meet the eligibility standards for Title IV-E eligibility based upon its determination that the removal order is not signed by the judge.

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Accordingly, the Department's decision is **REVERSED. The Department to make a determination of the child's eligibility for Title IVE-E fundi ng in accordance w ith department policy. So Ordered.**

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

Date Signed: March 4, 2013

Date Mailed: March 4, 2013

**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/las

cc:

