

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

IN THE MATTER OF:

[REDACTED]
[REDACTED] Hearing
[REDACTED] Van

Case

Reg. No. 2012-65985
Issue No. 6033
No. [REDACTED]
Date: January 20, 2013
Buren 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; MSA 16.437 upon the Claimant (Petitioner's) request for a hearing. After due notice a telephone hearing was held on January 20, 2012. Petitioner was represented at the hearing by [REDACTED] [REDACTED] [REDACTED]

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. There is one minor child: DOB February 10, 2012, hereinafter referred to as 'the child'.
2. On February 22, 2012, a petition was filed requesting placement.
3. On March 23, 2012 an emergency preliminary hearing was held before [REDACTED] in the [REDACTED] Case number [REDACTED]
4. The court determined that the child was to be taken into temporary family custody of the court and placed into foster care - preferably relative care. The child's mother was to be allowed to remain in the grandparents' home.
5. On June 26, 2012, the department caseworker sent notice that Title IV-E funding was denied because there was no removal due to the mother being allowed to remain in the house with the child.

6. On July 19, 2012, the GAL filed a request for a hearing to contest the denial of Title IV-E funding.

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 902-1, 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.

The child can be considered removed when a constructive removal (non-physical removal) takes place. A constructive removal occurs when **all** of the following apply:

- The child resides with a non-parent interim caretaker who is **not** the legal custodian or guardian of the child.
- The child is court-ordered into the custody of the department.
- The child remains in the home of the caretaker who serves as the out-of-home care provider to the child after the department is awarded custody.
- The child lived with a parent or stepparent within the past six months prior to court jurisdiction. FOM 902, pages 8-9

In the instant case, the GAL argues that the child was removed from the mother's custody and the mother was allowed to stay in the relative's home and that this is a constructive removal. In this case, the child was residing in the home with her mother and grandparents at all times relevant to this case. The transcript from the 24 hour Emergency Preliminary Hearing before [REDACTED], Juvenile Court Referee states:

"The mother shall continue to be allowed to live with the baby and grandparents and parents as long as you behave yourself and aren't a problem. What we're doing and what I just did goes against state policy. But I – we can do that as long as you cooperate."

The Order after Preliminary Hearing, signed by the court March 23, 2012, states in pertinent part:

- (24) The child was ordered to be placed with the department of Human Services for care and supervision.
- (30) Other:
1. The minor is to continue to remain in the temporary custody of the court; under the care and supervision of DHS; S.W. is the caseworker.
 2. The court recommends the minor be placed in foster care/relative care if possible.
 3. The court supports the minor's continued placement with maternal grandparents.

In the alternative, the GAL argues that the department should allow the child to be eligible for Title IV-E based upon the exception which is listed in Department policy. Pertinent policy states:

The federal regulations contain an exception to allow a child to be title IV-E eligible when the court orders a placement if **all** of the following stipulations are followed:

- The court must provide notice for and hold a hearing to determine the best placement for the child.

- The court must hear relevant testimony and work with all parties, including DHS, to make an appropriate placement decision.
- The court must enter a detailed written order that explains how the court considered the department's recommendation and why the court directed a different placement.
- The court must provide a transcript of the court hearing if the order is not detailed and clear.
- All other title IV-E eligibility requirements must be satisfied in conjunction with the stipulations above.

Note: Best practice is for each court order to affirm the child's placement 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. FOM, 902, pages 14-15.

Since the child remained in the home with her parent, there was no removal. The department's decision must be upheld. In order for a child to be eligible for Title IV-E funding state policy must be followed. The policy exception does not apply.

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 did not meet the eligibility standards for Title IV-E eligibility.

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 26, 2013

Date Mailed: February 27, 2013

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.

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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/las

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