

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

IN THE MATTER OF:

[REDACTED]
[REDACTED] Case
[REDACTED]
Iron

Reg. No. 2013-33170;
2013-33173;
2013-33182
Issue No. 6033
No. [REDACTED]
Hearing Date: April 4, 2013
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 April 4, 2013. Petitioner's were represented at the hearing by [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Appearing on behalf of the department were Assistant Attorney General [REDACTED] [REDACTED] [REDACTED] Manager, [REDACTED] [REDACTED] DHS Funding Specialist, [REDACTED] [REDACTED] Director of Iron County DHS, and [REDACTED] [REDACTED] Foster Care Worker. This case, **Register #2013-33170** ([REDACTED] [REDACTED]) is consolidated with **Register # 2013-33173** ([REDACTED] [REDACTED]) and **Register # 2013-33182** ([REDACTED] [REDACTED]) as each case arose out of the same fact situation and the same incident of removal from parental care.

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 three minor children, [REDACTED] will be referred to as "the children".
2. On January 30, 2013, the children were removed from the parental home [REDACTED] or 'the father').

3. On January 31, 2013 the Child Welfare Specialist received a referral to complete an initial funding determination for the children.
4. The children's father (██████) was employed in January 2013.
5. The department caseworker received verification of the father's income from his former employer for the month of January 2013 along with his earnings for the past year.
6. The department caseworker determined that the children's father received gross income in the amount of \$ ██████ for January 2013, which exceeded the former AFDC income limits.
7. On February 8, 2013, the department caseworker sent the Guardian Ad Litem notice of case action that the children would not be eligible to receive Title IV-E funding because the family income exceeded the former AFDC program standards. (Department Exhibit page 38)
8. On March 1, 2013, the guardian Ad Litem filed a request for a hearing on behalf of the children to contest the department's negative action.
9. The Title IV-E AFDC Standard of Needs Chart from July 1996 indicates that the income limit for a group size of four persons in the children's shelter area was \$ ██████ (ALJ Exhibit #1).

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).

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 may begin on the first day of placement in the month in which all eligibility criteria are met. Eligibility criteria which must be met include:

- Required judicial determinations of reasonable efforts and contrary to the welfare on a signed court order.
- **AFDC eligibility, including establishment of financial need and deprivation.**
- Living with and removed from the same specified relative.
- 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 their nineteenth birthday. FOM 902, page 3. Emphasis added.

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) program 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. FOM 902, page 4.

The child must meet all eligibility requirements for the former AFDC program, except that of living with an acceptable relative, in the month in which the court action that led to the child's removal occurred. A court action is defined as an order that removes the child from his/her home.

The eligibility requirements include age, deprivation, and need. A reasonable effort to reconstruct the elements of eligibility at the time the court action occurred which led to removal is expected.

The following children are not former AFDC eligible as there are no facts upon which to base former AFDC program eligibility:

- Children, whose parents or other relatives cannot be identified.
- Children whose parents will not cooperate in the eligibility determination process and DHS has no income or asset information on record. FOM 902, page 7.

The removal household determines whose income to use in determining the eligibility group. The same members used to determine the eligibility group are used in determining the group size. The child's income and assets are always used in determinations. The following are examples:

- For a child removed from the parent(s).
 - The income and assets of the **parent(s)**, stepparent(s), sibling(s) and stepsibling(s) under age 18 (or are age 18 and attending school and are expected to graduate by age 19), must be considered in the initial eligibility determination.
 - **Do not include the income and assets of the non-parent adult, putative father or living together partner. They are not counted in the group size. FOM 902, page 11.**

The SWSS FAJ funding determination process automatically applies the following income and asset deductions:

- Income disregards. Additional income deductions are applied if the parent whose income was a part of the initial determination also received FIP in the last four months.
- Child care expenses. Enter the amount paid for the actual child care expenses, not the DHS allowable amount.
- Child support. Enter the amount of child support paid, not the ordered amount, by the parent for a child who is not living within the removal home.
- Property exemptions. \$10,000 in property is exempted. FOM 902, page 12-13.

In the instant case, petitioner's representative argues that using the father's gross income for the determination of Title IV-E funding is inappropriate and that one of his checks, received on January 3, 2013 was actually for hours worked in December, 2012 and should not have been counted. In addition, the representative states that some of the income received by the children's father in January, 2013 was not actually earned income, but income received after he quit the job when he got out of jail and therefore could not be counted as earned income. The representative did concede that the

children's father did receive \$ [REDACTED] in net income for January, 2013. Even without the January 3, 2013 check of \$ [REDACTED] the children's father received \$ [REDACTED] in net income. \$ [REDACTED] in net income for the month exceeds the \$ [REDACTED] Title IV-E AFDC Standard of Needs for July 16, 1996. Thus, the family income exceeded the AFDC Standard of Needs effective July 16, 1996 and did not have income eligibility on the date of the children's removal from the family/parental home. Under the circumstances, the department has established by the necessary competent, material and substantial evidence on the record that it was acting in accordance with department policy when it denied eligibility for Title IV-E funding for the children.

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 family income exceeded Title IV-E AFDC Standard of Needs for July 16, 1996.

Accordingly, the Department's decision is **AFFIRMED**.

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

Date Signed: April 5, 2013
Date Mailed: April 8, 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.

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

cc:

[REDACTED]