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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-001509
Issue No.: 6033
Case No.: [redacted]
Hearing Date: June 3, 2014
County: Delta

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a hearing was commenced on June 3, 2014, from Lansing, Michigan. Participants on behalf of the Petitioner included authorized hearings representative [redacted].

The Department of Human Services (Department) was represented by [redacted], Manager of Federal Compliance Office, [redacted], Child Welfare Funding Specialist and [redacted] Foster Care 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 present appeal is from the Department of Human Services denial of Title IV-E foster care funding.

2. On August 2, 2013, petitioner, a [redacted], (hereinafter referred to as the [redacted] was removed from the care and custody of her [redacted]

3. On August 2, 2013, the [redacted] filed a Petition for Child Protection with the [redacted]. (State Exhibit 7, pages 43 – 45).

4. On August 5, 2013, the court entered an order confirming petitioner's removal from his [redacted]. (State Exhibit 7, pages 41 – 42).

5. On August 14, 2013, the child welfare funding specialist received petitioner's petition and court orders from the foster care worker with a request to complete an initial funding determination.

6. Initially, the child welfare funding specialist determined that the child was Title IV-E eligible and that her placement was Title IV-E reimbursable.

7. On April 23, 2014, the federal compliance division replied by email indicating that the court order did not meet the requirements for Title IV-E as the written order with the contrary to welfare funding was not obtained prior to removal.

8. On April 24, 2014, the Department sent notice of case action stating that the court order does not contain a finding with case specific documentation that it is contrary to the child's [redacted] (State's Exhibit 1, page 3).

9. On April 24, 2014, a meeting was held with the [redacted] to discuss the need for a [redacted] with the [redacted] to comply with Title IV-E policy.

10. On April 29, 2014, the Department of Human Services received a request for hearing by the tribal prosecutor to contest the Department's negative action.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

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). Claimants 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). (FOM, Item 901-6).

Title IV-E is a funding source which requires all applicable federal regulations be followed for its use. Other funding sources such as state ward board and care, county child care funds, and limited term and emergency foster care funding are listed in FOM 901-8.

A determination is to be made regarding the appropriate funding source for out-of-home placements at the time the youth is referred for care and supervision by DHS regardless of actual placement; see FOM 722-01, Court Ordered Placements. FOM, Item 902, page 1.

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 funding must be denied or cancelled based upon the following factors:

- Child is not a [redacted]; see FOM 902, Funding Determinations and Title IV-E Eligibility, US Citizenship/Qualified Alien Status.

- The home from which the child was removed does not meet the former AFDC program's deprivation requirements; see FOM 902, Funding Determinations and Title IV-E Eligibility, Former AFDC Program Eligibility Requirements.

- The family's income exceeds the former AFDC program's standards; see FOM 902, Funding Determinations and Title IV-E Eligibility, AFDC Income and Assets.

- The family has assets exceeding the former AFDC program's standards; see FOM 902, Funding Determinations and Title IV-E Eligibility, AFDC Income and Assets.

- The child's income exceeds the cost of care; see FOM 902, Funding Determinations and Title IV-E Eligibility, AFDC Income and Assets.

- The child's [redacted]; see FOM 902, Funding Determinations and Title IV-E Eligibility, AFDC Income and Assets.

- The court order does not contain a finding with case specific documentation that it is contrary to the child's [redacted] see FOM 902, Funding Determinations and Title IV-E Eligibility, Continuation In The Home Is Contrary To The Child's Welfare Determination.

- There was no hearing within 60 days of the child's removal that resulted in a court order with case specific documentation finding that reasonable efforts to prevent removal had been made; see FOM 902, Funding Determinations and Title IV-E Eligibility, Reasonable Efforts Determinations.

- **There is no valid court order that grants DHS sole placement and care responsibility**; see FOM 902, Funding Determinations and Title IV-E Eligibility, Legal Jurisdiction. (emphasis added).

- There is no court order resulting from a hearing held within the past 12 months that contains a finding with case specific documentation that reasonable efforts have been made to finalize a federally recognized permanency plan; see FOM 902, Funding

Determinations and Title IV-E Eligibility, Reasonable Efforts Determinations.

- The placement is not eligible for Title IV-E funding; see FOM 902, Funding Determinations and Title IV-E Eligibility, Eligible Living Arrangement.
- The court order specifies any of the following; see FOM 902-02, Funding Determinations and Title IV-E Eligibility, Legal Jurisdiction:
  - .. A family court orders dual or co-supervision of the case by DHS staff together with court/private agency staff.
  - .. The court orders specific selection of and/or control of the foster care placement.
  - .. The court orders payment of rates not appropriate in the given case.
  - .. The court orders Title IV-E payment be made.
- The child is [redacted] and not expected to complete high school by age [redacted] see FOM 902, Funding Determinations and Title IV-E Eligibility, Title IV-E Age Requirements and Exceptions. (FOM, Item 902-5).

Pertinent Department policy dictates as follows:

The SWSS FAJ generated DHS-176, Claimant Notice, must be sent to the Family Division of Circuit Court and the Lawyer-Guardian Ad Litem (L-GAL) when Title IV-E is denied or cancelled, except in cases of children committed to DHS under Act 296 (Adoption Voluntary Release). 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 Title IV-E funding is to be denied or cancelled. The DHS-176 must be completed accurately to reflect all of the reasons the child is not eligible for Title IV-E benefits so that **all** fair hearings requirements are met. (**Failure to document all reasons for ineligibility may result in the Department's denial or cancellation being overturned).**

If the child is not eligible due to judicial findings and there is no deprivation factor, both items must be noted as the reasons for denial or cancellation so both matters can be presented in the hearing.

Title IV-E funds cannot be used once it has been determined that the child is not Title IV-E eligible. Foster care maintenance and administrative payments must be made from a fund source other than Title IV-E based on the child's legal status.

For cases where payments have been made from Title IV-E funds in error, payment reconciliation should **not** be pursued until the time period for an appeal, 90 calendar days, has elapsed. The reason for this delay is to prevent further reconciliation if more information may be discovered through the appeal process that would enable the child to be Title IV-E eligible.

If Title IV-E funding is cancelled, an appeal is not filed and the 90 calendar day time period has elapsed, payment reconciliation must be completed for any payments made from Title IV-E for the entire period of ineligibility. Title IV-E funds are required to be returned to the federal government from the start of any period of ineligibility if Title IV-E payments were made and the child is later determined not Title IV-E eligible. FOM, Item 902-05, pages 2-3.

An Indian child under jurisdiction of a [redacted] is funded in the same manner as any other Michigan child in foster care or in accordance with any agreement (e.g., Tribal/state Title IV-E agreement) DHS may have with an Indian tribe. NAA 300, page 1.

FOM 902 states in pertinent part:

Federal regulations require the court to make a contrary to the welfare of best interest determination in the first court order removing the child from his/her home for Title IV-E eligibility. **The court order must coincide with the removal of the child**. The contrary to the welfare determination must also be made within the first court order for each new placement episode, regardless of whether a new petition is filed or not. The child is ineligible for the current placement episode if the finding is not made in the first order for each placement episode. The determination must be explicit and made on a case-by-case basis.

Federal regulations require the court to make a contrary to the welfare or best interest determination **in the first court order removing the child from his/her home** for Title IV-E eligibility. The court order must coincide with removal of the child. Examples of the first court order removing the child from his/her home include:

- JC 05b - Order to take child(ren) into protective custody (child protective proceedings).
- JC 05a - Order to apprehend and detain (delinquency proceedings/minor personal protection).
- JC 11a - Order after preliminary hearing (child protective proceedings).
- JC 10 - Order after preliminary hearing/inquiry (delinquency/personal protection).
- JC 75 - Order following emergency removal hearing (child protection proceedings).

- The court can make the contrary to the welfare finding on any order as long as the determination is made. FOM 902, page 5.

In the instant case, the facts are not at issue.

A Petition For Child Protection was issued by the Hannahville Child Protective Services Office August 2, 2013 which stated in pertinent part:

- The child has [redacted] of the children's code section 2.1101. Removal and placement took place at 11 AM on August 2, 2013, page 43).

- This petition is based on the following allegations: prior to this action, the [redacted] whose relationship to the child is [redacted]

- On August 1, 2013 [redacted] had become [redacted] and the [redacted] Prior to going to the hotel the petitioner spoke to [redacted] around 5:00 PM. She was walking down the road and [redacted] with the [redacted] and had no plans of where they were going to stay for the evening. The petitioner offered to take [redacted] but she refused that offer.

- [redacted], the child's [redacted] was scheduled to go to [redacted] on [redacted]

- The child was brought to the [redacted] The child of follow-up of Claimant on April 4, 2013 which [redacted] canceled and never rescheduled. The child requires [redacted] to be medically cleared as a carrier of the [redacted]

- The trial court was requested to immediately enter an [redacted] pending a preliminary hearing, State's Exhibit 7, page 44.

The Ex Parte Order for Child Protection Confirming Removal entered August 5, 2013 indicated:

- The child has been removed from the home and taken into protective custody by [redacted] worker under the authority of the children's code section 2.1103.
- The removal of the child under children's code section 2.1103 is confirmed.
- The child is made a [redacted] pending preliminary hearing on the petition and his temporarily referred for placement, care and supervision to Michigan Department of Human Services.
- It is contrary to the welfare and best interests of the child to remain in the home and [redacted], for the following reasons:

Mother is [redacted] and has a history of [redacted], resulting in [redacted] none of which are now available. As a result of [redacted]. The child was diagnosed with [redacted], [redacted], but has not been taken to follow up appointments and has not been medically cleared. [redacted] is also scheduled to be [redacted] and will be unable to care for these [redacted]. The [redacted] of the [redacted] has no home, alternately resides with his [redacted], is [redacted] and has refused [redacted].

Reasonable efforts were made to rectify the conditions causing removal and to prevent the child's removal from the home, as follows:

> services provided to this family include: transportation, random drug/alcohol testing, weekly office visits, medication assistance, service referrals, goal progress updates, court updates, healthy homes intensive in-home services, employment assistance, housing assistance, transportation supervision, family foster care placements, medical and dental care. (Exhibit #7, page 42)

Petitioner's representative argues that the child was removed from the home on an [redacted] and therefore the court order could not be obtained prior to the [redacted]. An [redacted] which contained contrary to the welfare and best interest of the child language. (Exhibit 7, page 41).

The Department sent notice of case action on April 23, 2014, stating that the court order does not contain a finding with case specific documentation that it is contrary to the child's welfare to remain in the home on the [redacted]. (State's Exhibit 1).

The Department representative argues that the court order did not meet the requirements of the Title IV-E because the court order must coincide with the [redacted]. The policy in the past allowed for a verbal authorization if the removal occurred during nonworking hours and was on emergency basis. The policy then requires the court to follow up with the court order within 24 hours or on the next business day following weekends and holidays. As of [redacted] Title IV-E funding policy is changed to state that a court must provide a written court order on the date the [redacted].

Pursuant to PSM 715-2, Removal and Placement of Children, DHS staff may not take any child into custody without a written order authorizing the specific action.

Prior to [redacted], in the event a judge or referee gave verbal approval/consent for removal and placement of a child, that verbal approval/consent would not jeopardize the child's potential Title IV-E eligibility if all the following conditions were met:

- The verbal consent occurred during non-working hours (such as nights, weekends, or holidays) and emergencies;
- The first written order following the verbal consent must **reference the date of the removal.** The order must have been obtained within 24 hours or on the next business day following weekends and holidays.
- The first written order contained the findings of fact, on which the verbal consent was based, and includes the contrary to the welfare finding signed by a judge or referee. FOM 902, page 21

DHS policy does not specifically require that a written order with the contrary to welfare findings be obtained **prior** to the removal of the child. DHS policy specifically requires that ***the court order must coincide with the removal of the child***. One definition of coincide is "to occur at the same time; take up the same period of time" *New World Dictionary*. However, DHS policy specifically states that federal regulations require the court to make the contrary to the welfare or best interest determination in the ***first*** court order removing the child from his/her home for Title IV-E eligibility. Examples of the first court order removing the child from his/her home include Order Following Emergency Removal Hearing (child protection proceedings). FOM 902, page 19.

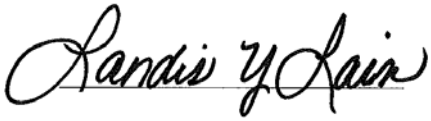
Pertinent Department policy dictates: The determination of reasonable efforts to prevent removal from the home, must be documented on a court order **within 60 calendar days of the child's removal from his/her home**. The court order must be signed within 60 calendar days. Title IV-E eligibility cannot begin until the first day of placement in the month in which the reasonable efforts judicial determination has been made. If the finding is not made in the calendar month of removal, Title IV-E eligibility begins the first day of the month in which all eligibility criteria are met, provided that it is within the 60 calendar day time frame. This finding must be made within 60 calendar days of **each** placement episode. The signature date on the order is the date used to determine the month eligibility begins. FOM 902, page 22.

Petitioner's assessment of the circumstances is appropriate. The Department decision to deny Title IV-E funding based upon the fact that a written order with the contrary to welfare findings must be obtained prior to the removal of the child must be reversed.

DECISION AND ORDER

The Administrative Law Judge, by a preponderance of the evidence, based upon the above findings of fact and conclusions of law, decides that the Department has not established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it denied petitioner's eligibility for Title IV-E funding based upon its determination that the court order does not contain a finding with case specific documentation that it is contrary to the child's welfare to remain in the home on the removal date.

Accordingly, the Department's decision is REVERSED. The Department is ORDERED to reinstate petitioner's request for Title IV-E funding and make a determination in accordance with Department policy, and if petitioner is otherwise eligible for Title IV-E funding, to provide petitioner with appropriate funding in accordance with Department policy.



Landis Y. Lain
Administrative Law Judge
for Maura Corrigan, Director

Date Signed: 7/21/14
Date Mailed: 7/25/14

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the Claimant;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

cc: [redacted]