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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-001511
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 Attorney [redacted] Tribal Prosecutor.

The Department of Human Services (Department) was represented by Assistant Attorney [redacted]), [redacted], Manager of Federal Compliance Office, [redacted], Child Welfare Funding Specialist and J[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 [redacted], petitioner, a [redacted], (hereinafter referred to as the child) resided as the [redacted] and was in the care and custody of the [redacted] whose relationship to the child is [redacted]

3. On Saturday, [redacted], the child was removed under the [redacted]. Removal and placement took place at the time of the child's [redacted] upon [redacted]. (State's Exhibit 7, page 56).

4. On [redacted]es filed a Petition for Child Protection with the [redacted]. (State Exhibit 7, pages 56-58).

5. On [redacted], the court entered an [redacted] confirming petitioner's removal from the home. (State Exhibit 7, pages 53-55).

6. On [redacted], 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.

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

8. 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.

9. On April 23, 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 welfare to remain in the home on the date of physical removal from the home, (State's Exhibit 1, page 3).

10. On April 24, 2014, a meeting was held with the Hannahville tribal court to discuss the need for a court order to coincide with the child's physical date of removal from the parental home to comply with Title IV-E policy.

11. 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). 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). (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 place-ment 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 US citizen or qualified alien; 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 assets exceed $10,000; 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 welfare to remain in the home; 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 is made.

- The child is over the age of 18 and not expected to complete high school by age 19; 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, Client 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 **tribal court** 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).

  Note: 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 Supplemental Petition For Child Protection was issued by the Hannahville Child Protective Services Office August 13, 2013 which stated in pertinent part:

- The child has been removed under the emergency authority of the children's code section 2.1101. Removal and placement took place at the time of the c[redacted] upon the [redacted].

- The child's [redacted] was [redacted] to protect the [redacted] from further exposure to [redacted] and unnecessary [redacted].

- This petition is based on the following allegations: the child's mother was [redacted] and had a [redacted]r. She had not received any further prenatal care. Protective services became involved in [redacted] as an [redacted] is considered a [redacted] of both the [redacted] and [redacted]. On [redacted] showed up at [redacted] to make sure she did not have appendicitis. She stated at that time she estimated to the doctor on duty that she thought she maybe 3 to 4 months pregnant however was not receiving prenatal care because she does not want to be [redacted]. Her estimated today would have been [redacted]. The [redacted] was [redacted] on [redacted] from further exposed to [redacted]. She was charged with [redacted] with her doctor admitted to him that she was [redacted] felt that the [redacted] should be taken off of her [redacted] [redacted] would not administer

those drugs and the [redacted] 2013 does the [redacted] it buys the petitioner that they were concerned a suspect its mobile drug use is in jail. The [redacted] tested and was discovered to be non-negative for [redacted] and [redacted] She was then tested on [redacted] only and was again found non-negative. The mother remained in general to the [redacted].

- The child welfare committee has recommended this petition.

- The tribal court was requested to immediately enter an ex parte order to confirm the emergency removal which has already occurred under children's code section 2.1101 into place the child in protective custody pending a preliminary hearing.

The [redacted] indicated:

- The child has been removed from the home and taken into protective custody by tribal police officer or protective services 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 temporary Ward of the court pending preliminary hearing on the petition and is 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:

- The child's mother was pregnant and had a positive pregnancy test on [redacted]. She had not received any further prenatal care. Protective services became involved in [redacted] as an [redacted] is considered a child and tribal law. On [redacted] a drug test of both the [redacted]. On [redacted] to make sure she did not have appendicitis. She stated at that time she estimated to the doctor on duty that she thought she maybe 3 to 4 months pregnant however was not

receiving prenatal care because she does not want to be [redacted]
Her estimated today would have been [redacted]. The [redacted]
[redacted] on [redacted] otect the unborn from further [redacted] She was charged with [redacted] felt that the [redacted] should be taken off of her [redacted]. [redacted] On [redacted] it buys the petitioner that they were concerned a suspect its [redacted] is in [redacted] The mother tested and was discovered to be non-negative for [redacted]. She was then tested on [redacted] only and was again found non-negative. The mother remained in general to the [redacted].

Reasonable efforts remain to rectify conditions causing removal and to prevent the child from the home, as follows:

> Services include: transportation, random drug/alcohol testing, case monitoring, medication assistance, service referrals, mental health counseling goal progress updates, court updates, healthy homes intensive in-home services, employment assistance, housing assistance, parenting time scheduling, transportation supervision, M ICW a foster care placements and supervision, DHS case supervision, first families intensive in-home prevention program, outpatient substance abuse treatment, family support, medical and dental care, FAC E parenting classes, Delta County Jail, PS involvement, prenatal monitoring and Suboxone assistance. (State's Exhibit 7, page 54) .

Petitioner's representative argues that the child was removed from the home on emergency basis and therefore the court order could not be obtained prior to the child's removal from the home. An Ex Parte Order for Child Protection Confirming the Removal was issued [redacted] which contained contrary to the welfare and best interest of the child language. (Exhibit 7, page 53-55).

The Department sent notice of case action on [redacted], 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 date of physical or moral from the home. (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 child's physical removal from the home for Title IV-E eligibility. 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 a [redacted] Title IV-E funding policy is changed to state that a court must provide a written court order on the date the child is physically removed from the home.

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 November 1, 2012, 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.

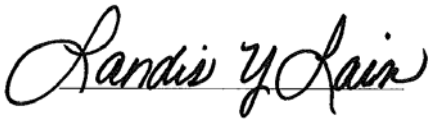
Pertinent Department policy dictates: The determination of reasonable efforts to prevent removal from the home, must be documented on a court order **within 60 calendar days of the child's removal from his/her home**. The court order must be signed within 60 calendar days. Title IV-E eligibility cannot 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
Department of Human Services

Date Signed: 7/24/14

Date Mailed: 7/25/14

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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. MAHS 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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant 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 the hearing decision is mailed.

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

LYL/tb

cc: [redacted]