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

IN THE MATTER OF:

[redacted]

Reg. No.: 14–010518
Issue No.: 6033
Case No.: [redacted]
Hearing Date: October 22, 2014
County: St. Joseph

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 telephone hearing was held on October 22, 2014, from Lansing, Michigan. Participants on behalf of Petitioner(s) included Petitioner's authorized hearings representative, Guardian Ad Litem [redacted] and [redacted], St. Joseph County Juvenile Court Referee [redacted]. Participants on behalf of the Department of Human Services (Department) included [redacted], Manager of Child Welfare Funding, and [redacted], Child Welfare Funding Specialist. The Department was represented at the hearing by Assistant Attorney General [redacted]

The eligibility factors were the same for all children. The fact situation and removal incident were identical. The four cases, Register/Case Numbers:

[redacted]

are herein consolidated.

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. Petitioners are minor child(ren), named above, hereinafter referred to as the child/children.

2. The mother of all four children is [redacted].

3. On May 29, 2014, Judge [redacted] issued an Ex Parte Order To Take Children Into Protective Custody stating:

> there are reasonable grounds for this court to remove the child(ren) from the parents, guardian or legal custodian in compliance with MCL 712 A.2(B)(1) stating: the four children are living with adults [redacted] and [redacted]; only [redacted] is a parent, and he is a parent of only two of the children. [redacted] and [redacted] tested positive for opiates, benzodiazepine and marijuana and cannot produce a valid prescription. Bell is reported to smoke marijuana "all the time". [redacted] and [redacted] are being evicted from the residence. Circumstances warrant issuing an Ex Parte Order. Reasonable efforts were made to prevent the removal of the child(ren) from the home. Those efforts include interviews with occupants of the home and attempt to locate parents. (Petitioner's Exhibit B, page 1).

4. On May 30, 2014, the Michigan Department of Human Services filed a Petition (Child Protective Proceeding, petition [redacted]) in the St. Joseph County 45th Judicial Circuit Court – Family Division, requesting that the child/children be removed based upon abuse and neglect, stating:

> the home environment of the children by reason of neglect, cruelty, drunkenness, criminality or depravity on the part of a parent, guardian, nonparent adult or other custodian, is an unfit place for the children to live in, as set forth in Attachment A. Jurisdiction is provided by MCL 712 A.2(b)(2).
>
> 1) That the mother of the above minor child has a history of homelessness and is currently transient with no place to live. She will leave her children for long periods of time with improper caretakers. At the present the children reside with an individual who has the no legal authority over them and is facing eviction.
>
> 2) That the mother has a history of substance abuse and so (does) many of the caretakers including the present caretakers. It is contrary to the welfare of the above minor children to remain in the custody of the mother or the present caretakers, (State's Exhibit 1, pages 1 – 2).

5. On May 30, 2014, Judge [redacted] issued an Order After Preliminary Hearing (Child Protective Proceedings) stating:

> that probable cause determination was waived by all parties present and that there is probable cause that one or more of the allegations in the petition are true. Contrary to the welfare findings were made in a prior order and reasonable efforts to prevent removal of the children from the home were made as determined in a prior order, (State's Exhibit 2, page 1).

6. On July 18, 2014, the Department of Human Services issued a Notice of Case Action denying Title IV-E funding for the children, stating that contrary to welfare findings included only putative father to children and his girlfriend; neither are "relatives". Case cannot be Title IV-E because child was not "judicially removed from a relative". (Petitioners Exhibit C).

7. The reason for the denial was that the children were not "judicially removed from a specified relative". The case action concluded that contrary to the welfare findings were made but not made against any relative of the children because the findings were against a male who was putative father to two of the children and not the father of the other two children, and against that man's girlfriend, who was not related to the children.

8. The children were determined otherwise eligible for Title IV-E funding

9. On August 14, 2014, Petitioner(s) through the Guardian ad litem filed a request for a hearing 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.

Petitioner argues:

> The children are eligible for Title IV-E funding because the initial removal was a judicial removal from a relative. The authorized hearings representative submits that the Ex Parte Order does remove the children from a parental home. FOM 902 clearly contemplates a scenario where child can be physically removed from a non-parental home, but judicially removed from the parental home, and thereby meet Title IV-E eligibility requirements.
>
> It appears that on May 29, 2014, [redacted] was the biological but not legal father to two of the children ([redacted] and [redacted]). [redacted] is related to none of the children. The word "home" in the boilerplate part of the Ex Parte order is construed to mean physical home, it was proper and necessary to remove them from that home. If the word "home" is construed to mean "home of a parent", as DHS argues, then the findings also satisfied that criterion. The findings were that the children were living in an inappropriate physical home. There is no finding that the children were kidnapped, or were otherwise in the home without the consent of a parent. The findings can reasonably be read to mean that a parent allowed the children to live in an inappropriate environment. Nothing in the DHS Title IV-E manual or Title IV-E requires naming the parent against whom contrary to the welfare findings are made. The findings in the Ex Parte Order were that it was contrary to the children's welfare to live in the physical home – it follows a parent allowed the condition to exist, such that it would be contrary to children's welfare to be in a parent's care.
>
> FOM 902 at page 10 defines a specified relative has one within the 5th degree of kinship to the child by blood or adoption. FOM 902 does not distinguish between legal father versus putative father. [redacted], although not a legal father at the time of the removal, is presented as being within the fifth degree of kinship by blood. Therefore, even under the restrictive view of the definition of a removal home, [redacted] home is a qualifying removal home for two of the children, because he is within the fifth degree of kinship, (State's Exhibit, 3 pages 1 – 5).

The department argues:

> That this child was denied Title IV-E eligibility because the court did not make contrary to the welfare findings against the specified relative in the initial removal order. The court made contrary to welfare findings against a specified relative to this child (putative father of this child and his girlfriend). If contrary to the welfare findings would have been made against the child's mother, the case would have been Title IV-E eligible based on income and asset information, and based on the fact that this child lived with at least one legal parent within six months of the removal (mother, [redacted]).
>
> A putative father is not a legal parent for the child. FOM 902, page 13.

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.

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 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.

- 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 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 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.

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 when 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. <u>In almost all cases</u> this would be the parent's home, even if the child is physically removed from a different home. (emphasis added)**

- 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 at some point 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 if the child lived with the parent in the prior six months. **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.

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 the parent or stepparent that the contrary to the welfare determination was made against within the past six months, prior to court jurisdiction. FOM, Item 902, pages 11-12.

In the instant case, the Administrative Law Judge finds that Department policy dictates:

- **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. <u>In almost all cases</u> this would be the parent's home, even if the child is physically removed from a different home. (emphasis added)**

The Department, in its own policy, alludes to the fact that there are some cases where the removal of the child may not be from the parents' home. The removal of the child/children, in this case was from the putative father's home. There is no evidence in the record of whether or not the child/children resided with the mother within the past six months, prior to court jurisdiction. There is no evidence in the record of where the child's/children's mother resided.

All of the children have a common mother, [redacted]. The May 29, 2014, Ex Parte Order to Take The Children Into Protective Custody specifies that there are reasonable grounds for this court to remove the children from the parent, guardian, or legal custodian in compliance with MCL 712 A.2(b) and MCR 3.963(B) and (1) custody of the children with the parent(s), Guardian or custodian presents of substantial risk of harm, or the surroundings present imminent risk of harm, to the children's lives, physical health or mental well-being; (2) no provision of service or other arrangement except

removal of the children is reasonably available to adequate safeguard the children from this risk; (3) conditions of child custody away from the parent(s), guardian, or legal custodian are adequate to safeguard the child's health and welfare; (4) continuing the child/ren's residence in the home is contrary to the welfare of the children because:

> The 4 children are living with adults [redacted] and [redacted]; only [redacted] is a parent and he is a parent of only two of the children. [redacted] and [redacted] tested positive for opiates, benzodiazepines and marijuana and cannot produce a valid prescription. Bell is reported to smoke marijuana all the time. [redacted] and [redacted] are being evicted from the residence, (Petitioner's Exhibit B, page 1).

Documentation contained in the May 30, 2014, Petition, indicates that the address of the mother of all four children is unknown, (States' Exhibit 1, page 1). Thus, it is within the realm of possibility that the mother has the same address as the father and/or the children. In fact, the document indicates that the children are 'living with' the father and mother as both checkboxes are filled in. There is no evidence to the contrary that the mother of the children does not retain the same address as the putative father and/or the children. The record is insufficient to establish the mother's address at any time relevant to this determination. At the time of removal, the mother's whereabouts were simply unknown.

A constructive removal occurs when a child resides with a nonparent interim caretaker who is not the legal custodian or guardian of that child. Thus, at all times relevant to this case, the child/children at least resided temporarily with a putative father of two children and a non-relative caretaker. The child/children were court ordered into the custody of the department. The child/children did not remain in the home of the caretaker who served as the out of home care provider to the child/children after the Department was awarded custody. There is no evidence on the record of two of the child/ren living with the parent or stepparent that the contrary to the welfare determination was made against within the past six months, prior to court jurisdiction. Thus, no constructive removal occurred.

Based on the record, two of the children were residing with their putative father, ([redacted] and [redacted].) The two children who were residing with their father were actually removed from the parental home, which makes the reason for the denial of Title IVE eligibility incorrect under the circumstances. [redacted] is a first degree relative of his children whether he has been determined the legal father or not. Department policy dictates that the relationship is not severed by the termination of parental rights, BEM 902, page 10. It logically follows that the relationship is not terminated or negated just because [redacted] has not legally acknowledged paternity or been determined to be the legal father of the two children. [redacted] is a parent of [redacted] and [redacted]. According to the department policy a putative father is not a legal father. However, a putative father is still "related" to the child, just as a grandparent or other relative within the fifth degree of kinship would be "related" to the child. Thus, [redacted], a parent, would be considered a specified relative under policy. At the

least, [redacted] and [redacted] were removed from a parental home. The reason for the denial of Title IVE eligibility for at these two children is inappropriate and the denial of eligibility must be overturned.

The department had no knowledge of the whereabouts of the children's mother. Under the circumstances, because the mother, [redacted]' address was unknown and her whereabouts were unknown, this Administrative Law Judge has insufficient evidence to determine that the contrary to welfare findings included only putative father to the child/ren and his girlfriend. While all four children were present in the home with the putative father and his girlfriend at the time a removal, there is no evidence that the mother of the children did not reside or had not resided at the same address as the children at some time before removal. There is insufficient evidence contained in the record to determine whether or not the mother even had a legal address. While the record establishes that the child/ren were not physically removed from their mother's presence, there is insufficient evidence contained in the file to determine that the child/children are not Title IV-E eligible because the child/children was/were not judicially removed from a relative.

The Court relies upon the Department to describe accurately, the circumstances of the children when requesting a removal. In fact, the Petition, signed May 30, 2014, specifically indicates that the children were living with father and mother. (State's Exhibit 1, page 1). The language in the Petition states explicitly:

> It is contrary to the welfare of the above minor children to remain in the custody of the mother or the present caretakers, (State's Exhibit 1, page 2) (Emphasis Added)

Moreover, in the May 29, 2014, Ex Parte Order to Take the Children into Protective Custody, the Court removes the children from the "parents, guardian or legal custodian", which would include the mother, father and other specified relatives, (Petitioners' Exhibit B, page 1). The children were all judicially removed from the mother's custody, even though the mother's whereabouts were unknown at the time of removal.

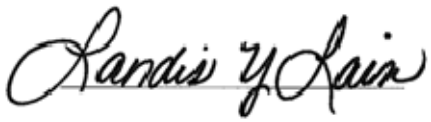
Thus, the Department's determination that the circumstances of the removal prevented Title IV-E eligibility for the children under the circumstances was incorrect and cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has not appropriately determined by the necessary competent, material and substantial evidence in the record that the child did not meet removal standards for Title IV-E eligibility.

Accordingly, the Department's decision is REVERSED. The Department is ORDERED to re-evaluate Petitioner's eligibility for Title IV-E and determine claimant's eligibility for

Title IV-E in accordance with both this Decision and Order and Department policy and if Petitioner(s) is/are otherwise eligible, pay appropriate Title IV-E funds.



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

Date Signed: 11/18/2014

Date Mailed: 11/18/2014

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 48909-8139

LYL/sw

cc: [redacted]