

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001504
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], Manager of Federal Compliance Officer, [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 [REDACTED], (hereinafter referred to as the child), ran away from his parental home.

3. On April 1, 2014, the [REDACTED] filed a Petition for Child Protection with the [REDACTED]. (State Exhibit 5, page 32-34).
4. On April 1, 2014, the court entered an order confirming petitioner's removal from his mother's home. (State Exhibit 5, pages 30-31).
5. On April 2, 2014, 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. On April 3, 2014, the child welfare funding specialists sent the removal court order to the federal compliance division for review.
7. On April 4, 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 7, 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 removal date per DHS policy, (State's Exhibit 1).
9. On April 24, 2014, a meeting was scheduled with the [REDACTED] 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.
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.
11. On May 22, 2014, the Department of Him Services sent the Hannahville tribal court and amended notice of case action stating that the family's income exceeds the former AFDC program's standards and 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. (State's Exhibit 8, page 43).

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 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. (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 Petition for Child Protection was issued by the Hannahville Child Protective Services Office March 31, 2014 which stated in pertinent part:

- The child's been removed under the emergency authority of the children's code section 2.1101 and is currently placed in a safe tribally licensed foster home. Removal emplacement took place at 2 PM on [REDACTED]. (Exhibit 5, page 32).
- This petition is based on the following allegations: on [REDACTED] the petitioner was contacted by [REDACTED] who allegedly [REDACTED] from home. CPS asked the officer keep up the child would be safe if returned to the home. The officer responded he did not feel the child would be safe and the child needed to be removed from the home. The child shared with the petitioner that he is [REDACTED]. He stated his [REDACTED] refuses to accept it and causing a bag when she is mad at him. He stated that [REDACTED] does not know how to take his [REDACTED] and therefore belittles him about it. The child also shared a pre-existing family issue that has never been resolved and when the child is not agree with his mother onset issue she gets very upset. The child stated that on the day of removal his [REDACTED] told him to get out if you want to take the side of extended family members and he was a child molester supporter. The petitioner and child welfare board after talking with the child, his [REDACTED] and stepfather felt that he was at risk of emotional abuse due to his sexuality and family conflict. [REDACTED] stated that the petitioner took cam and can do what she wants with him as mother is not going to participate in a case plan or [REDACTED]. She stated that the petitioner can just keep him and she is moving to Arizona. [REDACTED] stated that she will not accept him back without an apology for what he has put her through. She also stated that she does not forget easily.

- The Child Welfare Committee has met recommended this petition.
- I request the tribal court to do the following: immediately enter an [REDACTED] order to confirm the emergency removal which has already occurred under children's code section 2.1101 and to place the child in protective custody pending a preliminary hearing.(Exhibit #5, page 32-33).

The Ex Parte Order for Child Protection Confirming Removal entered April 1, 2014 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 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 legal custody of his mother, [REDACTED] for the following reasons:

On [REDACTED] [REDACTED] ran away from home. When found the child stated that he is [REDACTED] that his mother refuses to accept it, that she calls him a [REDACTED] when she is mad at him, that his mother does not know how to take his [REDACTED] and that she belittles him about it. The child also referred to pre-existing family issues that have never been resolved, and when the child did not agree with his mother on the issue she got very upset. The child stated on the day of removal his mother told him to get out if he wanted to take the side of the extended family members and he was a child molester supporter.

The child welfare board met separately with the child and his mother and concluded that the minor was at risk of emotional abuse due to his sexuality and family conflict. The [REDACTED] stated she was not going to participate in a case plan or counseling to get him back, the petitioner could just keep him, that she is moving to Arizona, that she will not accept them back with an apology what he is put her through and that she does not forget easily.

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

Police efforts to locate and return the minor, social services efforts to arrive at a reasonable resolution without formal proceedings, and child welfare board special meetings with the minor, his mother, and the CPS worker to find a resolution without court proceedings. (Exhibit #5, page 30-31).

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. Petitioner did not object to the Amended Notice of Case Action sent on [REDACTED].

The Department sent notice of case action on [REDACTED] 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 removal date per DHS policy. (State's Exhibit 1).

The department representative argues that did not meet the requirements for Title IV-E as the written order with the contrary to welfare funding (finding) was not obtained prior to removal. The Department representative also argues that petitioner's family income exceeds the former AFDC program standards.


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**. 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 Filing Emergency Removal Hearing (child protection proceedings). FOM 902, page 19.

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, 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 petitioners 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 per DHS policy.

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 provide petitioner with appropriate funding in accordance with Department policy. If it is determined that the family's income exceeds the former AFDC program standards, then the Department's original decision to deny claimant's Title IV-E funding for lack of ineligibility based on family income exceeding the former AFDC program standards, then the original determination of the department must stand and petitioner would be denied Title IV-E funding eligibility based upon family income exceeding the former AFDC program standards.



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:

