

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Reg. No.: 14-019555
14-018089
Issue No.: TITLE IV-E

Case No.: [REDACTED]
[REDACTED]

Hearing Date: March 19, 2015
County: GOGEBIC DHS

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Claimant'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; and Mich Admin Code, R 792.11002. After due notice, a three way telephone hearing was held on March 19, 2015, from Detroit, Michigan.

Petitioners' duly court-appointed Guardian Ad Litem and attorney, [REDACTED], appeared on behalf of the Claimants, [REDACTED], who did not appear. A witness, [REDACTED] also appeared on behalf of Petitioners.

[REDACTED], Assistant Attorney General, appeared on behalf of the Respondent Department. [REDACTED], Child Welfare Funding Specialist, [REDACTED], Child Welfare Supervisor, Gogebic County appeared on behalf of the Department of Human Services and [REDACTED], Child Welfare Funding Manager (Lansing), also appeared on behalf of the Department of Human Services (Department).

ISSUE

Did the Department properly deny Petitioners Title IV-E eligibility due to the Department's inability to verify income and assets and employment?

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 Petitioners [REDACTED] are minor children and are brother and sister. The Petitioners were removed from [REDACTED] (their mother) care by court order on August 6, 2014. Exhibit A, p. 4-5.
2. At the time of the Petitioners' removal and determination of Title IV-E eligibility, the Petitioners' mother, [REDACTED] [REDACTED] was unavailable as she was fleeing law enforcement and her whereabouts were unknown. At the time of the hearing, [REDACTED] [REDACTED] still had an outstanding warrant for her arrest for involvement in possession and sale of a controlled substance and that her whereabouts were still unknown. Claimant Exhibit 1.
3. The Department attempted to gather family financial information from the DHS inquiry system and from [REDACTED], a former roommate, of the Petitioners' mother at the time of their removal from the home.
4. The Department obtained a written statement from the mother's roommate, [REDACTED] [REDACTED] that stated the Petitioner's mother was self-employed working 168 hours per week and her gross income and hourly rate "varied" and had cash on her from \$1.00 to \$2,000 in cash. Exhibit A, p. 16-18.
5. In a previous oral statement provided to the Department, [REDACTED] informed the Department that [REDACTED] had no assets, did not work and did not own a vehicle. Claimant Exhibit A, p. 53. The Department did not utilize the information it obtained from [REDACTED].
6. The Department also interviewed [REDACTED] brother who was not in the household at the time of removal. [REDACTED] brother was uncooperative and provided no information to the Department.
7. The Department also used its inquiry system to seek information on [REDACTED] which included child support (payee/payor), income and unemployment. Exhibit A, p. 27-32.
8. On September 18, 2014 The Department issued a Notice of Case Action and determined the Petitioners to be ineligible for Title IV-E funding for foster care payments on the basis that the Department could not verify household assets, income and employment information. Exhibit A, p. 8-15.
9. The Petitioners' Guardian Ad Litem and Attorney requested a timely hearing on December 9, 2014 to contest the Department's determination and negative action denying Title IV-E eligibility.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Children's Foster Care Manual, FOM, and Title IV-E requirements, 42 USC 670, *et seq.* The Adoption Assistance and Child Welfare Act of 1980. Title IV-E is The Foster Care Program implemented by the Social Security Act Section 401 *et seq.*, as amended and implemented under the Code of Federal Regulations at 45 CFR parts 1355, 1356 and 1357.

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 DHS to provide, purchase or participate in the cost of out-of-home care for a child has been established in state law: the juvenile code, MCL 712A.1 *et seq.*; the Social Welfare Act, MCL 400.1 *et seq.*; the Michigan Children's Institute Act, MCL 400.201 *et seq.*; the Michigan Adoption Code, MCL 710.21 *et seq.*; and the Youth Rehabilitation Services Act, MCL 803.301, *et seq.* These laws specify the method of DHS participation in the cost of care. The legislature has established a system whereby either:

1. The local court may provide out-of-home care services directly and request reimbursement by the state (child care fund).
2. The court may commit the child to the state and reimburse the state for the cost of care provided (state ward board and care).

Under option #1, the court may request that DHS provide casework service through a placement and care order. FOM 901-6 (May 1, 2014) p. 1.

In this case, after the Petitioners removal from the family home pursuant to court order, the Department was required to determine Title IV-E eligibility for Petitioners care. On September 18, 2014 by Notice of Case Action the Department determined that the Petitioners were not eligible for Title IV-E funding. The Department's determination was because it was unable to determine and verify whether the Petitioner's mother, [REDACTED] had income, employment or assets at the time prior to the removal of the

Petitioners from the family home in the month of August 2014. The Department attempted to determine based upon resources and individuals available to it whether the Petitioners' mother had assets, income and employment. The Department's Notice of Case Action dated September 18, 2014 indicated the reason for the denial as, "12.: Other: Biological mother, [REDACTED], is on the run from Law Enforcement and therefore financial information was unable to be gathered and verified." Handwritten notes on the Notice of Case Action indicate the Department was unable to determine whether the home from which the Children were removed met the former AFDC program's deprivation requirements and whether the family's income exceeded the former AFDC program's standards. Exhibit A, p. 8-9. The Petitioners' father was located out of state and was in a drug rehabilitation program at the time of the Petitioners' removal. Exhibit A, p. 14.

The Department also communicated with witness [REDACTED], a roommate of the Petitioners' mother [REDACTED], by written questionnaire while she was in the county jail. The Department's questionnaire sought information regarding income, assets and employment. The information requested was returned by [REDACTED]. Exhibit A, p. 16-18. Other information provided earlier to a Department foster care worker who was not present at the hearing, noted that during a conversation with witness [REDACTED] informed her that [REDACTED] had no assets, did not work and did not own a vehicle. Exhibit A, p 53.

Ultimately, the Department did not use any of the information provided by witness Pestka as it was inconsistent with other information she had provided. At the hearing witness [REDACTED] testified that the Petitioners' mother [REDACTED] had between \$1,000 to \$2,000 on her at all times and less when she was purchasing product (drugs to sell), at which time she could have \$500 or less. Witness [REDACTED] indicated that the reason she advised the Department representative that [REDACTED] had no assets, income or employment was because she knew these activities were illegal and thus she did not think [REDACTED] was employed. However the witness [REDACTED] testimony is construed, it is not sufficient or reliable to determine what profit (income) if any, [REDACTED] earned from drug sales such that its income could be determined. Thus, overall it is determined that witness [REDACTED]'s testimony was not helpful and did not establish a factual basis to establish the income or assets of [REDACTED] for August 2014, the Petitioners' removal month.¹

In this case Petitioners were placed in foster care. Foster Care is defined in Department policy as:

¹ Exhibit A, pages 1-53, was admitted at the hearing and is contained in the [REDACTED] case file and refers to only [REDACTED]. This Exhibit A is identical to the documents contained in [REDACTED] hearing packet with the only change being the reference to her name. The parties stipulated to admitting Exhibit A as the Department's evidence regarding the Department's determination of eligibility for both Petitioners', [REDACTED], cases.

Means 24-hour substitute care for children placed away from their parents or guardians and for whom DHS has placement and care responsibility. This includes, but is not limited to, placements supervised by a private child placing agency under contract with DHS, placements in foster family homes, relative's homes, group homes, emergency shelters, residential facilities, child care institutions and preadoptive placements. A child is in foster care regardless of whether the foster care facility is licensed and payments are being made for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is federal matching of any payments. FOM 721 (February 1, 2104) p. 22

Title IV-E is a funding source which requires all applicable federal regulations be followed for use of the fund. 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, Fund Sources. Title IV-E funding is a source of financial support for children placed in foster care. FOM 902 (May 1, 2014) p. 1.

There are two types of title IV-E categories: title IV-E eligible and title IV-E reimbursable. Both must occur concurrently before title IV-E payments can be issued. Definitions of the two types of title IV-E categories are:

- Title IV-E eligible** - Initial title IV-E eligibility is determined based on information related to the child and removal household when the child is initially removed from their home. Specific eligibility requirements are detailed within this manual item.
- Title IV-E reimbursable** - Federal financial participation (FFP) is available for a child who meets all title IV-E eligibility requirements. A child's reimbursability status can change based on specific factors. Some of these factors include the child's placement and DHS having sole care and custody. FOM 902, p. 1-2

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

- Required judicial determinations of reasonable efforts and contrary to the welfare on a signed court order.
- AFDC eligibility, including establishment of financial need and deprivation.

- Living with and removed from the same specified relative.
- A child must be under the age of 18, unless enrolled full-time in high school or an equivalent vocational or technical course and can reasonably be expected to complete the course prior to their nineteenth birthday; see IV-E Age Requirements and Exceptions section in this policy item.
- Legal jurisdiction, by way of a signed court order from a family or tribal court that gives DHS placement and care responsibilities. FOM 902, p. 4.

Title IV-E funding must be denied or cancelled based upon the following factors:

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 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. FOM 902-5, (May 1, 2014) p. 1.

The child has the right to contest a department decision affecting title IV-E eligibility. After the department notifies the court of a denial or cancellation, the court may appoint the child's lawyer-guardian ad litem as the child's authorized hearing representative (AHR) to request an administrative hearing. The department provides an administrative hearing to review the decision and determine its appropriateness. FOM 902 -05 (May 1, 2014) p 3

Title IV-E, 42 USC 670, et seq., allows the states to use federal funds to pay for part of the cost of foster care for eligible children. Eligibility is examined on pre-1966 Aid to Families with Dependent Children (AFDC) program. 42 USC672 (h). To be eligible for Title IV-E funding, a child must be deprived of parental support and **and** be in need of financial assistance. FOM 902, p.9; Child Welfare Policy Manual, Ch. 8.4a, Question 19.

In making its decision the Department also utilized as guidance the Child Welfare Policy Manual to support their denial of Petitioners eligibility for Title IV-E benefits. The Child Welfare Policy Manual is intended to give guidance regarding answers to various Title IV-E questions it addresses. The pertinent manual reference used by the Department was Question 19 and the corresponding answer to Question 19 set forth below:

Question 19 asks:

How does a Title IV-E agency determine title IV-E eligibility for an abandoned child whose parents are unknown?

The Answer states:

It is unlikely that a title IV-E agency would be able to determine title IV-E eligibility for an abandoned child whose parents are unknown. This situation differs from one in which a parent leaves a child with a friend or relative and is unreachable, but the identity of the parent is known. In either scenario, all of the title IV-E eligibility requirements must be met for a child on whose behalf title IV-E foster care or adoption assistance is claimed. This includes the requirement that the child meet the Aid to Families with Dependent Children (AFDC) eligibility requirements as outlined at section 472 (a)(3) and 473(a)(2) (A)(i)(I)(aa)(BB) of the Social Security Act. As such, the title IV-E agency must be able to establish and verify financial need and deprivation of parental support based on the home from which the child was removed. Determining a child's financial need requires a title IV-E agency to examine the parent's income and resources. In the case in which the identity of the parents is unknown, including when a child has been abandoned, the title IV-E agency will not have any financial information on which to make an AFDC eligibility determination. **A title IV-E agency must document that a child meets all AFDC eligibility requirements; a title IV-E agency cannot presume that a child would meet the eligibility requirements simply because the child has been abandoned.** Child Welfare Manual, Question 19, (March 26, 2015, p. 204 (emphasis supplied).

After a thorough review of the facts, testimony and documentary evidence presented by the parties, and the applicable guidance found in the Child Welfare Manual, and policy found in FOM of the Department's Foster Care Manual, it is determined that the Department correctly determined that the Petitioners were ineligible for Title IV-E funds

as the Department was unable to establish and verify assets, employment or income due to the absence of the Petitioners' mother, [REDACTED], and could not assume there was no income, assets or employment. The Policy found in FOM 902 and Child Welfare Manual Question 19 requires and dictates that the Department has a mandatory duty to verify income, assets and employment, as the answer to Question 19 states the Department must document that the child meets all Title IV-E requirements and cannot presume the Petitioners would meet the eligibility requirements simply because the child has been abandoned. This requirement applies even in the case where the child's parents are unknown.

The Petitioners' Attorney also asserted that the [REDACTED], should be deemed unemployed as a basis for establishing and answering the question of whether [REDACTED] was employed during August 2014 removal month. The Petitioners argue that if [REDACTED] is deemed unemployed it is established that the removal household therefore had no income. The evidence presented at the hearing does not establish a basis for this argument. In addition, this assertion is not supported by Department Policy found in FOM 902, p. 12. In looking at unemployment provisions found in FOM 902, unemployment of the parent is used to determine whether there is deprivation of parental support, not as a basis for establishing whether the child has a need of financial support. FOM 902, p. 12. Both categories, deprivation and need must be separately verified and determined by the Department when determining Title IV-E eligibility.

There is no dispute that at the time of the Petitioners' removal from the home their mother was absent from the home and the household was a single parent household. Policy found in FOM 902 enumerates reasons for deprivation as: Absence of a parent from the removal home; such as in the circumstances of separation, divorce, death, or removal from a single parent household. A child is considered to be removed from a single parent household when there is only one legal parent in the home at the time of removal as was the case in this matter. There is no question that deprivation of parental support was established as the Petitioners were removed from a single parent household thus satisfying the requirements of FOM 902 as regards deprivation. Even though the Department's Notice of Case Action may be interpreted a questioning whether deprivation was satisfied, there is no question that under the facts presented the deprivation requirement was met. Exhibit A, p. 8-9.

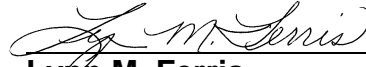
Also listed in FOM 902 to establish deprivation is unemployment of a parent. Policy provides that a parent who is unemployed may or may not have unemployment as a deprivation factor. This policy also requires that to be unemployed the unemployed parent must receive unemployment benefits. There was no evidence that Lisa Kirby was receiving unemployment benefits in August 2014. FOM 902 p. 12-13.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, finds that the Department acted in accordance with Department policy when it

denied Title IV-E eligibility as regards Petitioners [REDACTED] [REDACTED] [REDACTED] [REDACTED] as the Department could not verify employment, income or assets.

DECISION AND ORDER

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



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/19/2015**

Date Mailed: **5/19/2015**

LMF / cl

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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 client;
- 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

