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

IN THE MATTER OF:

[redacted], Petitoner

Reg. No.: 14-018436
Issue No.: 6033
Case No.: [redacted]
Hearing Date: APRIL 29, 2015
County: BERRIEN

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain for ALJ Aaron McClintic

DECISION AND ORDER

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 April 29, 2015, from Lansing, Michigan. The hearing was held by Administrative Law Judge (ALJ) Aaron McClintic. ALJ McClintic is on leave from the Michigan Department of Health and Human Services (formerly Department of Human Services or DHS). This hearing decision was completed by ALJ Landis Y. Lain after having considered the record in its entirety.

Participants on behalf of Petitioner included Attorney [redacted] and Attorney [redacted], Berrien County Family Division Referee. Participants on behalf of the Department of Health and Human Services included Assistant Attorney General [redacted], and Department employees [redacted] and [redacted].

Petitioner's Exhibit 1 and State's Exhibit A pages 1-33 were admitted as evidence.

ISSUE

Whether the Department of Health and Human Services (DHHS 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. Petitioner is a minor child whose date of birth is: January 9, 1998.

2. On June 6, 2014 a Violation of Probation PETITION was filed in the Berrien County Trial Court for Petitioner stating:

(Petitioner) was placed on intensive Probation Services at his March 25, 2014 court hearing. At that time (Petitioner) signed Terms and Conditions of Probation which state the juvenile shall: Attend school daily with no suspensions, unexcused absences, expulsions or tardiness and abstain from the use of illegal drugs/alcohol and tobacco product and follow a 9:00 pm -6:00 am curfew seven days per week. (Petitioner) was also placed on tether and signed the Tether Agreement which states "Verbal authorization/confirmation is required for all time arrangements, unless otherwise agreed upon by the IPS Officer.

(Petitioner) violated his probation on May 30, 2014 when he was suspended for Disrupting the Educational Process and Fighting at Benton Harbor High School. This was (Petitioner's) fifth suspension for fighting since returning to Benton Harbor High School on April 9, 2014. In addition, (Petitioner) violated his probation on June 4, 2014 when tested positive for THC. (Petitioner) violated his tether agreement on June 4, 2014 when he was out of range from 2143 until 2222 (9:43pm to 10:22pm) and again at 2313 until 0041 (11:13pm – 12:41am). (Petitioner) was also out of range on June 5, 2014 from 1505-1618 (3:05pm-4:18pm), 2031-2147 (8:31pm-9:47pm) and again from 2229-2303 (10:29pm – 11:03pm). (Petitioner) did not have authorization to be out at any of these times. State's Exhibit A, page 33

3. On June 6, 2014, the PETITION was signed by Berrien County Trial Court Referee [redacted].

4. On June 6, 2014, Judge/Attorney Referee [redacted] held a Probation violation hearing.

5. On June 6, 2014, Judge/Attorney Referee [redacted] completed a JC10 ORDER AFTER DETENTION HEARING AFTER J-5 PICKUP which determined that the custodial parent was unable to control the child in the custodial home and removed the child from the custody of his mother and placed with the Berrien County Juvenile Center.

6. On June 9, 2014, Family Division Judge [redacted] signed the JC10 ORDER AFTER DETENTION HEARING AFTER J-5 PICKUP.

7. On October 16, 2014, Petitioner was determined to be ineligible for Title IV-E funding.

8. On October 16, 2014, the Department caseworker sent a 176 Notice of Case Action that denied Petitioner's Title IV-E funding stating:

Based on the removal order, it has been determined that this case does not qualify for Title IV-E funding because the placement date and court ordered removal date do not coincide. (Petitioner) was removed from his mother's care on June 6, 2014; the removal Order was authorized June 9, 2014. "The court order must coincide with removal of the child." FOM 902 pg. #19.

9. On December 2, 2014, petitioner's 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.

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 also 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 Health and 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.

Moreover, Department policy dictates:

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.

Pursuant to PSM 715-2, Removal and Placement of Children, 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

In the instant case, the facts are not at issue. The first hearing was held on June 6, 2014. Petitioner was present in court with his mother. The hearing was presided over by Referee [redacted], who gave permission for the child to be removed from his mother's custody and placed in juvenile detention. Referee [redacted] credibly testified that he held the hearing on the afternoon of June 6, 2015. He drafted the Order at 4:35pm and signed the Order Friday, June 6, 2014 at about 5:00pm. There was no place on the Order for the Referee to date his signature. He left the Order for Judge [redacted] to sign. The Judge was not available and signed the Order on Monday, June 9, 2014. Referee [redacted] stated that there was no lapse in time from when the hearing was conducted and when he signed the Order for removal and placement of the child.

DHHS policy does not specifically require that a written order with the contrary to welfare findings be obtained **prior** to the removal of the child. DHHS 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, DHHS policy specifically states that federal regulations require the court to make the 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. Examples of the first court order removing the child from his/her home include JC 10 - Order After Preliminary Hearing/Inquiry (delinquency/personal protection). FOM 902, page 19.

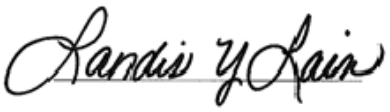
Pertinent Department policy dictates: The determination of reasonable efforts to prevent removal from the home must be documented on a court order **within 60 calendar days of the child's removal from his/her home**. The court order must be signed within 60 calendar days. Title IV-E eligibility cannot 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 in this case. The Department's determination 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 or on the same date as the removal of the child must be reversed as not being in compliance with Department policy.

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's 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 Nick Lyon, Director
Department of Health and Human Services

Date Signed: June 26, 2015

Date Mailed: June 29, 2015

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[redacted]

cc: [redacted]