

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-018437
Issue No.: 6033
Case No.: [REDACTED]
Hearing Date: APRIL 29, 2015
County: BERRIEN

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

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 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 and Order was completed by ALJ Landis Y. Lain after having considered the record in its entirety.

This hearing was consolidated with the case of [REDACTED], Register #14-018438, [REDACTED].

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].

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 (the child or juvenile) whose date of birth is: April 29, 2000.
2. The child has lived with an aunt, [REDACTED] and then with [REDACTED], a foster care parent. She has never resided with her mother or father. (Respondent's Exhibit a page 33.)
3. On March 6, 2013, an ORDER TO APPREHEND/DETAIN (DELINQUENCY PROCEEDINGS/MINOR PERSONAL PROTECTION) – JC 05a, (ORDER TO APPREHEND) was filed with the Berrien County Family Court Division stating that the minor child has violated probation/placement. The juvenile has failed to appear for a Disposition held on March 6, 2013 at 8:30 a.m., Berrien County Courthouse, Fourth Floor, Courtroom 405, St. Joseph, Michigan. (Respondent's Exhibit A page 23)
4. The ORDER TO APPREHEND stated that it was contrary to the welfare of the juvenile to remain in her home because the juvenile has no suitable placement with either parent and her AWOL status puts her at risk of harm to herself. (Respondent's Exhibit A page 23)
5. The ORDER TO APPREHEND stated that reasonable efforts were made to prevent removal of the juvenile from the home. Those efforts include: Contact with juvenile; Contact with juvenile's parent; contact with foster parent; contact with police agency; monitoring of school progress; alternative or special education; assessment of needs and strengths; Riverwood Liaison; drug screens; other services through Children's Protective Services. (Respondent's Exhibit A page 23)
6. On March 13, 2013, the ORDER TO APREHEND was signed by Berrien County Judge [REDACTED] stating: IT IS ORDERED: The juvenile shall be apprehended and brought before this court or temporarily detained at the Berrien County Juvenile Center, in secure detention, ADP, or returned to the residential Program at the discretion of the Juvenile Center Director, Assistant Director, or designee pending preliminary hearing. (Respondent's Exhibit A page 24)
7. On March 13, 2013 a Violation of Placement PETITION was filed in the Berrien County Trial Court for Petitioner requesting the Court to:

Authorize this petition and find the juvenile has violated placement and notify the juvenile to appear for a hearing.
8. On March 27, 2013, the child was picked up at school and detained.
9. On March 28, 2013, the PETITION was signed by Berrien County Trial Court Referee.
10. On October 17, 2014, the Department caseworker sent a 176 Notice of Case Action that denied Petitioner's Title IV-E funding stating:

(The child's) case is being denied Title IV-E funding because AWOL efforts to detain the youth were insufficient. The hearing date of the J-5 order is 3/06/13 and it was authorized 3/13/13. (The child) was detained 3/27/13. According to the probation officer, the following efforts were made to detain the youth:

1. 3/06/13—J5 issued for fail to appear at scheduled disposition hearing;
2. 3/12/13—I contacted [REDACTED] at BHAS and asked if (the Child) had been in school and asked for her to keep an eye out for her and notify me if she appears as there is an active J5.
3. 3/19/13 [REDACTED] and I spoke and she said that she hasn't seen (the Child) at school recently.
4. 3/27/13—[REDACTED] contacted me and said (the Child) was at school so dispatch was notified and she was picked up.

"This is all the efforts that were made between the time she had the J5 issued and her apprehension."

These efforts were forwarded to the Federal Compliance Division who acknowledged that the efforts to locate (the Child) were insufficient. (Respondent's Exhibit A pages 1-2)

11. On May 30, 2014, an ORDER OF DISPOSITION COMMITMENT OR REFERRAL TO DEPARTMENT OF HUMAN SERVICES (DELINQUENCY PROCEEDINGS) was signed by Judge [REDACTED], which stated that the juvenile appeared in court with representation. The juvenile was fingerprinted and committed to the Michigan Department of Health and Human Services under Public Act 150. This action is in accordance with Children's Foster Care Manual: FOM 902-5 (Respondent's Exhibit A pages 26-27)
12. On December 9, 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 Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and 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 DHHS 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 DHHS-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 DHHS under Act 296 (Adoption Voluntary Release). In other words, a DHHS-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 DHHS-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.

As a condition for Title IV-E funding, court orders must make the Department of Health and Human Services solely responsible for the child's placement and care.

- Court orders do not have to contain the exact words placement and care; substitute wording such as care and supervision, or placement and supervision may be used without affecting Title IV-E funding eligibility.
- An order that includes the confirmation of prior orders or states that prior orders are affirmed may be used if a prior order made DHHS solely responsible for the child's placement and care.
- Jurisdiction of the eligible child must have been taken under either the neglect or delinquency section of the Juvenile Code (but not under any adult criminal code or proceedings).
- A court order giving the DHHS responsibility for placement and care acts as the application for Title IV-E. For youth released under 1974 PA 296, the order terminating rights meets this requirement as long as the DHHS is given responsibility for placement and care.
- Orders for state wards must include the words: committed to the Michigan Department of Health and Human Services. The public act under which the youth is committed (such as the Youth Rehabilitation Services Act, 1974 PA 150 or the Michigan Children's Institute (MCI) Act, 1935 PA 220) must be identified on the commitment order. Orders for temporary or permanent court wards must contain the words: placed with the Michigan Department of Human Services for placement and care; see MCL 400.55(H).
- A child is a dual ward when there are concurrent abuse/neglect and delinquency cases. Any youth who has both abuse/neglect and delinquency cases is a dual ward, whether or not DHHS has supervision of the delinquency side of the case. This is regardless of the

youth's commitment under Act 150. This does not include youth on a consent calendar or voluntary, informal probation.

Note: To qualify for Title IV-E funding, DHHS must be solely responsible for a dual ward's placement and care. If the delinquency court supervises the youth's delinquency case **and** assumes placement and care responsibilities, then the youth is not Title IV-E eligible. FOM 902, pages 15-16

If a child cannot be located and is not physically removed at the time the court enters an order for removal, absent without legal permission (AWOLP) procedures are to be followed including the diligent search requirements; see FOM 722-03 and JJ 410. The child's placement must be entered as AWOLP in MiSACWIS. If the AWOLP policies are followed and documented in the electronic and paper case file, the child can be Title IV-E eligible. FOM 902, page 20.

The diligent Search Requirements are found in FOM 722-03A and state in pertinent part:

As soon as possible, but within two business days of the child's absence, the assigned caseworker must commence a diligent search for the child. Actions required are:

- Review all available information in the case file/MiSACWIS records to identify information on the potential location of child; for example, family members, unrelated caregivers, friends, known associates, churches, and/or a neighborhood center.
- Contact the school that the child last attended. Verify that the child is not in attendance and determine if there are friends/teachers of the child who may have information.
- Contact the local school district office(s) to determine if child has enrolled in a new school.
- Review Medical Passport and medical records in case file and determine if there are:
 - Outstanding medical needs and contact physician.
 - Medication needs and contact pharmacy.
- Document results of all contacts in MiSACWIS.
- Forward any new results of contacts to the court and law enforcement.

DHS Caseworkers Only

- Complete automated systems checks to search for child or known family members (Bridges, Secretary of State, LEIN).

As soon as possible, but within two business days of notification, the DHHS monitoring worker or designee must commence a diligent search for the child by the following actions:

- Complete automated systems checks to search for child or known family members (BRIDGES, Secretary of State and LEIN).
- Review any additional DHHS case files/MiSACWIS records to identify information on the potential location of child/youth; for example, family members, unrelated caregivers, friends, known associates, churches, and/or a neighborhood center. Forward any new information to the court, law enforcement and the supervising agency.

At a minimum, the assigned caseworker and (if applicable) the DHHS monitoring worker must repeat a diligent search every calendar month until the child is located. The assigned caseworker must document all efforts to locate a child and any child-initiated contacts in the case file using the DHHS-991, Diligent Search Checklist. This information must also be documented in the case service plan and court reports.

The caseworker must continue to notify law enforcement of any new information to aid in their efforts to locate the youth.

The Child Locator Centralized Unit will:

- Receive email notification generated by MiSACWIS that the child is AWOLP.
- Review the electronic case file for completeness.
- Notify local office via reply email of determination or need for additional information.
- Determine if child information will be placed on the Child Locator Web site. FOM 722-03A, pages 1-4.

In the instant case, Berrien County contends that the AWOLP guidelines within FOM 722-03A and JJ 410 pertain to children placed with the Department of Health and Human Services for care and supervision. The child was not placed with Department of Health Human Services, and therefore, denial of funds cannot be based upon FOM 722-03A and JJ 410. Additionally, there are no sufficient guidelines for AWOL efforts for

the detention of children not placed within DHHS for care and supervision. The County's efforts to detain the child were sufficient, the AWOLP guidelines within FOM 722-03A are not workable without DHHS involvement and denial of funds should not be based on FOM 722-03A and JJ 410 for children not placed with DHHS.

The Department contends that, once a youth is placed with DHHS, per FOM 722-03A and JJ 410 efforts must be applied to determine the appropriate fund source for the youth. If the county does not meet these policy requirements at the time of removal and later decides to place the youth with DHHS for care and supervision, it will affect the funding determination and could make a youth ineligible for federal Title IV E funds. Accordingly, the denial of funds was proper given the county's failure to comply with the efforts and reporting requirements in FOM 722-03A and JJ 410.

This Administrative Law Judge finds that the child left placement without permission. An ORDER TO APPREHEND was issued. Department policy dictates specific steps which must be taken before it will consider that diligent efforts have been made to apprehend a child who is absent without legal permission (AWOL). In this case, there is insufficient documentation on the record which indicates exactly when the child left care and became AWOL. However, the child failed to appear at a scheduled disposition hearing on March 6, 2013. Taking March 6, 2013 as the date the child became legally AWOL, the record indicates that the school was contacted on March 12, 2013, which is seven days after the child failed to appear. The ORDER TO APPREHEND was signed by the Judge on March 13, 2013. There is insufficient evidence on the record that the assigned caseworker or in this case, the probation officer took the following required actions within two days of the child's absence:

- Review all available information in the case file/MiSACWIS records to identify information on the potential location of child; for example, family members, unrelated caregivers, friends, known associates, churches, and/or a neighborhood center.
- Contact the school that the child last attended. Verify that the child is not in attendance and determine if there are friends/teachers of the child who may have information.
- Contact the local school district office(s) to determine if child has enrolled in a new school.
- Review Medical Passport and medical records in case file and determine if there are:
 - Outstanding medical needs and contact physician.
 - Medication needs and contact pharmacy.
- Document results of all contacts in MiSACWIS.

- Forward any new results of contacts to the court and law enforcement.

The Department determination that diligent search efforts were insufficient is established under the circumstances, by a preponderance of the evidence, and the department's determination to deny Title IV-E eligibility must be upheld.

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 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 AWOL efforts were not sufficient to locate the minor child.

Accordingly, the Department's decision is AFFIRMED



Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: July 7, 2015

Date Mailed: July 7, 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.

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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]