

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-008694
Issue No.: TITLE IV-E
Case No.: [REDACTED]
Hearing Date: July 15, 2015
County: CHEBOYGAN

[REDACTED]

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Issue No.: TITLE IV-E
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County: CHEBOYGAN

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 3 way hearing was held on July 15, 2015, from Detroit, Michigan.

The Petitioners Attorney, Guardian Ad Litem, [REDACTED], appeared on behalf of Petitioners Dakota Brandt and Haylena Brandt, who did not appear.

The Respondent Department of Health and Human Services (Department) was represented by [REDACTED], Assistant Attorney General. Appearing as witnesses for the respondent were [REDACTED], MDHHS Title IV-E Federal Compliance Division, and [REDACTED], Child Welfare Funding Specialist from the Cheboygan District Office of MDHHS.

ISSUE

Did the Department properly deny Petitioners Title IV-E Funding?

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 are minor children who were removed from their mother's home on [REDACTED] by the Department. Exhibit 1, p. 5
2. Although a Family Court hearing preceded the removal, the Department did not obtain a written court order until [REDACTED], 6 days after the Petitioners were removed and 6 days after the Family Court hearing. Claimant Exhibit A and Exhibit 1 pp.5-9
3. The Department removed the Petitioners prior to the issuance of the written court order.
4. The Department issued a Notice of Case Action on [REDACTED] denying the Petitioners' Title IV-E funding for out of home care for the stated reason: "Judges signed Removal Order is 6 days after removal making continuing funding no good". Exhibit 1, p. 3-4
5. The parties' respective legal counsel agreed that the facts regarding Dakota Brandt and Haylena Brandt, (Petitioners') removal were the same facts for both Petitioners removal. One Court Order was issued for both Petitioners. Exhibit 1, p. 5-9
6. The Petitioner's Attorney Guardian Ad Litem, [REDACTED] requested a timely hearing on [REDACTED] protesting the Department's denial of Title IV-E funding for Petitioners.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Children's Foster Care Manual, FOM, Bridges Administrative Manual, (BAM), and Children's Protective Services Manual (PSM). 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, the Petitioners were removed from their mother's home on [REDACTED], [REDACTED] by the Department after a Family Court Hearing. The Department, contrary to its policy, removed the Petitioners without a written court order. No Court order was obtained by the Department until [REDACTED] (6 days after Petitioners removal from their mother's home and the Family Court Hearing). Upon review of the Title IV-E funding determination, the Department determined by Notice of Case Action that the Petitioners were ineligible to receive Title IV-E funding on March 4, 2015. The reason for the denial was essentially that the Judge's removal order was issued 6 days after the removal. The Department witness, [REDACTED], of the Departments' Title IV E Federal Compliance Division agreed that the removal order's contents and language were sufficient to support a removal had it been issued on the removal date, but that the removal of Petitioners did not comply with Department policy because the removal order was not issued until after the Petitioners removal from their mother's home.

The Respondent MDHHS (Department) argues that Petitioners are ineligible for Title IV-E funding because the Court Order confirming their removal did not conform to Title IV-E funding requirements and MDHHS policy. Specifically the Department asserts that the court order removing the child from the home must coincide with the removal. FOM 902 (May 1, 2014) p. 21; 42 USC 672 (a)(2)(A)(ii). The Department conceded that it did not comply with its own policy when it removed the Petitioners without a written court order and that the court order did not coincide with the removal. At the hearing a question was raised as to whether coincide meant at the same time or prior to and is not a defined term in Department policy. The Oxford Dictionary meaning of the word coincide means "at or during the same time; synonyms: occur simultaneously, happen

together, be concurrent, see also Merriam Webster definition, "to happen at the same time as something else". Oxford Dictionary ; [REDACTED], found online at: <http://www.oxforddictionaries.com/definition/english/sanction?q=coincide+>; www.oxforddictionaries.com. Merriam-Webster Dictionary; [REDACTED], found online at: <http://www.merriam-webster.com/dictionary/coincide>.

The Department's policy is consistent with Federal regulatory requirement as regards the requirements for removal. 45CFR 1356.21 provides:

(c) *Contrary to the welfare determination.* Under section 472(a)(2) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. **The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.** (Emphasis supplied).

This regulation clearly requires that a court ruling must sanction (even temporarily) the removal, and requires the removal from the home be a result of a judicial determination. Again the common meaning of the word sanction is: "give official permission or approval for (an action: (verb) synonyms authorize, permit, allow". Oxford Dictionary; found online at: <http://www.oxforddictionaries.com/definition/english/sanction?q=sanction+>

The Department's Office of Child Protective Services petitioned for removal and removed the Petitioners. Department policy found in Children's Protective Services Manual, PSM 715-2 (June 1, 2014) p. 1 provides:

CPS cannot receive custody of a child from law enforcement or remove a child from his/her home or arrange emergency placement without a **written** court order (in writing, communicated electronically or otherwise) authorizing the specific action even if requested by law enforcement. When DHS is contacted by law enforcement seeking the assistance of CPS in the removal of a child, CPS must immediately contact the designated judge or referee.

Reviewing the Department's policy referenced above found in FOM 902, PSM 715-2 and the Federal regulation found in 45CFR 1356.21 it is clear that all three are consistent and require a court order prior to the removal of a child from a home.

Michigan Courts have held that the plain language of the statute controls in articulating the standard of review applicable to an agency's interpretation of its own policy directive. *Iscaro v Dep't of Corr.*, 2013 Mich App Lexis 928; see also *SBC Mich v PCS (In re Rovas*

complaint 482 Mich 90, 108 (2008). In *Iscaro* the Supreme Court explained that “ the agency’s interpretation is entitled to respectful consideration, and... should not be overruled without cogent reason.” The Court also added that the agency interpretation can be helpful for the construction of “doubtful or obscure provisions”.

In reviewing Department policy, the plain language, found in both FOM 902 and PSM 715-2 are consistent and clear and read together, require a written order in order to remove a child from the child’s home. In addition the Department conceded that it violated its own policy when removing Petitioners.

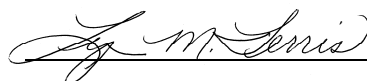
It is generally accepted law that the MDHHS cannot make a claim for federal funds that do not meet the federal statutory and regulatory requirement or MDHHS policy as approved in the State Plan for Title IV-E. Title IV-E funding is a source of financial support for children placed in foster care. FOM 902, (May1, 2014) p.1. Therefore it is determined that the Department properly denied the Petitioners Title IV Funding because the removal of Petitioners was not in compliance with Department policy.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it denied Title IV-E funding for Petitioners in this case because the Court’s Removal Order was not signed until 6 days after the removal and thus did not coincide with the Petitioners removal.

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: **7/24/2015**

Date Mailed: **7/24/2015**

LMF / hw

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

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

CC:

