



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

MIKE ZIMMER  
DIRECTOR

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

[REDACTED]  
MAHS Docket No.: 15-023344 CMH  
[REDACTED]  
[REDACTED]

**ADMINISTRATIVE LAW JUDGE: Steven Kibit**

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon the Petitioner's request for a hearing.

After due notice, a hearing was held on [REDACTED] [REDACTED], the minor Petitioner's mother, appeared and testified on Petitioner's behalf. [REDACTED] [REDACTED] n, Compliance Officer, represented the Respondent [REDACTED] Quality Assurance Manager, and [REDACTED], Case Manager, also testified as witnesses.

**ISSUE**

Did Respondent properly deny Petitioner's request for retroactive payments through the Family Support Subsidy (FSS) Program?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. In [REDACTED] Petitioner's representative applied to Respondent for the FSS on Petitioner's behalf. (Undisputed testimony).
2. On or about [REDACTED], Respondent sent Petitioner a letter stating that the request was denied on the basis that Petitioner's Individualized Education Program (IEP) provides that Petitioner's Intelligence Quotient (IQ) places her at minus three standard deviations below the mean while the intellectual assessment must show a rate of 4.5 or more standard deviations below the mean for a child to qualify under the cognitive impairment programming rule for the FSS program. (Exhibit A, page 1).

3. Petitioner never appealed that denial. (Undisputed testimony).
4. The IEP was developed through [REDACTED] (Undisputed testimony).
5. Petitioner's IQ score in her IEP was based at least in part on her score on the Leiter-3 test. (Undisputed testimony).
6. In [REDACTED] the company that developed that test sent a letter to clients stating that, in light of new analyses, it had found that "some oddities in the data and models apparently resulted in tables that did not adequately estimate the score distribution for the lower IQ range" and that it had now adjusted the tables for the Appendix of the Leiter-3 test. (Exhibit B, page 1).
7. The letter also stated that:

Although these inconsistencies have not affected a large portion of the Leiter-3 population, it is possible a few individuals may have achieved higher than anticipated scores at the lower IQ ranges.

*Exhibit B, page 1*

8. In [REDACTED], Petitioner's IEP was updated and it was determined that her IQ score was lower than what had previously been determined. (Undisputed testimony).
9. Petitioner then reapplied for the FSS and was approved. (Undisputed testimony).
10. On or about [REDACTED], the Supervisor of Compliance at [REDACTED] sent Petitioner a letter and copies of Petitioner's testing and plans. (Exhibit C, page 1).
11. In particular, the letter addressed the [REDACTED] amendment to the [REDACTED] Multidisciplinary Evaluation Report (MET) and stated:

The amendment, the third document I am sending you, clearly states that there was a problem with the scoring and the Leiter 3 publisher has released an adjusted Nonverbal IQ norms table following extensive analysis. Although these inconsistencies have not affected a large portion of the Leiter-3 population, it did have a significant impact on [Petitioner's] scores from [REDACTED]. Please refer to this document as evidence of the problem and the amended to the MET as the solution. Again, this scoring

adjustment had a major impact on your daughter's nonverbal IQ scores.

*Exhibit C, page 1*

12. After receiving that letter discussing the errors in testing, Petitioner's representative requested that Respondent grant retroactive FSS payments for the [REDACTED] months between Petitioner's initial application and the approval during which she was deemed ineligible. (Undisputed testimony).
13. Respondent reviewed the request with Petitioner's representative and the representatives from the Department of Health and Human Services before denying the request. (Undisputed testimony).
14. On [REDACTED], Petitioner's representative sent a letter/local appeal to Respondent again stating that Petitioner was improperly denied [REDACTED] years of monies due to faulty testing and requesting payment for that time period. (Exhibit E, page 1).
15. On [REDACTED], Petitioner's representative also filed a request for an administrative hearing with the Michigan Administrative Hearing System (MAHS) making the same claims. (Exhibit 1, page 1).
16. In [REDACTED] Respondent again reviewed Petitioner's appeal with Petitioner's representative and the Supervisor of Compliance at the [REDACTED] (Undisputed testimony).
17. During that review, the Supervisor of Compliance at the [REDACTED] noted that it cannot or will not reissue an eligibility determination for [REDACTED] (Undisputed testimony).
18. On [REDACTED], Respondent sent Petitioner written notice that her local appeal had been denied and the original decision to deny the request for back pay for FSS had been upheld based on the available information. (Exhibit F, pages 1-2).

### **CONCLUSIONS OF LAW**

The purpose of the Family Support Subsidy Program is:

to keep families together and to reduce capacity in state facilities by defraying some of the special costs of caring for eligible minors, thus facilitating the return of eligible minors from out-of-home placements to their family homes, and preventing or delaying the out-of-home placement of eligible minors who reside in their family homes.

*MCL 330.1156*

A parent or legal guardian may apply for the Family Support Subsidy Program if he or she believes a family member is eligible for the subsidy or will become eligible in the near future. See Mich Admin Code R 330.1621.

Regarding the eligibility criteria for the program, MCL 330.1157(2) provides:

(2) The department shall create application forms and shall make the forms available to community mental health services programs for determining the eligibility of applicants. The forms shall require at least the following information, which constitutes the eligibility criteria for receipt of a family subsidy:

(a) A statement that the family resides in this state.

(b) Verification that the eligible minor meets the definition in section 100a.

(c) A statement that the eligible minor resides, or is expected to reside, with his or her parent or legal guardian or, on a temporary basis, with another relative .

(d) A statement that the family is not receiving a medical subsidy for the eligible minor under section 115h of the social welfare act, Act No. 280 of the Public Acts of 1939, being section 400.115h of the Michigan Compiled Laws.

(e) Verification that the taxable income for the family for the year immediately preceding the date of application did not exceed \$60,000.00, unless it can be verified that the taxable income for the family for the year in which the application is made will be less than \$60,000.00.

*MCL 330.1157(2)*

An "Eligible minor" is defined as follows:

(28) "Eligible minor" means an individual less than 18 years of age who is recommended in the written report of a multidisciplinary team under rules promulgated by the department of education to be classified as 1 of the following:

(a) Severely mentally impaired.

(b) Severely multiply impaired.

(c) Autistic impaired and receiving special education services in a program designed for the autistic impaired under subsection (1) of R 340.1758 of the Michigan administrative code or in a program designed for the severely mentally impaired or severely multiply impaired.

*MCL 330.1100a(28)*

Moreover, in demonstrating that a minor is eligible for the program, the applicant must submit written verification from the applicable public school:

(1) An applicant for the family support subsidy program shall provide written verification from the public school which the family member attends or would attend if the family member were in the public school system which shall report the diagnostic category recommended for the family member by the school's multidisciplinary evaluation team.

(2) If the family member has been recommended by the multidisciplinary evaluation team for the diagnostic category of autistic impaired, then the parent or legal guardian shall ensure that the written verification includes the classroom or program placement that is required for family members who are determined to be autistic impaired.

*Mich Admin Code R 330.1607*

Here, the facts are undisputed and they first demonstrate that Petitioner's initial application for the FSS program in [REDACTED] was denied pursuant to the above criteria and on the basis that Petitioner failed to provide the required written verification from her public school district regarding her recommended diagnostic category. Moreover, after a later application was approved in [REDACTED] information came to light that the public school district's decision back in [REDACTED] had been based on a faulty test or other errors.

Petitioner now requests that Respondent grant retroactive FSS payments for the time period between her initial application, in [REDACTED], and her eventual approval, in [REDACTED]. In support of that request, Petitioner's representative argues that the denial of the initial application was clearly based on the use of a faulty test by the school and that, as Petitioner's circumstances have not changed, she would have been approved for the FSS back in [REDACTED] had a proper test been administered.

In response, Respondent does not dispute the facts of the case or that an error occurred back in [REDACTED]. However, it also argues that its decision at that time was proper in light of the available information and that, given the propriety of that past decision and

the school district's continuing unwillingness to verify Petitioner's eligibility for that time, it has no authority to grant retroactive payments at this time.

Petitioner has the burden of proving by a preponderance of the evidence that Respondent erred in denying her request.

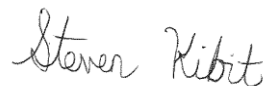
Given the record in this case, Petitioner has failed to meet that burden. The undersigned Administrative Law Judge's jurisdiction is limited to reviewing the Respondent's decision and he has no authority over the school district or the determination it made. Moreover, pursuant the above statutes and rules, Respondent must rely on the information provided from the school district and, based on the information provided in this case, Petitioner's initial application was properly denied as the documentation from the school district failed to verify that Petitioner met one of the eligibility categories for the program. Similarly, the current decision by Respondent at issue in this case, the decision to deny retroactive payments, is likewise proper as the school district has still never verified Petitioner's eligibility for the disputed time period and, even if it had, Petitioner has not demonstrated any authority for making retroactive payments where the Respondent's past decision was correct based on the information available at the time.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly denied Petitioner's request for retroactive payments through the FSS Program

**IT IS THEREFORE ORDERED** that

Respondent's decision is **AFFIRMED**.



SK/db

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**Steven Kibit**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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 30763  
Lansing, Michigan 48909-8139

**DHHS Department Rep.**

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

**DHHS-Location Contact**

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

**Petitioner**

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

**DHHS -Dept Contact**

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