



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

IN THE MATTER OF:

MAHS Docket No.: 16-007767

_____,
Petitioner,

Agency Case No.: _____

V

Case Type: Title IV-E

**Department of Health and
Human Services,**

Respondent.

**Issued and entered
this 1st day of November, 2016
by: Lynn M. Ferris
Administrative Law Judge**

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; and Mich Admin Code, R 792.11002. After due notice, a three-way telephone hearing was held on _____, from Detroit, Michigan.

The Petitioner was represented by Attorney _____, Legal Guardian Ad Litem. The Petitioner _____ did not appear.

The Respondent, Michigan Department of Health and Human Services (Department) was represented by _____, Assistant Attorney General.

Appearing as witnesses for the Respondent were:

- _____, Department Analyst, Federal Compliance Division.
- _____ Child Welfare Specialist Supervisor
- _____, Child Welfare Specialist

ISSUE

Did the Department properly deny/cancel the Petitioner's 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. On [REDACTED], the Petitioner was picked up by a police officer and removed from her family home due to an alleged domestic assault on her mother. Exhibit E.
2. A Complaint was completed by the [REDACTED] Police Department on [REDACTED], indicating the removal of Petitioner occurred at [REDACTED] on that date. Exhibit E.
3. A Petition (Delinquency Proceedings) was filed on [REDACTED], by the [REDACTED] City Police Department and was authorized by the County Prosecutor on [REDACTED] Exhibit C.
4. A Preliminary Hearing was held on [REDACTED]; and an Order After Preliminary Hearing (Order) was issued and entered.
5. The Order finds that it is contrary to the welfare of the juvenile to remain in the home because: [REDACTED] is currently on probation for home desertion. After serving time in detention, she was returned home to her mother. She was on tether and recently is alleged to have violated. [REDACTED] has a violation hearing [REDACTED]. She has a history of not staying home and assaultive behavior when at home. Innerlink was tried and was not successful. [REDACTED] struggles with complying with rules and being respectful toward authority. She is now charged with assaulting her mother. [REDACTED] is fearful about her daughter returning home under any rules as she does not believe [REDACTED] will stay there. The mother is also worried about [REDACTED] assaultive behaviors. [REDACTED] is at risk of injury to herself and others and also long term incarceration.
6. The Order After Preliminary Hearing ordered in paragraphs:
 14. The petition is authorized and the juvenile is temporarily placed with/detained at [REDACTED] County Juvenile Detention facility;
 15. Placement continues pending [REDACTED] for Trial Conference;
 17. The juvenile shall be fingerprinted in accordance with the Order for Fingerprints;
 18. In home care programs are authorized for use, as needed. MAYSI testing ordered. Probation Officer to be assigned.
7. The Petitioner's Legal Guardian Ad Litem requested a timely hearing on [REDACTED].

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 DHHS 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 DHHS 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 DHHS provide casework service through a placement and care order. FOM 901-6 (May 1, 2014) p. 1.

In this case, the Petitioner was taken into custody by a [REDACTED] City police officer and removed from the home and detained in a juvenile detention facility on [REDACTED]. Exhibit E. The next day, [REDACTED], a hearing was held on a Petition filed by a [REDACTED] City Police Department police officer. A preliminary hearing was held before a Judge on [REDACTED], which resulted in an Order After Preliminary Hearing. The Order After Preliminary Hearing dated [REDACTED] was issued the same day as the hearing. The Order specifically found that "It is contrary to the welfare of the juvenile to remain in the home, or placement would be in the best interest of the juvenile because:

[REDACTED] is currently on probation for home desertion. After serving time in detention, she was returned home to her mother. She was on tether and recently is alleged to have violated. [REDACTED] has a violation hearing [REDACTED]. She has a history of not staying home and assaultive behavior when at home. Innerlink was tried and was not successful. [REDACTED] struggles with complying with rules and being respectful toward authority. She is now charged with assaulting her mother. [REDACTED] is fearful about her daughter returning home under any rules as she does not believe [REDACTED]

will stay there. The mother is also worried about [REDACTED] assaultive behaviors. [REDACTED] is at risk of injury to herself and others and also long term incarceration. Exhibit D, p. 1, paragraph 8.

The Order ordered the following:

14. The petition is authorized and the juvenile is temporarily placed with/detained at [REDACTED] County Juvenile Detention facility;
15. Placement continues pending [REDACTED] for Trial Conference;
17. The juvenile shall be fingerprinted in accordance with the Order for Fingerprints;
18. In home care programs are authorized for use, as needed. MAYSI testing ordered. Probation Officer to be assigned.

After initially approving Title IV-E funding, the Department reversed its position and issued a Notice of Case Action on [REDACTED], denying/canceling out of home care for the Petitioner. The Department's basis for the cancellation/denial was the following:

A removal order was completed on [REDACTED]. However, youth was detained on [REDACTED] without an order that indicates contrary to the welfare. Based on this, youth is not Title IV-E eligible. Exhibit A.

Any child for whom Title IV-E foster care maintenance payments are claimed must meet the eligibility criteria described in Section 472 (a) of the Social Security Act (the Act). These general requirements are: (a) the child must be a "dependent child" as defined in Section 406 (a) or 407 of the Act and the applicable regulation, 45 CFR 233.90 (c)(1) , but for his or her removal from the home of a specified relative; (b) that the child was eligible for Aid to Families with Dependent Children (AFDC) in the month described in Section 472(a) (3) (A)(i) of the Act; (c) the child must be removed from the home of a relative pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child and reasonable efforts were made prior to the placement to prevent the need for removal of the child from his home; and (d) the child's placement and care must be the responsibility of the state Title IV-E agency or another public agency with whom the state agency has a currently effective agreement. Child Welfare Policy Manual, October 2015, Section a .3 A.1. See also FOM 902, (May 1, 2015).

In this matter, the Petitioner was removed by a local police officer from the home. Such actions are authorized by MCL 712A.14. The Probate Code provides:

Sec. 14. (1) Any local police officer, sheriff or deputy sheriff, state police officer, county agent or probation officer of any court of record may, without the order of the court, immediately take into custody any child who is found violating any law or ordinance, or whose surroundings are such as to endanger his or her health, morals, or welfare, or for whom there is reasonable cause to believe is violating or has violated a personal

protection order issued pursuant to section 2(h) by the court under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or for whom there is reasonable cause to believe is violating or has violated a valid foreign protection order.

In this case, the first court order making the “contrary to the welfare of the child” finding was the Order After Preliminary Hearing/Inquiry. This order was entered after the removal of the Petitioner from the home. A review of Department policy will assist to determine what type of orders or actions constitute orders of removal. Department policy found in FOM 902, sets forth the following requirements when the finding of Contrary to the Welfare must be made, it provides:

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, May 1, 2014), p. 19. (Emphasis supplied).

As can be seen, the Order After Preliminary Hearing/Inquiry (inquiry) is anticipated as the type of order which must be in place prior to the removal of child from the home.

Child Welfare Policy Manual

Further guidance is also found in The Child Welfare Policy Manual (Manual) developed by the agency designated to administer Title IV-E, The Administration for Children & Families (ACF) which is used as a guide for determining Title IV-E program requirements and eligibility. The Manual contains questions and answers applicable to the child welfare program requirements prepared by the Children’s Bureau. The Manual specifically addresses the “contrary to the welfare” findings which must be made. Several of the questions offer guidance as to whether a court order must be in place at the time of the removal.

8.3A.6 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Contrary to the Welfare

Question 8.

Once a court order is issued with a judicial determination that remaining in the home is contrary to the child's welfare, does the State have to actually remove the child at that time and place the child in foster care?

Answer Yes. Section 472(a)(2) of the Social Security Act predicates a child's receipt of Title IV-E funds on the child's removal from home as the result of either a voluntary placement agreement or a judicial determination that to remain at home is contrary to the child's welfare. **The judicial determination that results in the child's removal must coincide with (i.e., occur at the same time as) the agency's action to physically or constructively remove the child, unless the court order specifies an alternative timeframe for removal, as allowed for in the Departmental Appeals Board (DAB) decision # 2017.**

If a court makes a judicial determination that it is contrary to the child's welfare to remain at home (without specifying an alternative timeframe) and the child does, in fact, remain at home and no removal occurs, the requirement for removal is not met and the child is ineligible for Title IV-E. If the child's safety is not at risk and a State chooses to offer support services to the family in-home to prevent having to remove the child, it should do so. States cannot issue "blanket" removal orders, however, in an attempt to guarantee Title IV-E eligibility in the event that the child has to be removed from home at some point in the future. Child Welfare Policy Manual

http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy.jsp?idFlag=8

The answer to Question 8 contains the "must coincide with" language also found in Department policy contained FOM 902. The answer to Question 8 states very clearly that the judicial determination by way of court order that results in the child's removal, must coincide with (i.e. occur at the same time as) the agency's **action to physically** or constructively remove the child... (Emphasis supplied).

The Child Welfare Policy Manual also provides guidance and discusses a circumstance similar to the facts in this case.

The Question 2: For purposes of meeting the Section 472 (a)2 (A) iii eligibility requirement, must a temporary detention order include "contrary to the welfare" language or is it possible to consider a later delinquency adjudication order or dependency adjudication order as the removal order?

The Answer: The statute requires that "removal" from the home must occur as a result of the judicial determination to the effect that continuation therein would be contrary to the child's welfare. Therefore,

such a determination must be made in the order that results in the removal of the child from the home. Since the child has already been removed from his home and is in detention as a result of a temporary detention order, the later order only sanctions that removal. The child would remain ineligible during the entire foster care placement if the “contrary to the welfare” determination is not made at the time of a temporary detention order. Child Welfare Policy Manual, July 11, 2016, Section 8.3A.6.

In this case, there was no court order, or a temporary detention order issued at the time of the Petitioner’s removal on [REDACTED]. The Order After Preliminary Hearing/Inquiry, was entered after the removal of Petitioner from the home had occurred. Under these circumstances, it is determined that the Department properly denied the Petitioner’s Title IV-E funding as no court order authorizing the removal of Petitioner was issued at the time of Petitioner’s removal.

Petitioner’s attorney has argued that the Order was sufficient as at the time the Petitioner was taken into custody, the Department was not involved. This argument is not supported by the requirements which must be met for Title IV-E funding eligibility as they are reasonably intended to extend to any person or agency, as well as the Department, who removes a child; such person or agency must have a court order to remove a child in order to be Title IV-E eligible. Local law enforcement agencies may seek to remove or detain a juvenile pursuant to the authority granted to them to do so; however, if removal is done without an order of the court authorizing the removal with the appropriate requisite findings, Title IV-E funding will be jeopardized.

The standard of review applicable to an agency’s interpretation of its own policy directive articulated by Michigan court decisions have held that the plain language of the statute controls. *Iscaro v Dep’t of Corr.*, 2013; see also *SBC Mich v PSC* (in re Rovas Complaint, 482 Mich 90, (2008)). The Supreme Court explained that the “the agency’s interpretation is entitled to respectful consideration and, should not be overruled without cogent reasons.” Further, the court observed that agency interpretations can be helpful for the construction of “doubtful or obscure provisions”. Thus, it is determined that the language of FOM 902 is clear in the plain meaning of its requirement that the first court order contain a finding that it is contrary to the welfare of the child to remain in the home and that this order coincide with the child’s removal from the home, thus, requiring the order for removal be issued at the time of the child’s physical removal from the home.

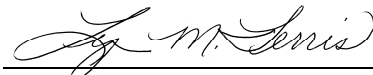
It is generally accepted law that the Department cannot make a claim for federal funds that does not meet the federal statutory and regulatory requirement or Department policy as approved in the State Plan for Title IV-E. Title IV-E funding is a source of financial support for children placed in foster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

Thus, it is concluded that the removal in this matter did not conform to the requirements of the 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 continuing Title IV-E funding for Petitioners in this case because the Court's Order After Preliminary Hearing/Inquiry did not coincide with the removal as the Petitioner as Petitioner was already removed.

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

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 30639
Lansing, Michigan 48909-8139

PROOF OF SERVICE

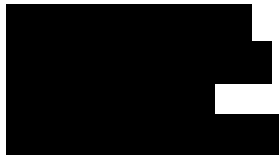
I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 1st day of November, 2016.



Jessie A. Farkas, Legal Secretary
Michigan Administrative Hearing System



Department Representative



DHHS



Counsel for Respondent



Petitioner



Counsel for Petitioner