



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.: 16-008661

[REDACTED]
Petitioner,

Agency Case No.: [REDACTED]

Case Type: Title IV-E

v

**Department of Health and Human
Services,
Respondent.**

**Issued and entered
this 4th 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 3-way telephone hearing was held on [REDACTED], from Detroit, Michigan.

Attorney [REDACTED], Legal Guardian Ad Litem, Appeared on behalf of the Petitioner.

The Petitioner [REDACTED] did not appear.

Attorney [REDACTED], Assistant Attorney General, appeared on behalf of the Respondent, Michigan Department of Health and Human Services (Department).

Appearing as witnesses for the Department were:

- [REDACTED], Analyst – Federal Compliance Division
- [REDACTED] ith, Child Welfare Funding Specialist
- [REDACTED], Child Welfare Funding Specialist Supervisor

ISSUE

Did the Department properly deny the Petitioner's request for 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 Petitioner was removed from his home on [REDACTED]; and thereafter, Title IV-E funding was requested by the County on [REDACTED].
2. At the time of Petitioner's removal on [REDACTED], a Review hearing regarding the Petitioner was held.
3. On [REDACTED], a Supplemental Order of Disposition Following Review Hearing (Delinquency Proceedings), ("Order") was issued by the [REDACTED] Judicial Circuit Court, Family Division for [REDACTED] County. The Order indicated that a probation violation hearing was held on [REDACTED]. The court found in its Findings that the juvenile has not been rehabilitated. The Court also made a finding that it is contrary to the welfare of the juvenile to remain in the home because fifth probation violation in less than nine months and refusing to follow the reasonable commands of parents. Exhibit C.
4. The Court ordered the following: IT IS ORDERED:
 18. Prior orders remain in effect except as modified by this order;
 20. The juvenile's placement shall be changed to [REDACTED]. Probation suspended while in placement;
 28. The next review hearing is [REDACTED]. Exhibit C
5. The Department issued a Notice of Case Action dated [REDACTED], which denied Title IV-E funding and provided:

Payment for out of home care for [REDACTED] funded through the title IV-E program is being cancelled or denied because: 12. Other: the removal order dated [REDACTED] was not signed by the judge until [REDACTED] therefore Contrary to the Welfare and Reasonable Efforts were technically not found until the Judge validated the order with a signature. Also noted on the removal order if it had been signed on the removal date the Contrary to the Welfare finding was not acceptable for Title IV E standards. Exhibit B
6. In its Hearing Summary, the Department advised that the removal order states, "it is contrary to the welfare of the juvenile to remain in the home because 5th probation violation in less than 9 months and refusing to follow the reasonable commands of Parent ... according to policy FOM 902 "The youth's delinquent

behavior is not a valid contrary finding". Also the court hearing took place on [REDACTED] but the order was not signed by the judge until [REDACTED]

7. The Petitioner, through his Legal Guardian Ad Litem, requested a timely appeal of the Department's determination denying Title IV-E funding.

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. FOM 902-05 (May 1, 2014), p. 3.

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

There are two issues which must be addressed in this case. The first is whether the Department policy was complied with when the Court Order authorizing the Petitioner's

removal from his home issued in this case was issued and signed after the removal of Petitioner from his home.

The second issue is whether the Court's "contrary to the welfare" findings were sufficient to support Title IV-E eligibility requirements as regards the detention of the Petitioner for a probation violation resulting in a removal of the Petitioner from his home.

A hearing was conducted by the [REDACTED] Judicial Circuit Court on [REDACTED], after which the Petitioner was removed from his home. The Petition was filed by a county juvenile officer; the Department was not involved in the removal of Petitioner.

The next day, [REDACTED], a Supplemental Order of Disposition Following Review Hearing (Delinquency Proceedings), hereafter referred to as ("Order") was issued by the [REDACTED] Judicial Circuit Court, Family Division for [REDACTED] County. The Order indicated that a probation violation hearing was held on [REDACTED]. The court found in its Findings that the juvenile has not been rehabilitated. In its findings, the court also found:

It is contrary to the welfare of the juvenile to remain in the home because 5th probation violation in less than 9 months and refusing to follow the reasonable commands of parents. Exhibit C.

The Court ordered the following:

IT IS ORDERED:

18. Prior orders remain in effect except as modified by this order;

20. The juvenile's placement shall be changed to [REDACTED].
Probation suspended while in placement;

28. The next review hearing is [REDACTED]. Exhibit C

Thereafter, the County applied to the Department on [REDACTED], for Title IV-E funding and was subsequently denied. In its [REDACTED], denial, the Department found:

Payment for out of home care for [REDACTED] funded through the title IV-E program is being cancelled or denied because: 12. Other: the removal order dated [REDACTED] 5 was not signed by the judge until [REDACTED] therefore Contrary to the Welfare and Reasonable Efforts were technically not found until the Judge validated the order with a signature.

Department policy in effect at the time of the denial by the Department is found in the Children's Foster Care Manual, which contains policy adopted by the Department and which sets forth the requirements of Title IV-E eligibility. The Department's Title IV-E eligibility requirements at the time of the court hearing and subsequent Order provided:

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.

The contrary to the welfare determination must also be made within the **first** court order for each new placement episode, regardless of whether a new petition is filed or not. The child is **ineligible for the current placement episode** if the finding is not made in the first order for **each** placement episode. The determination must be explicit and made on a case by case basis.

Note: The order cannot be amended by a subsequent order, such as a nunc pro tunc order, which amends the original order to meet the contrary to the welfare finding requirement; see 45 C.F.R. Sec. 1356.21(d). FOM 902 (May 1, 2014) p. 19-20.

Department policy referenced above has been modeled after guidance provided by the federal agency charged with administering the Title IV-E Program, the Administration for Children & Families (ACF). 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.¹

¹ The Child Welfare Policy Manual is found online at http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy.jsp?idFlag=8

As can be seen the language found in FOM 902 is taken directly from the language found in Child Welfare Policy Manual, Chapter 8.3A.11, Removal from the home/living.

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.

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 plain meaning of the words "must coincide with" found in FOM 902 requires the order be issued at the time of the removal. See Definition of word coincide as defined by the *Oxford Dictionaries* is: 1) Occur at or during the same time. http://www.oxforddictionaries.com/us/definition/american_english/coincide?q=COINCIDE. (November 2016)

The Petitioner has argued that that the Order was provided within 24 hours of the hearing and that as such should be deemed in reasonable compliance with the Title IV-E requirements sufficient to change the outcome in this case. Based upon the clear longstanding requirement that orders removing minor children be in place at the time of

their removal no such authority would exist for the Department to find reasonable compliance, nor has Petitioner offered any legal authority to support its contention.

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 quote 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.

The language in FOM 902 above referenced requires that the contrary to the welfare or best interest determination be made by the court in the first court order removing the child from his/her home. The Order must coincide with the removal of the child from the home. In the instant matter, while the finding of contrary to the welfare was made in the Order, the order was not a removal order as the Petitioner was already removed the previous day without issuance of an order by the court authorizing/ordering the Petitioners' removal. Thus based upon the clear language of the Department policy found in FOM 902, which has been a requirement since 2012, it is determined that the Department correctly denied the Petitioner's request for Title IV-E. Funding.

As regards whether the Court's Order's contrary to the welfare findings, which the Department also found not to comply with Department policy, it is determined that the contrary to the welfare findings do not comply with policy as explained below.
The Court found:

It is contrary to the welfare of the juvenile to remain in the home because 5th probation violation in less than 9 months and refusing to follow the reasonable commands of parents. Exhibit C.

Department policy in FOM 902 provides:

For juvenile justice wards, the court order may not reference the petition to document this finding because the petition often only details the youth's delinquent behavior. Other juvenile justice criteria include:

A finding must be based on either:

The parents' actions that put the child at risk of harm.

The youth's threat to self, provided the court order details case specific documentation the court utilized for making the determination.

A finding cannot be based on:

The youth's delinquent behavior.

Reference to removal is in society's best interest. The youth is a threat to the community. FOM 902, p. 20-21.

The Child Welfare policy Manual issued by the Administration for Children and Families provides further guidance on the contrary to the welfare findings for circumstances found in this case where a juvenile delinquency proceeding is involved. Several questions and answers shed light on the rationale for the Department's requirements and clearly support the requirements adopted by the Department.

Child Welfare Policy Manual 8.3A.6 Contrary to the Welfare

Question 4.

Court orders that sentence a child to a juvenile detention facility often include language which differs from that in a dependency order resulting in a foster care placement. Does language in a detention order indicating that the child is a "threat to himself or the community" meet the requirement in section 472(a)(2)(A)(ii) regarding "contrary to the welfare?"

Answer

A court order indicating that the child is a threat to himself satisfies the requirement of a determination that remaining in the home would be contrary to the child's welfare. However, if the court order indicates only that the child is a threat to the community, such language would not satisfy the requirement for a determination that continuation in the home would be contrary to the child's welfare.

Question 5

If a temporary detention order states that the child is to be detained until sentencing because there is reason to believe he would run away, would this satisfy the requirement for a determination regarding "contrary to the welfare?"

Answer

No. This language could not be construed to mean that to continue in the home would be "contrary to the (child's) welfare." It is important to remember that the judicial determinations required for title IV-E eligibility were intended to ensure that children were not removed from their homes unnecessarily. In juvenile justice procedures, where children are removed for correctional purposes, the courts must determine that continuation in the home would be contrary to the child's welfare if title IV-E eligibility is to be established.

As can be seen the Order in this matter is not based on either the parent's actions that put the child at risk of harm, nor does it demonstrate that Petitioner was a threat to himself and does not document the case specific documentation the court utilized for making the determination. In addition, the finding that Petitioner has violated probation 5 times in less than 9 months uses the Petitioner's delinquent behavior , as a basis for a contrary to the welfare determination, which by itself is not enough to meet a contrary to the welfare finding. Nor is the finding that states Petitioner refusing to follow the commands of parents sufficient to support a proper contrary to the welfare finding as it does not demonstrate that the parent's actions put the child at risk of harm.

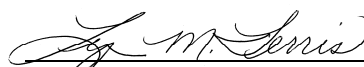
In this case, the Petitioner's attorney requested that he be allowed to present a transcript of the delinquency hearing which was not made available at the hearing, however even if a transcript was provided to illuminate the contrary to the welfare findings, the facts remain that the removal order was not signed at the time of the removal of Petitioner. It is well established law that a courts speaks through its written orders. *In re Contempt of Henry* 282 Mich App 656; 765 N.W.2d. 44 (2009); *Tiedman v Tiedman* 400 Mich 571, 576, 255 N.W.2d.632 (1977).

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.

DECISION AND ORDER

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 the Petitioner's request for Title IV-E funding for Petitioner's case because the court order removing the Petitioner from the home was not issued at the time of removal and the court order's contrary to the welfare findings were insufficient to support the requirements for removal and Title IV-E eligibility.

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 [REDACTED].

[REDACTED]
[REDACTED]
[REDACTED]
Michigan Administrative Hearing System

DHHS

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

Department Representative

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