



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: [REDACTED] August 15, 2017
MAHS Docket No.: 17-003496
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

HEARING DECISION

Following Petitioner's request for 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 [REDACTED], Michigan.

Petitioner was represented by [REDACTED], Attorney at law. Assistant Attorney General [REDACTED] and Assistant Attorney General [REDACTED], appeared on behalf of the Michigan Department of Health and Human Services (MDHHS), Respondent. Petitioner, [REDACTED], did not appear. The Department submitted 55 exhibits which were admitted into evidence.

Appearing as witnesses for Respondent were [REDACTED], Title IV-E Analyst, MDHHS Title IV-E Federal Compliance Division; [REDACTED], Children Welfare Specialist, Supervisor, [REDACTED] County District Office of MDHHS; and [REDACTED], Child Welfare Funding Specialist, [REDACTED] County District Office of MDHHS.

For hearing purposes, this matter and docket number [REDACTED] were combined and heard together. A separate decision will be issued for each contested matter.

ISSUE

Did the Michigan Department of Health and Human Services (Department) properly cancel/deny Petitioner's ongoing 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], a Petition for Child Protective Proceedings was filed by the Department's Child Protective Services worker, [REDACTED], seeking removal of Petitioner, [REDACTED] (DOB [REDACTED]), and his brother, from their mother, [REDACTED] (DOB [REDACTED]). [Dept. Exh. 6-8]
2. The [REDACTED] County Family Court Judge issued an Order After Preliminary Hearing on [REDACTED], ordering that Petitioner be placed with the Department for care and supervision. The Order After Preliminary Hearing specifically found that "It is contrary to the welfare of the child(ren) to remain in the home," because the children's physician stated, "the risk of harm to these children including death is high as [Petitioner's mother] is unable to complete and comply with an intensive program. The children are in NICU at the [REDACTED] and are not breathing or eating on their own, their condition is a result of [Petitioner's] mother's drug use during her pregnancy." The Petition was not authorized pending resumption of the preliminary hearing. [Dept. Exh. 9-13]
3. The [REDACTED] County Family Court Judge issued an Order of Disposition on [REDACTED], finding that custody of the child[ren] with the parent/guarding/legal custodian presents a substantial risk of harm to the child(ren)'s life, physical health, or mental well-being; no provision of service or other arrangement except removal of the child(ren) is reasonably available to adequately safeguard the child(ren) from the risk of harm to the child(ren)'s life, physical health, or mental well-being. Conditions of custody at the placement away from the home and with the individual with whom the child(ren) is/are placed are adequate to safeguard the child(ren)'s health and welfare. The child(ren) are placed with the Department of Human Services for care and supervision. [Dept. Exh. 14-18]
4. The Family Court Judge's Order of Disposition also ordered that Petitioner's mother "shall be drug test weekly. Once the children have been released from the hospital, the children shall be placed with the maternal grandmother and the respondent mother shall be allowed to reside in that home. DHS has been given a full hearing on this matter." [Dept. Exh. 14-18]
5. At the time of placement, Petitioner was in the Neonatal Intensive Care Unit (NICU) at the [REDACTED]. Petitioner remained in the hospital until his release on [REDACTED]. [Dept. Exh. 1, 7]
6. At the time Petitioner was placed with his maternal grandmother, Petitioner's mother had been residing with Petitioner's maternal grandmother since [REDACTED]. [Hearing Summary]

7. On [REDACTED], the [REDACTED] County Family Court Judge issued an Order Following Dispositional Review/Permanency Planning Hearing, indicating that returning the child(ren) to the parent would cause a substantial risk of harm to the child(ren)'s life, physical health, or mental well-being. Reasonable efforts were made to preserve and reunify the family and reasonable efforts for reunification should be continued. Progress toward alleviating or mitigating the conditions that caused the child(ren) to be placed or to remain in temporary foster case was partial. The Judge found that continued placement was necessary and appropriate and was meeting the child(ren)'s needs. [Dept. Exh. 19-23]
8. The Family Court Judge's Order Following Dispositional Review/Permanency Planning Hearing also ordered that Petitioner's mother "shall reestablish a fit home of her own." [Dept. Exh. 23]
9. Petitioner applied for Title IV-E funding on an unspecified date as no application date was provided.
10. Child Welfare Funding Specialist [REDACTED] testified during the hearing that the application to Title IV-E funding was denied because the [REDACTED], court order did not contain the necessary finding for Title IV-E funding. [Testimony of [REDACTED]]
11. On [REDACTED], the [REDACTED] County Department sent a Notice of Case Action denying Petitioner's Payments for Title IV-E funding stating "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" and written in "For 4/2016." The Notice of Case Action also indicated that the "Child removed due to parent court ordered to find own housing. No court order for children granting re-removal." [Dept. Exh. 4]
12. Petitioners' Attorney Guardian Ad Litem, Attorney [REDACTED], requested a timely hearing on [REDACTED]. [Dept. Exh. 3]

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 issue in this case is whether the Department of Health and Human Services properly denied Petitioners' continued Title IV-E funding. The Respondent Department contends that because the April 4, 2016 court order did not contain the necessary finding for Title IV-E funding, and ordered Petitioner's mother out of the home, that this was a constructive removal, and the placement started over.

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, (November 1, 2012).

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, Mich Admin Code 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. Mich Admin Code 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 the 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 (January 1, 2017), p. 1.

In this case, Petitioner was placed with the Department of Human Services for care and supervision on [REDACTED], after a hearing conducted pursuant to a Petition for Child Protective Proceedings filed by the Department for his removal. The Petition filed by

the Department requested the court to authorize the Petition and take jurisdiction over the children. The Petition requested the court to issue an order removing the children. [Dept. Exh. 9-13]

The Petition filed by the Department states:

“I request the court to

- b. authorize this petition and take jurisdiction over the child(ren). Further I request the court to issue an order removing the child(ren) from the home.” [Dept. Exh. 6-8]

The Petition was not authorized on [REDACTED], pending the resumption of the preliminary hearing. At the time of the physical removal based upon the Petition, the Family Court had available for its review the Petition listing each child, which contained factual information regarding why it was contrary to the welfare of the children to remain in the home, substantiating reasonable efforts and sought an order removing Petitioner.

On [REDACTED], the Petition was authorized and the court ordered:

“The mother shall be drug test weekly. Once the children have been released from the hospital, the children shall be placed with the maternal grandmother and the Respondent Mother shall be allowed to reside in that home. DHS has been given a full hearing on this matter.” [Dept. Exh. 14-18]

During the Permanency Planning Hearing on [REDACTED], while the children were still placed in the protective/temporary custody of the court and were placed with the maternal grandmother, the court found that returning the children to the parent would cause a substantial risk of harm to the child(ren)’s life, physical health or well-being. The court ordered that the children were continued in the protective/temporary custody of the court for care and supervision. However, Respondent, the children’s mother was ordered to “reestablish a fit home of her own.” [Dept. Exh. 19-23]

A new initial determination of title IV-E eligibility must be completed for each new out-of-home placement episode regardless of whether a new petition is filed with the court. An out-of-home placement episode begins:

- When a child moves from their own home living arrangement: Parental home; see note in Reimbursable Living Arrangements regarding minor parents. Legal guardian. Out-of-state parent.
- To an out-of-home living arrangement, or
- When a case is opened with the living arrangement noted as out-of-home. The placement episode ends when the:

- Child is returned home.
- Child is placed with the non-custodial legal parent.
- Child is placed with a legal guardian.
- Child is discharged from wardship.
- Parent resides in the same home as the child.
- Child's adoption is finalized (foster care payments cannot be made after the order placing the child for adoption has been signed).

The Department compared this case to the sample given in policy:

Example: The child is placed with the paternal grandfather. The legal father moves into the home. The date the legal father moves into the home, that placement episode ends and the child is living in an own home placement. If the legal father moves from the home, new legal findings must be made for this new removal episode to be considered for title IV-E eligibility. Payments from title IV-E cannot be made on or after any of these placement episode end reasons happen. Payments cannot be made from title IV-E on or after the date the court order is signed or the placement end occurs. Any payments needed beyond that date must be made from the child's alternate fund source. FOM 902, p 3.

In this case, the children were placed with the Department by the court on [REDACTED]. On [REDACTED], the court ordered that once the children were released from the hospital, they were to be placed with their maternal grandmother, where the children's mother was already living. According to testimony at the hearing, the children have never moved from the placement with their maternal grandmother and were still residing with their maternal grandmother at the time of the hearing.

On [REDACTED], the court ordered the children's mother out of the home. This, according to the Department, is what prompted a new placement because the court did not use the language, "contrary to the welfare of the children."

However, the example relied on by the Department has the child placed with the paternal grandfather, and that placement ending when the legal father moved in. That is not what happened in the case at bar.

The facts in the above captioned case are distinguishable. Here, the children's mother was already living in the maternal grandmother's home at the time the children were placed with the maternal grandmother. From the court's order of [REDACTED], the

children were placed with the maternal grandmother and upon release from the hospital on [REDACTED], were placed with their maternal grandmother where their own mother also resided. On [REDACTED], the court ordered the children's mother out of the maternal grandmother's home which the Department has interpreted as ending the placement.

The issue in this case concerns whether Department policy found in FOM 902, then in effect, requires that the court make a contrary to the welfare determination when the legal mother was ordered out of the maternal grandmother's home.

An analysis of the applicable Federal statutes, regulations and policy related to the particular Title IV-E issue raised follows.

Federal Statutory Provisions Concerning Title IV-E

Title IV-E requirements pertinent to this case are found in the Social Security Act, Section. 472; 42 USC 672 which provides a framework for the Foster Care Maintenance Payments Program. The relevant statutory provisions state:

(a) In General. –

(1) Eligibility - each state with a plan approved under this part shall make foster care maintenance payments on behalf of each child who has been removed from the home of a relative into foster care if --

(A) the removal and foster care placement met, and the placement continues to meet the requirements of paragraph (2) and...

42 USC 672 (2) (A) (2) (ii) provides:

(2) REMOVAL AND FOSTER CARE PLACEMENT REQUIREMENTS—The removal and foster care placement of a child meet the requirements of this paragraph if—

(A) the removal and foster care placement are in accordance with—

(i) a voluntary placement agreement entered into by a parent or legal guardian of the child who is the relative referred to in paragraph (1); or

(ii) a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts of the type described in section 471(a)(15) for a child have been made; (emphasis supplied)

(B) the child's placement and care are the responsibility of—

(i) the State agency administering the State plan approved under section 471; or

(ii) any other public agency with which the State agency administering or supervising the administration of the State plan has made an agreement which is in effect; and

(iii) an Indian tribe or a tribal organization (as defined in section 479B(a)) or a tribal consortium that has a plan approved under section 471 in accordance with section 479B; and

(C) the child has been placed in a foster family home or child-care institution.

Based upon the above requirements, the statutory provisions found in 42 USC 672 (2) (A) (ii) do not specify a time frame when the judicial determination must be made regarding the mandatory contrary to the welfare findings. However, the statutory language referenced above does require a state with an approved state plan to make foster care payments if the removal and foster care placement met, and continues to meet the requirements of paragraph 2 (A) ii. Paragraph 2 (A) ii requires that the removal is in accordance with a judicial determination.

Petitioners' Legal Guardian Ad Litem contended that Petitioner's physical placement has never changed. The only change was the court ordered the legal mother out of the home. The children were never placed with the legal mother, but with the maternal grandmother. So, the ordering of the legal mother out of the household did not change Petitioner's placement.

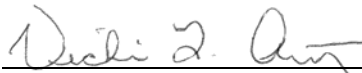
It is generally accepted law that the Department cannot make a claim for federal funds that does not meet the federal statutory and regulatory requirement or Department policy as approved in the State Plan for Title IV-E. Title IV-E funding is a source of financial support for children placed in foster care. FOM 902, (February 1, 2017) p 1. Therefore, it is determined that the Department improperly denied Petitioner's continued Title IV-E Funding because Petitioner was not removed from court ordered placement.

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, finds that the Department did not act in accordance with Department policy when it denied continuing Title IV-E funding for Petitioner in this case because the child was never removed from his placement with the maternal grandmother.

Accordingly, the Department's decision is **REVERSED**.

VLA/bb



Vicki Armstrong
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

Counsel for Respondent

[REDACTED]

Department Representative

[REDACTED]

DHHS

[REDACTED]

Counsel for Respondent

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Counsel for Petitioner

[REDACTED]

Petitioner

[REDACTED]