



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: August 21, 2019
MOAHR Docket No.: 18-014106
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen Fahie

**DECISION AND ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY DISPOSITION**

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; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a pre-hearing telephone conference was held on April 23, 2019, from Lansing, Michigan. The Petitioner was represented by Attorney, Paula A. Aylward, P#60757. The Department of Health and Human Services (Department) was represented by Assistant Attorney General, Brian K. McLaughlin, P#74958. The parties have submitted briefs and exhibits in support of arguments in this case.

ISSUE

Can whether Title IV-E funding be utilized for one-to-one supervision service in violation of the Michigan State Plan and Department policy be a hearing issue.

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 October 18, 2016, Petitioner was removed from his home and placed in foster care.
2. On November 1, 2016, Petitioner was determined to be Title IV-E eligible.
3. On [REDACTED], 2018, Petitioner's placement was changed to [REDACTED]
[REDACTED], [REDACTED]

4. On February 9, 2018, Petitioner's placement was determined to be Title IV-E reimbursable, so Title IV-E foster care maintenance payments were authorized for the placement.
5. On March 27, 2018, a one-to-one supervision case service was approved by the Division of Child Welfare Licensing (DCWL) for service dates of March 15, 2018-May 6, 2018.
6. On July 29, 2018, the Department received a hearing request from Petitioner's Attorney on his behalf, contesting the Department's negative action.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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 the Department to provide, purchase or participate in the cost of out-of-home care for youths has been established in state law: The Probate Code Chapter XII-A, Act 288, P.A. of 1939; the Social Welfare Act, Act 280, P.A. of 1935; the Michigan Children's Institute Act, Act 220, P.A. of 1935; the Michigan Adoption Code, Act 296, P.A. of 1974; and the Youth Rehabilitation Services Act, P.A. 150, of 1974. These laws specify the method of the Department involvement in these costs. The legislature has established a system whereby:

- (1) the local court may provide out-of-home care directly and request reimbursement by the state (Child Care Fund), or
- (2) the court may commit the youth to the state and reimburse the state for care provided (State Ward Board and Care). (FOM, Item 901-6)

Title IV-E is a funding source which requires all applicable federal regulations be followed for its use. Other funding sources such as state ward board and care, county

childcare funds, and limited term and emergency foster care funding are listed in FOM 901-8.

A determination is to be made regarding the appropriate funding source for out-of-home placements at the time the youth is referred for care and supervision by DHS regardless of actual placement; see FOM 722-01, Court Ordered Placements. FOM, Item 902-05.

Title IV-E funding must be denied or cancelled based upon the following factors:

- The placement is not eligible for title IV-E funding; see FOM 902, Funding Determinations and Title IV-E Eligibility, Eligible Living Arrangement.

Title IV-E funds cannot be used once it has been determined that the placement is not Title IV-E eligible. Foster care maintenance and administrative payments must be made from a fund source other than Title IV-E based on the child's placement status.

Funding Following the Denial/ Cancellation Determination

Title IV-E funds cannot be used once it has been determined that the child is not title IV-E eligible. Foster care maintenance and administrative payments must be made from a fund source other than title IV-E based on the child's legal status.

For cases where payments have been made from title IV-E funds in error, payment reconciliation should **not** be pursued until the time period for an appeal, 90 calendar days, has elapsed. The reason for this delay is to prevent further reconciliation if more information may be discovered through the appeal process that would enable the child to be title IV-E eligible.

If title IV-E funding is cancelled, an appeal is not filed and the 90 calendar day time period has elapsed, payment reconciliation must be completed for any payments made from title IV-E for the entire period of ineligibility. Title IV-E funds are required to be returned to the federal government from the start of any period of ineligibility if title IV-E payments were made and the child is later determined not title IV-E eligible.

FAIR HEARINGS

The child has the right to contest a department decision affecting title IV-E eligibility. After the department notifies the court of a denial or cancellation, the court may appoint the

child's lawyer-guardian ad litem as the child's authorized hearing representative (AHR) to request an administrative hearing. The department provides an administrative hearing to review the decision and determine its appropriateness.

FOM-903-9, pgs. 21-22

One-to-One Supervision

Service Description 0834

One-to-one supervision cannot be paid from title IV-E funds.

One-to-one supervision is expected to be short-term in order to maintain a residential placement and stabilize the youth's behaviors.

One-to-one supervision can only be authorized to a child caring institution (CCI) with a Residential Placement Exception Request (PER) approval from the local MDHHS office director and the Division of Child Welfare Licensing (DCWL). If the youth has been in the CCI for 12 months or longer, the PER must be routed from the local MDHHS office director to the Business Service Center (BSC) Director then to the DCWL for approval.

The one-to-one staff person must track the child's behaviors and activities on an hourly basis, document the information in writing and provide to the local MDHHS worker monthly.

Upload the approval memo/email from DCWL and route the case service authorization to FCD in MiSACWIS for approval.

In the Motion, Respondent contends that Rule 792.10129(1) provides that a party may file a motion for summary disposition when there is no genuine issue of material fact or when the tribunal lacks jurisdiction. *Smith v Lansing Sch Dist*, 428 Mich 248, 256-57 (1987). Summary disposition is proper when a court or quasi-judicial agency lacks subject matter jurisdiction. See *Electronics Data Sys Corp v Twp of Flint*, 253 Mich App 538, 544 (2002). Defects in subject matter jurisdiction cannot be waived and may be raised at any time. *Id.* "Indeed, having determined that [it] has no jurisdiction, a court should not proceed further except to dismiss the action." *Id.*

Petitioner counters with "[T]he court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial." *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d

475, *reh den* 445 Mich 1233 (1994). “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” West, 469 Mich at 183. Courts are liberal in finding a genuine issue of material fact. *Benton v Dart Properties, Inc*, 270 Mich App 437, 444-45; 715 NW2d (2006).

In this case, Petitioner was deemed eligible for Title IV-E funding. However, he was subsequently placed in a placement requiring one-to-one supervision case service. Even though the placement was instituted by DHHS, it was not a Title IV-E funded placement. Petitioner was put on notice on March 22, 2018, when an email was sent to the court’s assistant that included the policy manual from DHHS that one-to-one supervision cannot be paid from Title IV-E funds. Department Exhibit B, page 4. On March 27, 2018, the Department approved a Placement Exception Request that authorized \$15.00 per hour for up to 16 hours per day for 52 days with required daily logs of Petitioner’s behaviors and activities on an hourly based and a written Behavior Management Plan provided by [REDACTED] [REDACTED] [REDACTED] to the Department. Department Exhibit, page 5. This Administrative Law Judge notes that this is not an agreement for Title IV-E payment, but rather the requirements of the placement service.

On April 4, 2018, Judge Dobrich’s assistant requested a Notice of Case Action from the Department regarding the denial of Title IV-E funds for Petitioner one-to-one 24-hour care based on the March 22, 2018, electronic mail. Department Exhibit B, page 5. Petitioner remained eligible for Title IV-E. On April 9, 2018, the Department responded that Petitioner was eligible to receive Title IV-E funds for his placement episode, but one-to-one supervision was considered a “service”. One-to-one supervision is not a Title IV-E reimbursable service. Department Exhibit B, page 5. The Court was put on notice from March 22, 2018, and reminded on April 9, 2018, that one-to-one supervision is not a reimbursable Title IV-E service, which would result in payment from another funding source other than Title IV-E.

This Administrative Law Judge finds that Petitioner continues to be eligible for Title IV-E funding. However, the contested service for one-to-one supervision is not a covered cost for Title IV-E funding or reimbursement based on Department policy. The Department is within their means to require the service for Petitioner if it is needed, but the Department put the Court on notice that it was not a reimbursable service under Title IV-E funding so an alternative funding source would have to be used. There is no gray area here where Department policy clearly states that Title IV-E funding cannot be used for one-to-one supervision. Therefore, this Administrative Law Judge lacks the jurisdiction to hear this case because I cannot offer the relief requested by Petitioner.

Petitioner’s grievance centers on dissatisfaction with the Department’s current policy. Petitioner’s request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

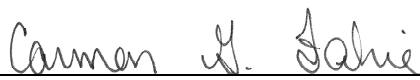
Furthermore, administrative adjudication is an exercise of executive power rather than judicial power and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940). Petitioner, in this case, makes an equitable argument to be excused from Department policy. The Administrative Law Judge has no equity powers in this case and cannot act outside of department policy.

Therefore, based on Respondent's Motion for Summary Disposition, there appears to be no genuine issue of material fact concerning the Department's inability to pay for one-to-one supervision using Title IV-E funding. Respondent is entitled to summary disposition in its favor as a matter of law.

DECISION AND ORDER

THEREFORE, IT IS ORDERED that Respondent's Motion for Summary Disposition is **GRANTED**. Respondent properly denied Petitioner's request for Title IV-E funding to be used for one-to-one supervision in violation of Department policy. This Administrative Law Judge does not have jurisdiction to hear this issue. Accordingly, Respondent's decision is hereby **AFFIRMED**.

CF/hb



Carmen G. Fahie
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:
Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Counsel for Petitioner

Brian K. McLaughlin
P.O. Box 30758
Lansing, MI 48909

DHHS

Jennifer Dunfee
325 M-62
Cassopolis, MI 49031

Department Representative

Nikki Jubeck
DHHS Federal Compliance Division
235 S Grand Ave, Ste 1013
Lansing, MI 48933

Cass County, DHHS

BSC3 via electronic mail

Counsel for Petitioner

Paula A. Aylward
105 W Michigan Ave
Marshall, MI 49068

Petitioner

[REDACTED]
MI [REDACTED]