



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: January 7, 2020
MOAHR Docket No.: [REDACTED]
Agency No.: 861077
Petitioner: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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; 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, an in-person hearing was convened on May 7, 2019, from Lansing, Michigan. The hearing was reconvened and completed on December 17, 2019. The Petitioner was represented by Attorney [REDACTED] [REDACTED] [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Assistant Attorney General, Brian McLaughlin (P74958). Witnesses for the Department were Cheryl McCurdy (Child Welfare Funding Specialist); and Julie Jackson (Department Analyst).

[REDACTED] [REDACTED] ([REDACTED] Roscommon County Referee appeared at the hearing but did not testify.

ISSUE

Did the Department properly deny Title IV-E funding status to Petitioner?

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 January 31, 2018, the Roscommon Circuit Court - Family Division issued an Order to take Child(ren) Into Protective Custody and Place (Child Protective Proceedings), in Case No. 18-723897-NA. Attorney Referee, [REDACTED] [REDACTED] [REDACTED] made detailed “contrary to the welfare” and “reasonable efforts” findings in the Order, justifying the removal of Petitioner (the child) from her home.

2. Contrary to the welfare findings made in the removal Order (Respondent's Exhibit 3 pages 10-12) were found against the mother (SG).
3. The Department gathered information about the income, assets and expenses of the removal home.
4. The household met the absent parent deprivation factor because Petitioner's legal father (BG) was lodged in the Midland County jail.
5. SG received \$823 per month in RSDI income, including during the removal month of January 2018.
6. The Department determined that a household with two persons has an income limit of \$446 per month in order to be eligible to receive Title IV-E eligibility (Respondent's Exhibit 9, packet pages 70-71)
7. On February 7, 2018, the Respondent Department of Health and Human Services (Respondent or Department) issued a Notice of Case Action denying Title IV-E benefits, incorrectly listing the reason for denial as 'the home did not meet former AFDC program's deprivation standards'.
8. On March 29, 2018, the Michigan Administrative Hearing System received a Request for Hearing to contest the Respondent's negative action.
9. On the April 9, 2018, Respondent conceded that the stated reason on the Notice of Case Action for denial of Title IV-E eligibility was erroneous; Petitioner does meet the former AFDC program's deprivation standard.
10. On April 9, 2018, Respondent sent Petitioner another Notice of Case Action indicating that the Child was not Title IV-E eligible because the household income exceeds the former AFDC program standards pursuant to the Children's Foster Care Manual (FOM) 902-05, page 1
11. On September 6, 2018, Petitioner's Representative filed a Motion and Brief in Support of Motion for Summary Disposition. Petitioner argued that Petitioner should be granted summary disposition when Respondent is unable to produce a copy of the AFDC State Plan in effect in July 1996, and therefore, cannot sustain its burden of proving that Petitioner would not have received aid in the home pursuant to the State Plan for the month in which the judicial removal proceedings were initiated.
12. On October 4, 2018, the Respondent filed the Department of Health and Human Services Consolidated Response in Opposition to Petitioner's Motion for Summary Disposition, Motion for Summary Disposition and Brief in Support.
13. The Department provided Petitioner with the Aid to Families with Dependent Children (AFDC) need standard that it relied on to determine that she is not eligible for Title IV-E.

14. The AFDC Charts from 2009 and 2011 that the Department relied on contained the same information as the ADC state plan in effect on July 16, 1996.
15. The Department became aware that Petitioner did not possess the state plan, and the Department searched through archived documents to locate relevant Title IV-E State Plan in effect on July 16, 1996, which was provided to Petitioner's counsel on September 26, 2018.

CONCLUSIONS OF LAW

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.

Title IV-E is a fund source which requires all applicable federal regulations be followed for use of the funds. Other fund 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, Fund Sources. (Funding Determinations and Title IV-E Eligibility (FOM) 902, page 1)

The child welfare funding specialist (CWFS) makes a determination regarding the appropriate fund source for out-of-home placements at the time the youth is referred for care and supervision by MDHHS regardless of actual placement; see FOM 722-01, Court Ordered Placements. FOM 902, page 1

Initial Title IV-E determinations and Title IV-E reimbursable determinations are to be completed using MiSACWIS. If the youth is in his/her own home at the time of acceptance, an initial Title IV-E determination or Title IV-E reimbursable determination is not necessary until the youth is placed in out-of-home care. FOM 902, page1

Petitioner's allegation and argument for Summary Disposition is based on Rule 1002 Requirement of Original - To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute. Secondly, Petitioner's Representative argues that failure of the Respondent to provide/produce the State plan in its entirety somehow negates the Department's determination that Petitioner was not eligible for Title IV-E funding based upon the fact that she did not meet the Aid to Families with Dependent Children (AFDC) need standard in effect on July 16, 1996. Petitioner's Representative further argues that the Department's failure to provide the State Plan in its entirety to Petitioner somehow confers eligibility for Title IV-E funding upon Petitioner.

Respondent's Representative argues that Petitioner is not entitled to judgment as a matter of law because this tribunal lacks jurisdiction to dismiss simply based on Petitioner's allegation that discovery is insufficient. Respondent's Representative further alleges that the 1996 AFDC state plan need standard is reproduced in the Program Reference Manual (PRM) Tables 200 and 215-1 and the AFDC Charts from 2009 and 2011, which contain the same information as the state plan and are simply copies of a 20-plus-year-old document.

Respondent's Representative argues that Petitioner is not eligible for Title IV-E because her household income of \$ [REDACTED] per month in Retirement, Survivors, and Disability Insurance (RSDI) benefits exceeded the AFDC need standard as it existed on July 16, 1996.

The Administrative Law Judge (ALJ) finds:

The jurisdiction of this Administrative Law Judge is limited to determination of whether Department policy was correctly applied or whether policy comports with federal and state law.

This Administrative Law Judge has no equity powers. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulation or overrule or make exceptions to MDHHS policy pursuant to the Delegation of Authority by the Director of the Michigan Department of Health and Human Services.

In addition, Michigan Rules of Evidence 1003(1)-(2) indicate that the original is not required, and other evidence if the contents of a writing, recording, or photograph is admissible if the original is lost, destroyed or not obtainable. Thus, the lack of production of the entire State Plan from 1996 is not a basis upon which relief can be granted.

Pursuant to a Delegation of Authority signed by the Director of Labor and Economic Opportunity (LEO), September 29, 2019, Administrative law judges have no authority to make decisions concerning the constitutionality of LEO or MRS policies, to overrule statutes, to overrule promulgated regulations, or to overrule or make exceptions to LEO or MRS policy. The decision must be based on the provisions of the approved State Plan, the Rehabilitation Act of 1973, as amended; federal regulations to the Rehabilitation Act, and MRS policies that are consistent with federal requirements. Except as provided herein, the decision of the administrative law judge is final and the last administrative remedy available to the individual.

Petitioner has presented no witnesses. Petitioner's Exhibits are limited to Department policy. The Department has established by the necessary competent, substantial and material evidence on the record that the ADFC state plan in effect on July 16, 1996 contains the same need standards as the AFDC charts presented and relied upon in determining that Petitioner had excess income for purposes of Title IV-E funding

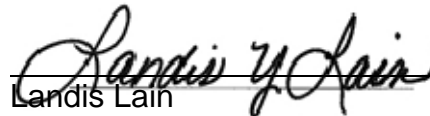
eligibility. Accordingly, Petitioner was not eligible for Title IV-E funding because her household income of \$■■■■ per month in RSDI benefits (two-person household) exceeded the ADFC need standard as it existed on July 16, 1996. The Department has established its case by a preponderance of the evidence presented on the record.

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 determined that Petitioner's removal home had excess income for Title IV-E eligibility.

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

LL/nr



Landis Lain
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
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