

Appealing a Title IV-E Funding Denial



AN OVERVIEW

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Legal Authority



- The Administrative Procedures Act, MCLA 24.201 - 24.328
- The Michigan Administrative Code, R 400.901 – 400.951. Hearings, Appeals and Declaratory Rulings
- DHS Policy Manual FOM 902-5 (effective 8-1-11)
- 42 USC 671(a)(12)

DHS Review of Title IV-E Eligibility



- DHS reviews all foster children for Title IV-E funding eligibility at the beginning of each “placement episode.”
 - A placement episode begins when a child moves from his or her own home living arrangement to an out-of-home living arrangement. (Courts typically use the term removal)
 - A placement episode ends when the child is returned home, placed with the non-custodial parent, placed with a legal guardian, or discharged from court wardship.
- The eligibility requirements are the basis for every approval or denial of Title IV-E Funding.
 - FOM 902-1; 902-2

Notice to the Court when Title IV-E is Denied

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- DHS notifies both the court & L-GAL if Title IV-E is denied or cancelled in cases in which the court retains jurisdiction.
 - Notice is provided with the DHS-176 Denial/Cancellation form
 - DHS is not required to notify the court or L-GAL regarding denial for an MCI 296 state ward.
 - If Title IV-E funding is approved, notice is not provided.
- FOM 902-5

Court Actions Upon Receiving DHS 176

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- A court Title IV-E administrator should carefully review each DHS-176 Denial/Cancellation form to determine if the court agrees with the determination DHS has made.
- If the court believes that the denial or cancellation is in error, they may request an L-GAL, or appoint an Authorized Hearing Representative (AHR), to file an administrative appeal.
 - SCAO recommends the court contact the DHS funding specialist to discuss any discrepancies prior to requesting an appeal to be filed. Many issues can be resolved without administrative appeals. Ex: Court may have financial information that DHS was unable to obtain, and can share that information to allow DHS to reconsider funding.

Who Can Request an Administrative Review Hearing?

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- The child is the person entitled to the Title IV-E funding program, and is the only person with standing to appeal a denial or cancellation. 42 USC 671(a)(12)
- An Authorized Hearing Representative (AHR) can act on behalf of the child in an administrative hearing (appeal). FOM 902-5

Who is an Authorized Hearing Representative?

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- An AHR is defined as:
The person who stands in for, or represents, the client in the hearing process and has the legal right to do so. This right comes from one of the following sources: (in relevant parts)
 - *Court appointment of a guardian or conservator;
 - *The representative's status as attorney for the client.

How to File an Appeal

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- The appeal must be filed at the local county DHS office. FOM 902-5
- An appeal filed with the local DHS office must be directed to the attention of the hearings coordinator. All materials related to the request must be directed through the local hearings coordinator.
- A request for a hearing must be in writing with an original signature. A fax will be accepted. FOM 902-5
- An appeal must be filed within 90 days of the date of mailing of the notice of the denial or cancellation. R 400.902; 400.904; FOM 902-5

Funding Pending Appeal

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- If the appeal is based on a denial of Title IV-E benefits, funding for the case will be provided by an appropriate alternative funding source. (SWBC; CCCF)
- If the appeal is based on a cancellation of benefits, Title IV-E benefits will **not** continue pending the hearing and the funding for the case will be paid through an appropriate alternative funding source. (SWBC; CCCF) R 400.904(5); FOM 902-5
- If DHS determines payments have been made in error, an appropriate reconciliation will occur at the time the matter is resolved. This can happen prior to an administrative hearing, or after the administrative law judge decision is issued.

Information in the Appeal

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- An appeal must be based on the eligibility requirements that DHS determined were not met.
- Ex: If DHS denied because they were unable to determine the financial eligibility; evidence that the child meets the financial requirements must be presented.
- Ex: If DHS denied because of a lack of judicial findings, the order or transcript containing the judicial findings must be provided.

Prehearing Conference

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- DHS will schedule a prehearing conference with the AHR to review the facts of the case.
- The AHR should bring all documentation to support their appeal to the prehearing conference.
- The purpose of the prehearing is to attempt to work out any issues and if possible find eligibility. Attendance by the AHR is critical.
- DHS will diligently attempt to verify any information that would result in a determination of eligibility.
- If DHS is able to verify eligibility based on information provided by the AHR, they are able to correct the determination prior to the administrative hearing.
- If a resolution is reached the request for an administrative law hearing can be withdrawn. (See DHS form DHS-18; www.michigan.gov/dhs-forms in the Other category)

Party's Rights

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- A party has the right to:
 - Examine the case file and all documents and records that the agency may use at the hearing, at a reasonable time prior to the hearing.
 - Bring witnesses.
 - Establish all pertinent facts and circumstances.
 - Advance relevant arguments without undue interference.
 - Question or refute testimony or evidence and cross-examine witnesses.

*DHS will be represented by the Attorney General's office during an appeal hearing.

- MCL 24.276; 45 CFR 205.10; R 400.912

The Review Hearing

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- Conducted by an Administrative Law Judge (ALJ)
- Witnesses will be put under oath.
- The rules of evidence are applied as in non-jury civil cases in circuit court.
- Objections to offered evidence may be made and shall be noted in the record.

• R 400.913

Requesting a Rehearing of an ALJ Decision

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- Either the claimant or the agency can request a rehearing or reconsideration within 30 days of the decision by the ALJ. R 400.919
- A rehearing can be granted if:
 - new evidence is discovered
 - the record is inadequate for the purposes of judicial review
 - MCL 24.287(3); MCL 24. 305; R 400.919

Reconsideration of ALJ Decision

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- Reconsideration can only be granted for the following reasons:
 - Misapplication of the manual policy or law in the hearing decision;
 - Typographical errors, mathematical errors, or other obvious errors; or
 - Failure of the ALJ to address other relevant matters in the hearing decision.
 - Reconsideration is strictly a paper review of the facts, law and any new evidence.
 - MCL 24. 305; R 400.191

Judicial Review

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- Title IV-E funding is considered public assistance for the purposes of time lines for requests for review.
- The parties can request a judicial review within 30 days of the ALJ's decision. MCL 24.304;R 400.921

Judicial Review

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- There is not a right to a jury trial.
- The review by the court shall be limited to the record.
- The court, on request, shall hear oral arguments and receive written briefs.
- MCL 24.304(3)

Judicial Review

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- Scope of review:
 - The court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:
 - ✦ In violation of the constitution or a statute.
 - ✦ In excess of the statutory authority or jurisdiction of the agency.
 - ✦ Made upon unlawful procedure resulting in material prejudice to a party.
 - ✦ Not supported by competent, material or substantial evidence on the whole record.
 - ✦ Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.
 - ✦ Affected by other substantial and material error of law.
 - ✦ MCL 24.306 (1)

Judicial Review

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- The court, as appropriate, may affirm, reverse, modify the decision or order or remand the case for further proceedings. MCL 24.306 (2)

Questions

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- Contact SCAO – Child Welfare Services

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