Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Michigan Family Independence Agency
Docket No. A-04-113
Decision No. 2048

DATE: October 6, 2006

DECISION

The Michigan Family Independence Agency (Michigan, MFIA) appealed in part the determination of the Administration for Children and Families (ACF) dated April 26, 2004. ACF disallowed a total of $283,223.89 of federal financial participation (FFP) claimed by Michigan for foster care maintenance payments and associated administrative costs under title IV-E of the Social Security Act (Act). ACF's determination was based on a "primary" eligibility review of payments claimed by Michigan for 80 sample cases during the period April 1 through September 30, 2003. The purpose of the review was to determine whether the payments were made on behalf of eligible children to eligible foster care providers. ACF found that Michigan was not in substantial compliance with the IV-E eligibility requirements. Specifically, ACF found that 12 sample cases were "error cases" because they had ineligible payments during the review period. ACF therefore disallowed IV-E payments (including some payments made prior to the review period) and associated administrative costs for these cases totalling $282,880.75 FFP. ACF also disallowed FFP totalling $343.14 for two other sample cases that it found had ineligible payments and associated administrative costs outside the review period but no ineligible costs during the review period.

Michigan initially disputed ACF's findings in nine of the 12 sample cases that ACF identified as "error cases."[1] Michigan

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[1] Michigan also initially took the position that ACF did not have authority to disallow administrative costs associated with cases found to be ineligible based on a primary review and requested that its appeal be consolidated with other then-pending IV-E appeals that raised this issue. Michigan

(continued...)

later formally withdrew its appeal with respect to one of the sample cases it initially disputed. See Withdrawal of State's Appeal of Case #40, dated 8/5/05. In addition, Michigan did not pursue its appeal of sample case 60. The seven sample cases that remain in dispute involve findings that Michigan failed to meet the IV-E program requirements for 1) a judicial determination that reasonable efforts to prevent the child's removal from home were made (sample cases 16 and 42), 2) a judicial determination that reasonable efforts to finalize the child's permanency plan were made (sample cases 22 and 51), and 3) a judicial determination that continuation in the home would be contrary to the child's welfare (sample cases 28, 36 and 80).[2] Michigan did not dispute the disallowance with respect to the non-error cases.

For the reasons discussed below, we uphold the disallowance pertaining to all of the sample cases except sample case 22. We reverse the disallowance pertaining to sample case 22.

IV-E Statute and Relevant Regulations

Title IV-E was originally enacted as part of the Adoption Assistance and Child Welfare Act of 1980, Public Law No. 96-272.[3] Under section 472(a) of title IV-E, as amended by the Adoption and Safe Families Act of 1997 (ASFA), Public Law No. 105-89,

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[1](...continued)
subsequently withdrew its request for consolidation and did not pursue this issue. See July 9, 2004 letter from Board summarizing results of telephone conference. The issue was resolved in ACF's favor in a decision addressing the consolidated appeals of four states. Maryland Dept. of Human Resources et al., DAB No. 1949, dated October 28, 2004.

[2] ACF originally found sample case 22 ineligible on a second ground--that responsibility for the child's placement and care was not vested with the state. However, ACF determined based on additional documentation provided by Michigan that this requirement had been satisfied. ACF submission dated 5/8/06, at 1.

[3] Social Security Act §§ 470 through 479A; 42 U.S.C.A. §§ 670 through 679b. The current version of the Social Security Act can be found at www.ssa.gov/OP_Home/ssact/comp-ssa.htm. Each section of the Act on that website contains a reference to the corresponding United States Code chapter and section. Also, a cross reference table for the Act and the United States Code can be found at 42 U.S.C.A. Ch. 7, Disp Table.

federal matching of state foster care maintenance payments is available for a child in foster care who would have been eligible for Aid to Families with Dependent Children under title IV-A as in effect as of June 1, 1995 –

> but for his removal from the home of a relative . . . if–
>
> (1) the removal from the home occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 471(a)(15) for a child have been made[.][4]

In relevant part, section 471(a)(15) requires that a state plan under title IV-E must (subject to certain exceptions in subparagraph (D)) provide that "reasonable efforts shall be made to preserve and reunify families–"

> (i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home . . . .

Section 471(a)(15)(B). Section 471(a)(15)(D) provides that "reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined" that the parent "has subjected the child to aggravated circumstances (as defined in State law . . .)," if the parent has committed certain crimes, or if parental rights have been terminated involuntarily with respect to a sibling of the child.

Section 471(a)(15)(C) requires that a State plan must provide that–

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[4] We quote section 472(a) as in effect during the period in question here. This section was amended in its entirety by section 7404 of the Deficit Reduction Act of 2005, Public Law No. 109-171, which was signed into law on February 8, 2006. The amendment was effective as if enacted on October 1, 2005. Pub. L. No. 109-171, § 7701.

> [i]f continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child[.]

Revised regulations implementing ASFA were effective March 27, 2000. 65 Fed. Reg. 4020 (Jan. 25, 2000). Section 1356.21 of 45 C.F.R. states in pertinent part:

> (a) *Statutory and regulatory requirements of the Federal foster care program.* To implement the foster care maintenance payments program provisions of the title IV-E State plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a State must meet the requirements of this section . . . .
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> (b) *Reasonable efforts*. The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; . . . . and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the "reasonable efforts" requirements of section 471(a)(15) (as implemented through section 472(a)(1) of the Act), the State must meet the requirements of paragraphs (b) and (d) of this section. . . .
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> * * * *
>
> (1) *Judicial determination of reasonable efforts to prevent a child's removal from the home.*
>
> (i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, . . . must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.
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> (ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.
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> (2) *Judicial determination of reasonable efforts to finalize a permanency plan.*
>
> (i) The State agency must obtain a judicial

> determination that it has made reasonable efforts to finalize the permanency plan that is in effect . . . within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 . . . and at least once every twelve months thereafter . . . .
>
> (ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the schedule prescribed in paragraph (b)(2)(i) of this section, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.
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> * * * *
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> (c) *Contrary to the welfare determination*. Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination . . . to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. . . .
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> (d) *Documentation of judicial determinations.* The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, **must be explicitly documented and must be made on a case-by-case basis and so stated in the court order**.
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> (1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

(Emphasis added.)

Pursuant to 45 C.F.R. § 1356.71, ACF conducts primary reviews every three years based on a random sample of 80 cases from a sampling frame of cases of children who were eligible for foster care maintenance payments during the reporting period reflected in a state's most recent submission of Adoption and Foster Care Analysis and Reporting System data. ACF reviews these cases to determine whether title IV-E payments were made (1) on behalf of eligible children and (2) to eligible foster family homes and

child care institutions. If a state's ineligible cases in the sample do not exceed eight in the "initial primary review," a state's program is deemed in "substantial compliance," and the state is not subject to another primary review for three years. However, a disallowance is assessed for payments and administrative costs associated with the individual error cases in the sample "for the period of time the cases are ineligible." 45 C.F.R. § 1356.71(c)(4). If a state's program is deemed not in substantial compliance, a program improvement plan is required, and the state is thereafter subject to a secondary review of 150 randomly drawn cases, which may result in a disallowance that is based on an extrapolation from the sample to the universe of claims paid.

Analysis

We note preliminarily that Michigan challenges ACF's determinations of ineligibility on the ground that the provisions of title IV-E cited by ACF in support of the disallowance exceed Congress's spending power and the Tenth Amendment. See MFIA Appeal Br. at 3-4 (incorporating by reference arguments set out in MFIA Ex. 2). Michigan also challenges ACF's determinations on the ground that the applicable regulations on their face are inconsistent with title IV-E. We do not consider these arguments since the Board is bound by all applicable statutes and regulations. See 45 C.F.R. § 16.14.

Michigan also made a cross-cutting argument that ACF applied the requirement for judicial determinations in a way that was inconsistent with congressional intent and the intent of the drafters of the regulations. Relying on language in the preamble to the final regulations stating that "States have a great deal of flexibility in satisfying" the requirement for documentation of judicial determinations, Michigan argues that ACF did not accord it this flexibility in reviewing the sample cases. Instead, according to Michigan, ACF rejected court orders and hearing transcripts that do not track the language of the regulation but from which a reasonable efforts determination or a contrary to the welfare determination can be inferred. See, e.g., MFIA Appeal Br. at 11 and 19 (quoting 65 Fed. Reg. 4020, 4056 (2000)).

The Board has previously stated that "statements regarding reasonable efforts that do not track the language of the statute might be acceptable." South Carolina Dept. of Social Services, DAB No. 1998, at 9 (2005). However, the Board proceeded to state that it is clear from the preambles to the proposed and final regulations that the regulations impose on states--

> a burden to explicitly document for each sample case that a court made the requisite reasonable efforts determination on an individualized, case-by-case basis. While no specific terminology is required, the use of the term "explicit" in the regulation means that it is not sufficient if the order (or transcript) merely implies that reasonable efforts were made. Instead, there must be an express statement on the face of the court order which, in the context of the order as a whole, can reasonably be understood as a determination that the required type of reasonable efforts has been made, or [was] not required.

South Carolina at 11 (footnote omitted).[5] The Board also noted that "[i]n the absence of such an express statement on the face of the court order, a court transcript verifying that the court considered the facts and made a finding with respect to reasonable efforts" will be accepted; however, the Board further noted that this did not require ACF "to read the hearing record and 'cull out' the fact that the court made the requisite determination." Id. (quoting 65 Fed. Reg. 4020, 4056). Thus, if a state relies on the transcript of a hearing rather than a court order, there must be an express statement in the transcript which, in context, can reasonably be understood as a reasonable efforts determination. As indicated below, most of the transcripts and orders on which Michigan relies lack such an express statement.

Below we discuss the individual cases, grouped by the requirement on which ACF's finding of ineligibility was based.

A. Reasonable efforts to prevent child's removal from home

Sample case 16 Michigan argues that the transcript of the August 15, 2000 hearing satisfies the requirement for a reasonable efforts determination because the judge found that reasonable efforts were made to locate the parents. See MFIA Ex. 7E.[6] According to Michigan, at the hearing the judge found "that the child had been abandoned by her mother at birth at the hospital and that the father's whereabouts were unknown" and also

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[5] South Carolina quoted preamble language at 63 Fed. Reg. 50,058, 50,075 (Sept. 18, 1998) and 65 Fed. Reg. 4020, 4055-4056.

[6] The exhibit labelled 6E appears under the tab for MFIA Exhibit 7.

recognized "the unsuccessful efforts to locate the mother." MFIA Appeal Br. at 18. Michigan asserts that "[t]hese findings clearly evidenced a judicial determination **to the effect that** reasonable efforts were made to prevent the removal of the child from her parents' home . . . ." Id. (emphasis in original).[7]

The purpose of the hearing in question was to obtain court approval for the two-week-old child to be tested for HIV. It is unlikely that in this type of hearing the court would have made a determination about reasonable efforts to prevent the child's removal from home. Moreover, a court would not necessarily have determined that the reasonable efforts made to locate the parents were reasonable efforts to prevent the child's removal from home. In any event, there is in fact no finding in the transcript even of reasonable efforts to locate the parents. The judge inquired of counsel as to "what attempts were made to locate the parents" but never stated that the attempts described (leaving telephone messages at the mother's last known address) were reasonable.

Michigan appears to argue in the alternative that a reasonable efforts determination was not required because neither Michigan nor the judge could do anything to prevent the child's removal given that the child had been abandoned and that the parents' whereabouts were unknown. A finding that reasonable efforts are not necessary may satisfy the requirement for a reasonable efforts determination if the finding is based on the existence of one of the circumstances specified in the Act and regulations. See Act, section 471(a)(15)(D); 42 C.F.R. § 1356.21(b)(1) and (3). As pertinent here, reasonable efforts are not required if a "court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include . . . abandonment . . .)." 45 C.F.R. § 1356.21(b)(3)(i). The same court that hears child welfare dependency cases may find that the child has been subjected to aggravated circumstances if authorized to do so by state law. 63 Fed. Reg. 50,058, 50,074. It appears that abandonment constituted aggravated circumstances under Michigan law. See MFIA Response to Order to Develop Record at 5, n.4.

Here, however, the transcript does not reflect that the court made a determination that reasonable efforts to prevent the

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[7] Contrary to what Michigan's argument suggests, the regulation does not use the language "to the effect" in reference to the reasonable efforts determination but only in reference to the contrary to the welfare determination. See 45 C.F.R. § 1356.21(b) and (c).

child's removal from home were not required because the child was abandoned. In the course of the hearing, the court stated: "And as I recall from the pretrial, we'll be publishing on the parents that this child was abandoned at the hospital. . . . [T]here's a father given, but the mother abandoned the child at the hospital, is that correct?" MFIA Ex. 6E at 6. This is not stated as a judicial finding that the child was abandoned, and indeed the court's statement suggests that further steps might be required prior to such a finding. While the circumstances might suggest abandonment, the state did not explicitly document that the court made the finding that the statute and regulations require.

Accordingly, we conclude that sample case 16 was ineligible.

Sample case 42 Michigan argues that the judge made a reasonable efforts determination in an order dated May 25, 2001 when he checked the boxes to the left of "6." and "a." and filled in the blank in the following pre-printed text:

☐ 6. ☐ a. Based on ☐ testimony from : ☐ other: _____,
reasonable efforts ☐ were ☐ were not made to
preserve and unify the family ☐ prior
to the placement of the child(ren)in foster care,
to prevent or eliminate the need for removing the
child(ren) from the child(ren)'s home and
reasonable efforts ☐ were ☐ were not made to
preserve and unify the family to make it possible
for the child(ren) to safely return to the
child(ren)'s home.

MFIA Ex. 8C. According to Michigan, it is clear from reading the rest of the order together with the hearing transcript that the judge intended to also check the first box in the second line (after "reasonable efforts").[8] Specifically, Michigan argues that the court would not have found that removal from home was required for the child's safety and ordered the child placed in foster care or with a suitable relative (paragraphs 7 and 11 of the order) unless the court had also found that reasonable efforts were made to prevent the child's removal from home. Even if this inference were logical, however, it does not satisfy the requirement for explicitly documenting a finding that reasonable efforts to prevent the child's removal were made. Moreover,

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[8] Presumably, Michigan also meant to argue that the court intended to check the box indicating that the reasonable efforts were made "prior to the placement of the child(ren) in foster care . . . ."

Michigan points to nothing in the hearing transcript (MFIA Exhibit 8B) that constitutes such a finding.

Michigan also argues that no reasonable efforts determination was required because the child was "*de facto* abandoned." MFIA Reply Br. at 9. As indicated above, the judicial determination requirement is satisfied where a state documents that a court has determined, based on a finding by an authorized court that the child was abandoned, that reasonable efforts were not required. There is nothing in Michigan's argument or in the record that suggests that an authorized court made a finding that the child in question was abandoned, much less that the court determined that reasonable efforts were not required based on such a finding.

Accordingly, we conclude that sample case 42 was ineligible.

B. Reasonable efforts to finalize the child's permanency plan

Sample case 22 There is no dispute that the court made a determination on June 26, 2002 that reasonable efforts were made to finalize the child's permanency plan. See MFIA Appeal Br. at 25; ACF submission dated 3/31/06, at 5. Another reasonable efforts determination was not due until 12 months later. Thus, IV-E payments claimed for this child through June 2003 were allowable.[9] However, whether IV-E payments from July through September 2003 (the end of the review period) were properly disallowed depends on whether there was a reasonable efforts determination after June 26, 2002 and before July 2003. Michigan argues that there was a reasonable efforts determination in several orders during that period, all of which state that "reasonable efforts have been made to reunite the family."[10]

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[9] ACF did not disallow these payments. See ACF Response to Order to Develop Record at 5.

[10] This language appears in the following paragraph:

> IT IS THE FINDING OF THE COURT THAT the acts complained of in the following petitions filed:
>
> July 31, 2001 Petition No. 99-075,518 Neglect
>
> _____ has been resolved in the following manner:
>
> IT IS THE FINDING OF THE COURT THAT return of the

(continued...)

According to Michigan, the child's permanency plan throughout the relevant period was reunification with her mother or both parents.

ACF argues, however, that the quoted language refers to efforts made to prevent the child's removal from home rather than efforts to finalize the child's permanency plan since the child's permanency plan was not always reunification and the court was not provided with a copy of the State agency service plans that identified the child's permanency plan for a particular period. ACF also argues that the hearing transcript contains no indication that the court considered what efforts were made to finalize the child's permanency plan.

We do not find ACF's arguments persuasive. ACF acknowledges that the child's permanency plan for the period February 17, 2003 through May 16, 2003 was "Return Home." See ACF Ex. 10. ACF fails to recognize, however, that one of the orders on which Michigan relies was issued during this period. See MFIA Ex. 3-N (order issued pursuant to April 22, 2003 hearing). This order would satisfy the requirement for a judicial determination of reasonable efforts to finalize the child's permanency plan every 12 months; thus, it is irrelevant if the other orders on which Michigan relies were issued when the child's permanency plan was something other than reunification. In addition, simply because the court did not receive a copy of the State agency service plan does not mean that the court was unaware that the child's permanency plan at the time of the April 22, 2003 hearing was reunification. Indeed, the transcript of that hearing shows that there was discussion of the parents' attending drug rehabilitation programs as well as of the parents' recent visit with the child, both of which could be considered efforts to finalize a permanency plan of reunification. See MFIA Ex. 3-Q, at 5-9.

Accordingly, we conclude that sample case 22 was eligible.

Sample case 51 There is no dispute that the court made a determination on July 29, 2003 that reasonable efforts were made to finalize the child's permanency plan. See MFIA Appeal Br. at

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[10](...continued)
children to the home would be contrary to the welfare of the children; and that reasonable efforts have been made to reunite the family . . . .

29; ACF Response Br. at 18. Thus, this case had no ineligible payments for the period July through September 2003. However, ACF found that there was no reasonable efforts determination from March 27, 2000 until July 29, 2003, and disallowed IV-E payments for the period beginning March 27, 2001 through June 2003.[11] Michigan argues that the court made reasonable efforts determinations in orders dated May 30, 2000, August 30, 2000, and July 11, 2002, by "referencing the fact that" the child was in a permanent foster care placement, which Michigan asserts was the child's permanency plan. MFIA Appeal Br. at 28. According to Michigan, "[b]ecause the orders reflected that Michigan had already implemented the plan, there was clearly a finding that reasonable efforts were made to finalize a permanency plan." Id.

The Board previously rejected a similar argument, stating that "[t]he requirement that a state obtain a periodic judicial determination of reasonable efforts to finalize a permanency plan applies 'while the child is in foster care.' 45 C.F.R. § 1356.21(a)(2)(i)." South Carolina at 17. A child in a permanent foster care placement is indisputably still in foster care. The Board noted, moreover, that -

> [r]equiring the continuation of such efforts, and a judicial determination that such efforts have been made, for a child whose permanency plan of permanent foster care has been implemented is consistent with the requirement that courts continue to hold periodic permanency hearings for such a child. Under ASFA, periodic permanency hearings are required where the state has established "a permanency plan that does not call for the child to exit foster care through reunification, adoption, legal guardianship, or placement with a fit and willing relative." See 65 Fed. Reg. 4020, 4058.

Id. Thus, the court's recognition or approval of the child's long-term foster care placement does not suffice as a reasonable efforts determination.

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[11] For children in foster care before the March 27, 2000 effective date of the regulation, HHS required a judicial determination of reasonable efforts to finalize the permanency plan no later than March 27, 2001 and then every 12 months thereafter. See 65 Fed. Reg. 4020, 4052. The child was removed from home in 1994. MFIA Appeal Br. at 25. For that reason, no disallowance was imposed for the period March 27, 2000 to March 27, 2001.

Accordingly, we conclude that sample case 51 was ineligible for IV-E from March 27, 2001 through June 2003 (including part of the review period) and that ACF properly disallowed IV-E payments and associated administrative costs for that period.

C. Continuation in the home would be contrary to the child's welfare

Sample case 28 Michigan argues generally, without pointing to any specific language, that a neglect petition and the transcript of the hearing at which the court granted that petition and ordered a foster care placement "clearly indicated" that the court found that remaining in the mother's home would be contrary to the child's welfare. MFIA Br. at 14, citing MFIA Exs. 5A and 5C. As discussed above, the transcript is the only documentation other than the court order that may be used to establish that the court made a contrary to the welfare determination. Michigan points to no language in the transcript that explicitly documents that the court made such a determination, however.

Accordingly, we conclude that sample case 28 was ineligible.

Sample case 36 Michigan argues that a petition for temporary custody and the transcript of the hearing at which the court granted that petition clearly indicate that the court found that remaining in the mother's home would be contrary to the child's welfare. MFIA Appeal Br. at 13-14, citing MFIA Exs. 6A and 6C. For the same reasons stated for sample case 28, we find that there was no contrary to the welfare determination in this sample case.

Accordingly, we conclude that sample case 36 was ineligible.

Sample case 80 Michigan argues that the transcript of the hearing in which the court granted a neglect petition shows that the court "considered the pros and cons" of leaving the child in her mother's home and concluded that this was contrary to the child's welfare. MFIA Appeal Br. at 10, citing MFIA Ex. 4E. Michigan argues further that the judge's "thought processes are evident in the transcript" and that she "made a case-specific determination **to the effect that** continuation in the children's home would be contrary to their welfare . . . ." MFIA Appeal Br. at 10 (emphasis in original). The transcript shows, however, that the court did not find that it would be contrary to the child's welfare to remain in the home, but simply deferred to the wishes of counsel for Michigan and counsel for the child that the child not remain in the home, as evidenced by the following colloquy:

> THE COURT: . . . .I'm not certain what the Agency is saying. You know normally I would simply include in the order that the children may be placed in the home of the mother with Families First intervention at the discretion of the case worker. Now is that what you want or do you just want me to leave the Families First issue not on the order?
> MS. SHRIVER [first Michigan counsel]: I prefer you just don't even address it.
> MS. WEINER [second Michigan counsel]: Don't- let's not address it now and we'll address it later if appropriate, please.
> THE COURT: And that's your position, also, Mr. Ladd?
> MR. LADD [child's counsel]: That's correct.
> THE COURT: Okay.

MFIA Ex. 4E, at 8.

Michigan also asserts that since the "interested parties" had agreed that the child cannot go home, this "stipulation should control" under Michigan law. MFIA Reply Br. at 7. Even if counsel entered into a stipulation that was binding under state law, however, that does not eliminate the requirement for a contrary to the welfare determination as a condition of IV-E funding.

Accordingly, we conclude that sample case 80 was ineligible.

Conclusion

For the foregoing reasons, we uphold the disallowance pertaining to all of the sample cases except sample case 22. We reverse the

disallowance pertaining to sample case 22. Our decision does not affect ACF's finding that Michigan was not in substantial compliance during the review period.

Donald F. Garrett

Leslie A. Sussan

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Presiding Board Member