

**TITLE IV-E FUNDING
DENIAL OR
CANCELLATION**

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

- Child is not a US citizen or qualified alien; see FOM 902, Funding Determinations and Title IV-E Eligibility, US Citizenship/Qualified Alien Status.
- The home from which the child was removed does not meet the former AFDC program's deprivation requirements; see FOM 902, Funding Determinations and Title IV-E Eligibility, Former AFDC Program Eligibility Requirements.
- The family's income exceeds the former AFDC program's standards; see FOM 902, Funding Determinations and Title IV-E Eligibility, AFDC Income and Assets.
- The family has assets exceeding the former AFDC program's standards; see FOM 902, Funding Determinations and Title IV-E Eligibility, AFDC Income and Assets.
- 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; see FOM 902, Funding Determinations and Title IV-E Eligibility, Continuation In The Home Is Contrary To The Child's Welfare Determination.
- There was no hearing within 60 days of the child's removal that resulted in a court order with case specific documentation finding that reasonable efforts to prevent removal had been made; see FOM 902, Funding Determinations and Title IV-E Eligibility, Reasonable Efforts Determinations.
- There is no valid court order that grants DHS sole placement and care responsibility; see FOM 902, Funding Determinations and Title IV-E Eligibility, Legal Jurisdiction.
- There is no court order resulting from a hearing held within the past 12 months that contains a finding with case specific documentation that reasonable efforts have been made to finalize a federally recognized permanency plan; see FOM 902, Funding Determinations and Title IV-E Eligibility, Reasonable Efforts Determinations.

- The placement is not eligible for title IV-E funding; see FOM 902, Funding Determinations and Title IV-E Eligibility, Eligible Living Arrangement.
- The court order specifies any of the following; see FOM 902-02, Funding Determinations and Title IV-E Eligibility, Legal Jurisdiction:
 - A family court orders dual or co-supervision of the case by DHS staff together with court/private agency staff.
 - The court orders specific selection of and/or control of the foster care placement.
 - The court orders payment of rates not appropriate in the given case.
 - The court orders title IV-E payment be made.
- The child is over the age of 18 and not expected to complete high school by age 19; see FOM 902, Funding Determinations and Title IV-E Eligibility, Title IV-E Age Requirements and Exceptions.

Notice of Denial/ Cancellation

The MiSACWIS generated DHS-176-MiSACWIS, Client Notice, must be sent to the Family Division of Circuit Court and the Lawyer-Guardian Ad Litem (L-GAL) when title IV-E is denied or cancelled, except in cases of children committed to DHS under Act 296 (Adoption Voluntary Release). In other words, a DHS-176-MiSACWIS is to be sent in all cases in which the court retains jurisdiction and on which the Department of Human Services has made the decision that title IV-E funding is to be denied or cancelled. The DHS-176-MiSACWIS must be completed accurately to reflect all of the reasons the child is not eligible for title IV-E benefits so that **all** fair hearings requirements are met. **(Failure to document all reasons for ineligibility may result in the department's denial or cancellation being overturned.)**

Example: If the child is not eligible due to judicial findings and there is no deprivation factor, both items must be noted as the reasons for denial or cancellation so both matters can be presented in the hearing.

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.

Hearing Request

Hearing requests must be made in writing and signed by the AHR. Faxes or photocopies of signatures are acceptable. The Michigan Administrative Hearing System (MAHS) will deny requests signed by unauthorized individuals and requests without signatures. The hearing request must reference the reason(s) for requesting the hearing.

Where to File a Hearing Request

Instruct AHRs to deliver, mail, or fax the hearing request to their local DHS office, **attention: hearings coordinator**. The hearings coordinator receives the request on behalf of the department. Route all hearings related material through the coordinator regardless of the addressee.

All hearing requests received must be date stamped and forwarded immediately to the hearings coordinator. If the hearing request is received by a local office that is not responsible for the disputed action, date stamp the request and forward it immediately to the correct local office, **attention: hearings coordinator**.

Deadlines for Requesting a Hearing

Only MAHS may deny a request for a hearing. Accept and forward all hearing requests to MAHS.

The AHR has 90 calendar days from the mailing of the notice of case action to request a hearing. If a hearing request is filed more than 90 calendar days from the date of the notice of case action, the hearings coordinator must do the following:

- Ensure the local office supervisor completes a DHS-3050, Hearing Summary, stating:
 - Why the request is ineligible for a hearing.
 - Specifically cite all reasons for lack of title IV-E eligibility.
 - The request was received after 90 days from the date of the mailing of the notice of case action (attach a copy of the notice).
- Forward the hearing request and the summary to MAHS.

MAHS will inform the AHR and the hearings coordinator if the request is denied.

Local Office Time Limits

If the hearing request is timely, local offices have **15** days from receipt of the hearing request to complete the following:

- Log the request.
- Contact the AHR.
- Arrange a prehearing conference including all appropriate staff.
 - The conference need not be **held** within the 15 day standard.
- Determine the nature of the complaint.
- Forward the request with either a DHS-18A, Hearing Request Withdrawal, **or** a DHS-3050, Hearing Summary, to MAHS so that MAHS receives it by the 15th day.
- Enter the information into MiSACWIS.
- Contact the Federal Compliance Division (FCD). For FCD staff to fully review the case, the local office will need to provide the following information upon request:
 - Case name(s).
 - MiSACWIS ID(s).
 - Copies of:
 - Court petition(s).
 - Order(s) removing the child from his/her home for the placement episode in question.
 - Information pertaining the actual execution of a removal order.
 - Writs, apprehension orders, emergency removal orders, delinquency orders prior to DHS involvement.
 - Order(s) where contrary to the welfare and reasonable efforts to prevent removal findings were made by the court.
 - Any other relevant orders or those addressing permanency planning or placement specification.
- Additional information relevant to the reason for denial.

Local Office Review

Resolve disagreements and misunderstandings regarding the reasons for denial or cancellation quickly, at the lowest possible level to avoid unnecessary hearings.

Upon receipt of the hearing request from the hearings coordinator, the first-line supervisor must review the disputed case action for accuracy according to policy and fact.

Administrative Review

The local office program manager or designee must review all hearing requests which are **not** resolved by the first-line supervisor. The purpose of the review is to assure local office staff did the following:

- Applied DHS policies and procedures correctly.
- Explained DHS policies and procedures to the AHR.
- Explored all eligibility alternatives (for example, if the denial is based on deprivation, have all other deprivation factors been explored).
- The local office program manager or designee must evaluate the advisability of a hearing in relation to such factors as intent of policy, type of issue(s) raised, appropriateness of the department's denial, cancellation, and administrative alternatives.
- The local office program manager is responsible for determining that a hearing request **cannot** be resolved except through formal hearing.

The administrative review does not replace the hearing process. The hearing must be held as scheduled unless the department reinstates title IV-E eligibility and reimbursability or the AHR withdraws the hearing request.

Prehearing Conference

Concerns expressed in the hearing request should be resolved whenever appropriate and possible through a conference with the AHR rather than through a hearing.

The spokesperson for the local office at the prehearing conference may be anyone from the county director to a first-line supervisor. Whoever is assigned this function, however, acts on behalf of the county director.

A prehearing conference **must** be offered to the AHR upon receipt of a hearing request.

The prehearing conference must take place as soon as possible after the local office receives the request **unless**:

- The AHR chooses not to attend the prehearing conference; **or**
- A conference was held prior to receipt of the hearing request, and the issue in dispute is clear, and DHS staff fully understand the positions of both the department and the AHR.

All appropriate staff (for example: first-line supervisor, child welfare funding specialist and Federal Compliance Division staff) **must** be consulted before the prehearing conference and attend as necessary.

All of the following must be completed at the prehearing conference:

- Determine why the AHR is disputing the DHS action.
- Review any documentation the AHR has to support his/her position.
- Explain the department's position and identify and discuss the differences.
- Determine whether the dispute can be resolved locally or requires a hearing.

Corrected Case Action

If the local office determines that the case action of title IV-E denial/cancellation needs correction, complete the following:

- Update the electronic and paper case record with the corrected information.
- Provide notification to the AHR that corrective action has been taken.

- Notify MAHS that the disputed action has been corrected and that the AHR's concerns have been resolved. MAHS must have all the following documentation to deny hearing requests:
 - The hearing request with the signature of the AHR.
 - A short summary of the actions the local office took to correct all the concerns (a DHS-3050, Hearing Summary, may be used).

MAHS will send the AHR a letter stating that the hearing request is dismissed because there is no longer any basis for a hearing. The hearing will **not** be dismissed if the AHR claims that the local office failed to correct all the disputed actions.

Hearing Summary

Complete a DHS-3050, Hearing Summary, if the dispute is **not** resolved at a prehearing conference. All case identifiers and notations on case status must be complete.

The narrative must include all of the following:

- Clear statement of case action.
- Facts which led to the action.
- Policy and federal regulations which supported the action.
- Correct address of the AHR.
- Description of the relevant documents the local office intends to offer as exhibits at the hearing. Attached exhibits and documents must be clearly numbered and identified.

Funding Pending the Hearing

Foster care funding continues pending the hearing from a fund source other than title IV-E based on the child's legal status.

Withdrawals

When any issue is still in dispute, do **not**:

- Suggest that the AHR withdraw the request; **or**
- Mail a withdrawal form to the AHR unless it is requested.

Prior to Mailing Hearing Request to MAHS

When all issues are resolved and the AHR wishes to withdraw the request, the local office must request a signed statement

requesting withdrawal from the AHR. The DHS-18A, Hearing Request Withdrawal, may be used for this purpose. The withdrawal must clearly state why the AHR has decided to withdraw the request. Enter all identifying case information on the withdrawal, attach the original copy to the request and forward them to MAHS. File a copy of the withdrawal in the case record.

After Mailing Hearing Request to MAHS

When all issues are resolved and the AHR wishes to withdraw the request, do the following:

- AHR requests withdrawal while in the local office:
 - Ask for a signed, written withdrawal. The DHS-18A, Hearing Request Withdrawal, should be used.
 - Fax a copy of the withdrawal request to MAHS at (517) 241-8541 or (517) 335-6696. The original request form must be placed in the case file at the local office.
- AHR requests withdrawal via telephone:
 - Ask the caller to promptly send a written request for withdrawal to the local office. The AHR may obtain and complete a DHS-18A at the local office or online at: www.michigan.gov/dhs-forms in the Other category.
 - When the request for withdrawal is received, fax a copy to MAHS at (517) 241-8541 or (517) 335-6696. File the original in the case record.

Requests for Postponement (Adjournment)

The AHR or local office may request a postponement (also called adjournment) of a scheduled hearing. If the AHR requests a postponement, instruct the AHR to call MAHS to request the postponement. **Only** MAHS can grant or deny a postponement. MAHS will notify the hearings coordinator **if** the postponement is granted. When the hearing is rescheduled, MAHS will issue a new DHS-26A, Notice of Hearing, which is mailed to all parties who received the original notice.

If the postponement is granted at the request of the AHR, the standard of promptness is extended for as many days as the hearing is postponed.

Late Arrival for the Hearing

Hearings will be held on the scheduled date if the AHR arrives within 30 minutes of the scheduled time.

If the AHR arrives **more** than 30 minutes late, immediately call MAHS for direction on how to proceed. Whenever possible, the hearing will be held on the scheduled date.

Failure to Appear for the Hearing

Contact MAHS if the AHR does **not** appear for the hearing within 30 minutes of the scheduled time. Do **not** take negative action until written authorization from MAHS has been received. If the AHR later contacts DHS to have the hearing rescheduled, instruct the AHR to:

- Write MAHS at P.O. Box 30695, Lansing, MI 48909; **or**
- Call MAHS at the toll-free number included on the DHS-26A, Notice of Hearing.

Presentation of the Case

The Attorney General (AG) and AHR will each present their positions to the Administrative Law Judge (ALJ), who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure.

Note: Once the hearing date has been determined, the Federal Compliance Division (FCD) will initiate action in obtaining AG representation for DHS.

Following the opening statement(s), if any, the ALJ directs the DHS case presenter to explain the position of the local office. The hearing summary, or highlights of it, may be read into the record at this time. The hearing summary may be used as a guide in presenting the evidence, witnesses and exhibits that support the department's position. Always include the following in planning the case presentation:

- An explanation of the action(s) taken.

- A summary of the policy or laws used to determine that the action taken was correct.
- Any clarifications by the central office staff of the policy or laws used.
- The facts which led to the conclusion that the policy is relevant to the disputed case action.
- The DHS procedures ensuring that the AHR received adequate or timely notice of the proposed action and affording all other rights.

Both the AG and the AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered into evidence.

Admission of Evidence

The ALJ will follow the same rules used in circuit court to the extent practicable. The ALJ must ensure that the record is complete, and may do the following:

- Take an active role in questioning witnesses and parties.
- Assist either side to be sure all the necessary information is presented on the record.
- Be more lenient than a circuit court judge in deciding what evidence may be presented.
- Refuse to accept evidence that the ALJ believes is:
 - Unduly repetitious.
 - Immaterial.
 - Irrelevant.
 - Incompetent.

Either party may both:

- State on the record its disagreement with the ALJ's decision to exclude evidence and the reason for the disagreement.

- **Object to evidence the party believes should not** be part of the hearing record.

When refusing to admit evidence, the ALJ must state on the record the nature of the evidence and why it was **not** admitted. The ALJ may allow written documents to be admitted in place of oral testimony if the ALJ decides this is fair to both sides in the case being heard.

Hearing Decisions

The ALJ determines the facts based only on evidence introduced at the hearing, draws conclusion of the law, and determines whether DHS policy was appropriately applied. The ALJ issues a final decision **unless**:

- The ALJ believes that the applicable law does **not** support DHS policy.
- DHS policy is silent on the issue being considered.

In that case, the ALJ recommends a decision and the policy hearing authority (the DHS director) makes the final decision.

MAHS mails the final hearing decision to the AHR and the local office. In most cases, the AHR and DHS have the right to appeal a final decision to circuit court within 30 days after that decision is received.

Implementing the Decision and Order

All hearing decisions **must** be recorded in the electronic and paper case records.

Some hearing decisions require implementation by the local office. Implement a decision and order within 10 calendar days of the mailing date of the hearing decision. **Do not** provide an additional notice of case action. The decision and order serves as notice of the action.

Implement the decision and order pending a court appeal unless a circuit court or other court with jurisdiction issues an order requiring a stay. In all cases the Federal Compliance Division must be consulted prior to reinstating or reconciling any title IV-E payments as the result of a hearing.

Rehearing/ Reconsideration

A **rehearing** is a full hearing which is granted when:

- The original hearing record is inadequate for purposes of judicial review.
- There is newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision.

A **reconsideration** is a paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is **not** necessary, but one of the parties believes the ALJ failed to accurately address all the relevant issues **raised in the hearing request**.

Rehearing/ Reconsideration Requests

The department or AHR may file a written request for rehearing/reconsideration. A decision must be made within 30 calendar days to request a rehearing/reconsideration. Request a rehearing/reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing, and that could affect the outcome of the original hearing decision.
- Misapplication of policy or law in the hearing decision which led to a wrong conclusion.
- Typographical, mathematical, or other obvious errors in the hearing decision that affect the rights of the client.
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The department, AHR or the client must specify all reasons for the request.

**Local Office
Requests**

A written request from the local office for a rehearing/reconsideration must be sent to the Federal Compliance Division in central office for a recommendation. The written request must include all of the following:

- A copy of the decision and order.
- A copy of the hearing summary and all evidence presented at the hearing.
- Reasons why a rehearing/reconsideration is appropriate.

Send requests to:

Federal Compliance Division
Grand Tower Building, Suite 501
P.O. Box 30037
Lansing, MI 48909

Or email to:

dhs-federalcompliance@michigan.gov.

**Standard of
Promptness**

Final action on hearing requests, including implementation of the decision and order, must be completed within 90 calendar days. The standard of promptness begins on the date the hearing request was first date stamped by any local office.

**Payments during
an appeal**

DHS may not use title IV-E funds during an appeal process.

If title IV-E payments have been made that should not have been, the following actions must be taken:

1. Complete a new title IV-E funding determination or reimbursability determination in MiSACWIS immediately.
2. Ensure that the payment authorization is using the appropriate fund source of either state ward board and care or county child care funds.

3. Payments made from title IV-E in error will not be reconciled prior to a MAHS hearing decision being made.
4. Following the MAHS hearing decision, reconciliation can be made as needed. The Federal Compliance Division will direct the local office on what payment action may need to be taken based on the MAHS hearing decision.