

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Petitioner

Reg. No.: 2007-14477
Issue No.: 6004
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 30, 2009
Wayne County DHS (69)

ADMINISTRATIVE LAW JUDGE: Rhonda P. Craig

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon pursuant to MCL 400. 9; MCL 400.37 upon petitioner's request for a hearing. After due notice an in-person hearing was held on April 30, 2009 and petitioner's representative appeared and testified.

ISSUE

Did the Department of Human Services (DHS) properly deny petitioner's request for an Adoption Subsidy rate increase?

FINDINGS OF FACT

- (1) Petitioner ([REDACTED]) was adopted on [REDACTED]
- (2) At that time petitioner's mother signed an Adoption Subsidy Agreement which indicated the Adoption Subsidy amount.
- (3) The subsidy amount did not include a Difficulty of Care supplement and was in conformity with the Foster Care rate.

- (4) Prior to adoption, petitioner was a ward the State of Michigan and was to receive Title IV-E (foster care federal fund) funding for the adoption subsidy.
- (5) DHS did not certify petitioner for a Difficulty of Care rate which would have qualified her for an additional adoption subsidy payment.
- (6) On March 5, 2007 petitioner, via her mother, requested that a Difficulty of Care payment be added to her adoption subsidy.
- (7) On April 10, 2007 DHS denied the request.
- (8) Petitioner requested a hearing contesting the denial.

CONCLUSIONS OF LAW

The Adoption Subsidy program is established by MCL 400.115, *et seq.*, and is administered by the Department of Human Services (formerly known as the Family Independence Agency) pursuant to MCL 400.10, *et seq.* Department policies regarding adoption subsidy are found in the Services Manual (SM). The federal law upon which Michigan law is based is Title IV-E of the Social Security Act, Section 473(c).

The State of Michigan administers three adoption subsidy programs: Adoption Support Subsidy; Adoption Medical Subsidy and Nonrecurring Adoption Expenses Reimbursement. The purpose of support and medical subsidies is to remove financial barriers to the adoption of Michigan foster children with special needs, as defined by MCL 400.115f. The purpose of the nonrecurring adoption expense reimbursement program is to assist in paying the out-of-pocket expenses of adoption of special needs children. Based on each individual child's situation and needs, one or more of the subsidy benefits may be available to support their adoption. Some children do not qualify for any subsidy program based on their individual circumstances. Subsidy is available without respect to the income of the adoptive parent(s). The adoption support subsidy is

intended to assist with the payment of expenses of caring for and raising the child. It is not intended to meet all of the costs of raising the child; rather, it is a money grant program, which provides assistance to adoptive parents in certain defined and limited ways. Adoptive parents retain financial and decision-making responsibility and authority for their child. A support subsidy is a monthly payment to the parent or parents of an eligible adopted child. This payment provides assistance to the parent or parents of the adopted child and eligibility is determined before the petition for adoption is filed. The child placing agency, the Department of Human Services (DHS), or the Department of Community Health unit that has responsibility under Michigan's law for the care and supervision of the child is responsible for submitting the application for support subsidy. CFS Manual Item 100 In Michigan, the negotiated adoption support subsidy rate agreed upon by the family is the maximum rate that can be paid under state law. Therefore, rates are not negotiable after adoptive placement except in those instances where the family has elected a lower rate than was offered. Parents may enter an agreement at a lower support subsidy rate and renegotiate the rate up to the maximum subsidy rate at a later date. The renegotiated rate will be effective when both the DHS and parents have signed the new agreement. The child will not be eligible for retroactive payments at the higher rate. Rates established on the adoption subsidy certification are not subject to administrative review .If a child's needs increase after the adoption placement due to pre-existing physical or emotional problems, the parents may apply for adoption medical subsidy to assist with the increased expenses of the child. CFS Manual Item 210 pp. 4-5. The DHS has an administrative hearing process to provide for the right to contest a department decision or case action when a client believes the decision is contrary to law or DHS policy. The issues of eligibility, computation of subsidy rates, case closure, and/or reduction of benefits are issues subject to administrative

hearings. The adoptive parent or guardian has the burden of proof in an adoption subsidy hearing. Support subsidy rates are agreed to by parents or legal guardians by the act of signing the Adoption Support Subsidy Agreement (DHS-4112 or DHS-4113). Rates are not negotiable and therefore do not qualify for administrative hearings. It is outside the authority of Administrative Hearings (AH) to renegotiate support subsidy rates. CFS Manual Item 130.

In the present case petitioner's mother signed an Adoption Subsidy Agreement which indicated the amount of the adoption subsidy. The agreement did not include a "difficulty of care" rate. Pursuant to policy, cited above, petitioner is precluded from having a hearing after the adoption, on the issue of renegotiating the subsidy rate. At the hearing petitioner argued that while she was receiving the adoption subsidy she was also receiving SSI benefits. She indicates that the Social Security Administration (SSA) is seeking to recoup of some of the SSI payments because her adoption subsidy payments were funded by Title IV-E another federally funded source. She was seeking the "difficulty of care" payment to offset the amount she may be required to pay the SSA. This administrative law judge does sympathize with petitioner's situation but does not have the prerequisite jurisdiction to change or alter department policy on this issue.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides this Administrative Judge does not have jurisdiction to renegotiate Adoption Support subsidy rates.

Therefore petitioners request for a hearing in this matter is hereby DISMISSED.

/s/
Rhonda P. Craig
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 05/04/09

Date Mailed: 05/04/09

NOTICE: The law provides that within 60 days of mailing of the above Decision and Order the claimant may appeal the Decision to the probate court for the county in which the petition for adoption was filed. If the adoptee is a resident of the State, the petition may be filed in the probate court for the county in which the adoptee is found. Administrative Hearings, on its own motion, or on request of a party within 60 days of the mailing date of this Decision and Order, may order a rehearing.

RPC/jlg

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