

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Petitioners

Reg. No: 2007-25378
Issue No: 6004
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 12, 2009
Adoption Subsidy
SOAHR

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon petitioner's request for a hearing. After due notice, an in-person hearing was held on March 12, 2009.

ISSUE

Did the Department of Human Services (department's) Adoption Subsidy Office (ASO) correctly assess petitioner's support subsidy rates in 2006?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) The department's Adoption Subsidy Office (ASO) certified pre-adoption subsidy rates for the following five-member sibling group who live in Indiana with their parents (petitioners):

Child A (DOB: [REDACTED])
Child B (DOB: 7 [REDACTED])
Child C (DOB: [REDACTED])
Child D (DOB: [REDACTED])
Child E (DOB: [REDACTED])

(2) These children were placed in pre-adoptive placement under a [REDACTED] Michigan court Order until adoption finalization on [REDACTED]

(3) The four boys (A-D) were granted a Level I designation and the girl (E) was granted a Level II designation, thus entitling their parents to additional per diem difficulty of care monies over and above the standard payment rates (Department Exhibit #1, pgs 3-7).

(4) A [REDACTED] letter from the children's father to the ASO requests a hearing to protest these levels as too low (Department Exhibit #1, pgs 48-50).

(5) The hearing was held on March 12, 2009.

(6) The presiding Administrative Law Judge extended the hearing record to allow the parties to engage in additional settlement negotiations, which included consideration of post-hearing evidence about each of the children at issue in this case.

(7) In October 2009, the presiding Administrative Law Judge received the ASO's closing conclusions ([REDACTED]) which state in relevant part:

After a review of the documentation submitted by [petitioners] and a review of the foster/adoptive record, the Adoption Subsidy office has completed new Assessment for Determination of Care for Children in Foster Care (DOC)-DHS 470 and DHS 470A. For all children, their total score is different as compared to the forms completed on [REDACTED]

(8) The ASO's proposed revised scores are:

Child A:	104 from 25 points.
Child B:	84 from 25 points.
Child C:	84 from 37 points.
Child D:	69 from 30 points.
Child E	30 from 58 points.

(9) These new scores are consistent with an upgraded Level III designation for Child A, as well as upgraded Level II designations for Child B, C and D retroactive to their adoptive placement date (██████████) because the department's witnesses failed to submit any evidence to support the contrary at hearing.

(10) As of the settlement negotiation/record closure date (1██████████), the ASO had not received any documentation of special needs (e. g., speech therapy, physical therapy, counseling, special education, etc.) provided to Child E during the disputed period.

(11) Furthermore, as of the established adoptive placement date (██████████), Child E's speech and physical therapy services had been discontinued.

(12) Lastly, Child E was determined not eligible for an enhanced foster care payment rate even before the adoptive placement occurred, despite suspected pre-birth exposure to alcohol/drugs, according to a foster care report dated ██████████ (Client Exhibit A, pg 4).

(13) Child E's initial Level II designation was based on behavior management issues which required intensive parental monitoring and speech therapy involvement at that time, now largely resolved (See Finding of Fact #10 and #11 above).

(14) The only exhibit petitioners presented regarding Child E during settlement negotiations were her ██████████ kindergarten records, which reveal ongoing progress in the majority of areas and confirm skills/development sufficient for promotion to first grade.

CONCLUSIONS OF LAW

The Adoption Subsidy program is established by MCL 400.115, *et seq.*, and is administered by the Department of Human Services (DHS or department) 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). Administrative Law Judges from the State Office of Administrative Hearings and Rules (SOAHR) conduct hearings and issue decisions when adoption subsidy issues are in dispute.

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. CFA, Item 740, p. 1.

INTRODUCTION

Adoption Support Subsidy eligibility is based on five specific criteria. Michigan law (MCL 400.115f -g) provides the basis for this policy.

After eligibility for Michigan's Adoption Support Subsidy program has been determined, federal policy is applied to determine the funding source of the Adoption Support Subsidy and whether Medicaid will be provided through the Adoption Subsidy Program. Funding determination is based on the state's federally-approved Title IVE plan.

Funding determination details are in CFA 754.

Adoption Support Subsidy-related Medicaid eligibility details are in CFA 755. CFA, Item 750, p. 1.

Who is Eligible?

Michigan's Adoption Support Subsidy eligibility criteria includes:

- the child’s identification as a “child with special needs”.
- certification of the child’s Adoption Support Subsidy eligibility by the Adoption Subsidy Program Office before the Petition for Adoption is filed with the court.
- a written Adoption Assistance agreement between the parent(s) and the department specifying the amount of Adoption Support Subsidy to be paid, signed by the parent(s) and DHS before the finalization of the adoption.

Note: It is required that the agreement be signed before the Petition for Adoption is filed for the adoptive family to begin receiving Adoption Support Subsidy payments effective on the adoption placement date.

Policy Statement

1. The Adoption Support Subsidy rate is determined without regard to the income of the adoptive family. (MCL 400.115g)
2. The Adoption Support Subsidy rate is established based on the daily or monthly rate paid for the child’s foster care on the date of certification.
3. The Adoption Support Subsidy amount cannot exceed the amount that was paid to support the child while in foster care. (MCL 400.115g)
4. The Adoption Support Subsidy rate offered cannot be less than the rate that was paid for the adoptee while in foster care.
5. State Ward Board and Care payments, Title IV-E foster care payments, County Child Care Fund, SSI, and FIP payments are all considered foster care payments for the purpose of determining adoption subsidy rates.
6. RSDI or VA benefits alone cannot be used to establish an Adoption Support Subsidy rate. If a child does not receive a foster care, SSI, or FIP payment, the subsidy rate will be zero. Nonrecurring Adoption Expenses and Medicaid may be available to eligible children who do not receive a support subsidy rate.

7. The age appropriate semiannual clothing allowance is added to the foster care daily rate for state wards and court wards under DHS supervision funded by Title IV-E, State Ward Board and Care, or County Child Care Fund. CFA, Item 751 p. 1.

Determination of Care Supplements

Any foster care rate that exceeds the DHS's current standard rate is considered a Difficulty of Care (DOC) supplement. CFA, Item 751, p. 2.

At hearing, petitioners contended the difficulty of care levels for Children A-E were too low when first established and they requested retroactive supplementation for each child.

This Administrative Law Judge reviewed all hearing exhibits, as well as all post-hearing settlement documentation before issuing this Hearing Decision. She concludes the ASO's upgraded levels of care for Children A-D are completely consistent with the new evidence presented, and also, with the children's special needs during their retroactive closed payment period now in dispute. Regarding petitioner's daughter (Child E), this Administrative Law Judge finds the evidence of record fails to support petitioner's contention her difficulty of care rate (Level II) was set in error. As such, no basis exists to increase Child E's rate, despite each boy's entitlement to the rate hikes associated with the increased scores set forth in the ASO's closing memorandum dated [REDACTED] (See also Finding of Fact #7-#9 above).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred when initially assessing petitioner's four boys (A-D) support subsidy rates in 2006, but properly assessed petitioner's daughter's rate at that time (Child E).

Accordingly, this case is returned to the ASO for timely issuance of retroactive payment on Children A-D, in accordance with their October 16, 2009 closing memorandum.

SO ORDERED.

/s/

Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 1, 2010

Date Mailed: September 2, 2010

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.

MBM/db

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