

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Petitioner

Re: Gabriel McNitt

Reg. No: 2007-6570

Issue No: 6004

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 4, 2009

Adoption Subsidy, Lansing AH

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

RECOMMENDED HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon Petitioners' request for a hearing. This particular matter is before the Administrative Law Judge according to the provisions of law (MCLA 400.111k) and department policy (CFA 744, CFA 750, and AAM).

After due notice, an in-person hearing was held on June 4, 2009. Petitioner was represented by [REDACTED]. The Department of Human Services was represented by [REDACTED] Assistant Attorney General. Recommended Hearing Decision Register #2005-11966 issued by Administrative Law Judge Landis Y. Lain on February 2, 2006, is hereby incorporated in its entirety. Final Hearing Decision and Order Register #2005-11966, issued May 12, 2006, by [REDACTED], (former) Director of Michigan Department of Human Services, approving the request for Post-Adoption Support Subsidy for Child A is hereby incorporated in its entirety.

ISSUE

Whether the Administrative Law Judge has jurisdiction to Adjust Adoption Support Rates beyond that which is allowed by statute or policy?

FINDINGS OF FACT

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

- (1) Child A was born [REDACTED].
- (2) On [REDACTED], Child A was placed into temporary court custody and Michigan Department of Social Services (now DHS or the Department) for care and supervision.
- (3) Child A was placed into foster care directly from the hospital.
- (4) On [REDACTED], the birth father's rights were released and terminated.
- (5) On March 2, 1995, Petitioner provided respite care for Child A for ten days through March 12, 1995.
- (6) The child placing agency had originally intended to place Child A with another couple for adoption. In early March 1995, the intended adoptive father suffered a sudden heart attack and died.
- (7) On [REDACTED], the birth mother's parental rights were terminated.
- (8) Petitioner was contacted later in March 1995 by the child placing agency to inform him that the department had determined that the originally planned adoption would not proceed. A few days later, the agency again called the Petitioner to ask whether he would be interested in adopting Child A.

(9) On [REDACTED], Petitioner signed a Placement Agreement.

(10) On [REDACTED], the Probate Judge signed Child A's adoption placement order.

(11) Petitioner adopted Child A on [REDACTED].

(12) On October 23, 2003, the Adoption Support Subsidy request was received by the Adoption Subsidy Office.

(13) Between 2002 and 2005 Child A was diagnosed with Reactive Attachment Disorder, Oppositional Defiant Disorder, Conduct Disorder and Intermittent Explosive Disorder, Sentinel Physicals Findings, Encephalopathy, Alcohol Exposed Attention Deficit Disorder, and non-specific cognitive problems.

(14) Prior to adoption, the caseworker informed the Petitioner that the parents of Child A had a history of schizophrenia and bipolar disorder. It was suggested to the Petitioner that he contact the genetic clinic at MSU regarding the transmission of schizophrenia.

(15) Petitioner filed a request for a hearing to request a Post-Adoption Support Subsidy for Child A.

(16) On February 2, 2006 Administrative Law Judge Landis Y. Lain issued and entered a Recommended Decision denying Petitioner's request for Post-Adoption Support Subsidy for Child A.

(17) Petitioner's exceptions were received by the Adoption Subsidy Office on March 1, 2006.

(18) On May 12, 2006, then Director of Human Services [REDACTED], issued a final Decision and Order stating that Child A was entitled to a Post-Adoption Support Subsidy based upon the best interests of the child.

(19) On June 5, 2006, the Adoption Subsidy Program Office mailed an Adoption Support Subsidy agreement for Child A to claimant's representative.

(20) The effective date of the agreement (10/23/03) was based on policy in CFA 750.

(21) The Adoption Support Subsidy Rate (14.69/day) was set based on policy in CFA 750 and Michigan State Law MCL 400.11g.

(22) A cover letter detailing the retroactive Adoption Support Subsidy payment back to 10/23/03 (date of Petitioner's request for Adoption Support Subsidy) was included with the Support Subsidy Agreement, along with information about the required signature process in order to complete the Agreement and activate the Adoption Support Subsidy payment and Medical Assistance coverage.

(23) On July 3, 2006, a letter from Petitioner's representative was received in the Adoption Subsidy Program Office requesting an administrative hearing to determine the terms and conditions of the Adoption Support Subsidy Agreement.

(24) On August 23, 2006, a pre-hearing conference was held with Petitioner's representative, Petitioner, DHS Adoption Services Director, [REDACTED], DHS Adoption Subsidy Program Manager, and [REDACTED], DHS Adoption Subsidy Program Specialist. The purpose of the meeting appears to have been a negotiation to change the Adoption Subsidy amount because Petitioner was not satisfied with what was offered.

(25) On September 8, 2006, the Adoption Subsidy Program Office mailed a letter from [REDACTED], DHS Adoption Services Director, explaining the Department's response to each of the Petitioner's requests for the changes in the terms of the agreement; a cover letter detailing

potential retroactive Adoption Support Subsidy payment of [REDACTED] back to April 28, 1995 (date of Adoption Placement Order) and a new Adoption Support Subsidy Agreement for Child A changing the effective date to April 28, 1995 and changing language regarding continuing eligibility for support subsidy.

(26) On October 20, 2006, a letter was received from Petitioner's attorney requesting an administrative hearing to determine the appropriate terms and conditions to be included in the Adoption Support Subsidy Agreement for Child A.

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 Family Independence Agency (the department or 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). Administrative Law Judge for the State Office of Administrative Hearings and Rules (SOAHR) conducts the hearing and completes this decision.

The State of Michigan administers three Adoption Subsidy programs: the Adoption Support Subsidy, the Adoption Medical Subsidy, and the Nonrecurring Adoption Expenses Reimbursement. The purpose of the support and medical subsidy programs 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.

The Adoption Support Subsidy Program is the pertinent program in the instant case. The Adoption Support Subsidy is intended to assist with payment of expenses of caring for and raising the adopted 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 limited and defined ways. 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. (CFS Manual, Item 100/AAM. Item 100.)

Current Policy dictates:

Federal and state laws (MCL 400.115f-m,r,s) require that adoption support subsidy eligibility and nonrecurring adoption expenses eligibility be determined and an adoption assistance agreement be negotiated and signed by the adoptive parent(s) and the Department of Human Services designee prior to the final order of adoption.

Application Process:

If adoptive parents assert that an error was made in their child's case, they may apply for Adoption Support Subsidy/nonrecurring adoption expenses by submitting a written request to:

Adoption Subsidy Office
Michigan Department of Human Services
Grand Tower, Suite 412
P.O. Box 30037
Lansing, MI 48909

The Adoption Subsidy Office will review the request and determine if additional information is needed in order to determine the circumstances of the adoption. The adoptive parents must provide documents for evidence.

The Adoption Subsidy Office will review the child's circumstances and determine Adoption Support Subsidy eligibility based on the eligibility policy in the Adoption Subsidy Manual (CFS) that was in effect at the time the child's adoption was finalized.

After review of all documents, the Adoption Subsidy Office will send a written response of the findings to the adoptive family. If the application is denied, the letter will include information about the right to request an administrative hearing.

If the parent(s) disagree with a denial, they may request an administrative hearing within 90 calendar days of the written notice of the denial decision by the Adoption Subsidy Office. In an administrative hearing, the Administrative Law Judge (ALJ) must first address whether an error has occurred. (See CFS 700, Administrative Hearings for additional information.) CFS Item 205, page 1. AAM, Item 205, p. 1.

The Department of Human Services (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 denials, notice of the Subsidy Program to prospective adoptive families, failure of DHS to complete required paperwork prior to the finalization of the adoption, 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 negotiated, agreed to and signed by adoptive parent(s) or legal guardians (state funded subsidy after the death of the adoptive parent) by the act of signing the Adoption Assistance Agreement (DHS-4113 or DHS-4113G). CFS, Item 700, page 1.

For hearings concerning Adoption Support Subsidy and/or nonrecurring adoption expenses eligibility after the finalization of the adoption, there are certain limited circumstances in which an ALJ may grant approval of the program through the administrative hearing process.

An approval may be granted only in cases in which there has been a determination that:

- One of the specific errors below was made, and
- The child's pre-adoptive circumstances met the Adoption Support Subsidy/nonrecurring adoption expenses eligibility requirements.

If the child's circumstances did not meet Adoption Support Subsidy/nonrecurring adoption expenses eligibility requirements prior to the date of the finalization of the adoption, the presence of an error is not relevant. Determination of an error listed below will not change the child's ineligibility

Specific Errors

The errors that may be considered in the administrative hearing for Adoption Support Subsidy and/or nonrecurring adoption expenses after adoption finalization are limited to the following:

- An error in the written determination of a child's ineligibility by the DHS Adoption Subsidy Office.
- The documented denial of eligibility by the DHS Adoption Subsidy Office based on a means test of the adoptive family.
- For children who were under the care and custody of DHS and placed for adoption after January 1, 1995 only: failure by the DHS local office adoption program (or private agency under contract with DHS to provide adoption services) to notify or advise the adoptive parent(s) of the availability of Adoption Support Subsidy and/or nonrecurring adoption expenses. Documented receipt of DHS Publication 538, Michigan's Adoption Subsidy Programs, is deemed evidence of notice of the above.
- An administrative error on the part of the adoption agency.
- Relevant facts regarding the child were known by the State or child placing agency and not presented to the adoptive parent(s) prior to the finalization of the adoption.

Adoption Support Subsidy Specific Error Determination

If it is determined that a specific error as listed above did occur in a case, the ALJ will review the child's circumstances to determine whether the child would have been eligible for an Adoption Support Subsidy and/or nonrecurring adoption expenses at the time of, or prior to, the adoption finalization. The eligibility policy in the Adoption Subsidy manual (CFS) that was in effect at the time of the child's adoption finalization will be used to determine eligibility.

If a child's circumstances did not meet eligibility criteria for Adoption Support Subsidy and/or nonrecurring adoption expenses prior to the date of the court order finalizing the adoption but there is evidence of an error as listed above, eligibility can not be granted.

Adoption Support Subsidy Rates for Children Found Eligible

If an ALJ determines that a specific error was made and the child met the eligibility requirements for Adoption Support Subsidy, the Adoption Subsidy Office will determine the maximum Adoption Support Subsidy Rate. The maximum rate will be determined consistent with the foster care maintenance rate that the child received, or would have received, in a foster family home at the time immediately prior to the final order of adoption. In addition, any legislative increases or decrease to the standard base rate that were authorized since the child's adoption placement will be considered in the rate setting.

For a child who was adopted from a residential treatment facility, the maximum Adoption Support Subsidy Rate will be determined consistent with policy in CFS 210, Adoption Support Subsidy Rate Determination.

After a maximum Adoption Support Subsidy Rate is determined by the Adoption Subsidy Office, the ongoing Adoption Support Subsidy payment will be negotiated with the adoptive parent(s). A negotiated DHS-4113, Adoption Assistance Agreement must be signed by

the adoptive parent(s) and the DHS designee before the Adoption Support Subsidy ongoing payment and any retroactive payments may be paid.

Effective Date of Post-Adoption Support Subsidy

If an ALJ determines that a specific error was made and the child met the Adoption Support Subsidy eligibility requirements, the Adoption Support Subsidy ongoing payment rate and effective date will be negotiated with the adoptive parent(s) and the Adoption Subsidy Office. The negotiation will result in a signed DHS-4113, Adoption Assistance Agreement.

The Adoption Support Subsidy payment is processed when the adoption assistance agreement is signed by the adoptive parent(s) and the DHS designee and the DHS-1344, Case Opening Request is submitted by the parent(s) to the Adoption Subsidy office.

Medicaid for Children Found Eligible After Finalization

If an ALJ determines that a child is eligible for Adoption Support Subsidy, the Adoption Subsidy Office determines the child's eligibility for Medicaid through the Adoption Support Subsidy Program. If it is determined that the child is eligible for Medicaid, Medicaid will be activated after the adoption assistance agreement is signed by the adoptive parent(s) and the DHS designee, and the DHS-1344, Case Opening Request is submitted by the parent(s) to the Adoption Subsidy office. CFS, Item 700, page 3.

The ALJ determines the facts based solely on the evidence at the hearing, draws conclusions of law, and

- For Adoption Support Subsidy requests received after adoption finalization, recommends a decision to the DHS director.
- For all other Adoption Subsidy matters, issues a decision and order.

Copies of the recommended decision and order are sent to the Adoption Subsidy Office and the Petitioner. In most cases, the Petitioner has the right to appeal the final decision to probate court within 60 days after the final decision is received. The DHS director has 60 days to issue a final decision and order or return the recommended decision to SOAHR for rehearing.

The hearing decision and order may require the Adoption Subsidy Office to take action. The office must implement any required action within 10 days of the mailing date of the hearing decision. The Adoption Subsidy Office will complete the DHS-1843, Administrative Hearing Order Certification, within ten calendar days and send it to SOAHR to certify the progress of implementation. CFS, Item 700, page 6.

Former Director of DHS [REDACTED], in her May 12, 2006 Final Decision and Order, states that once an extenuating circumstance is found and a post-adoption application is reviewed, eligibility must be determined applying the original criteria of state and federal law to the immediate case as if the application had been made prior to the adoption. (Administrative Law Judge Exhibit A, page 5) Director [REDACTED] also determined that Child A meets the special needs criteria and satisfies the requirements of 42 USC 673 (c)(2). (Administrative Law Judge Exhibit A, page 6)

Director [REDACTED] determined that extenuating circumstances existed in Child A's case to allow the consideration of a post-adoption request for a support subsidy. Director [REDACTED] determined that Child A was eligible for Adoption Subsidy before or at the time of adoption because of the 'best interest of the child' exemption. Child A is therefore eligible for a Post-Adoption Subsidy. (Administrative Law Judge Exhibit A page 8)

In the instant case, Petitioner requests that this Administrative Tribunal order the department to negotiate a Support Subsidy Rate in excess of the maximum amount Child A would have received while in foster care or in the alternative, to order the Department of Human Services to negotiate a higher rate than it is willing to currently negotiate for.

Department policy limits the determination of rate of Adoption Support Subsidy to the department:

If an ALJ determines that a specific error was made and the child met the eligibility requirements for Adoption Support Subsidy, the Adoption Subsidy Office will determine the maximum Adoption Support Subsidy Rate. **The maximum rate will be determined consistent with the foster care maintenance rate that the child received, or would have received, in a foster family home at the time immediately prior to the final order of adoption.** In addition, any legislative increases or decrease to the standard base rate that were authorized since the child's adoption placement will be considered in the rate setting. AAM, Item 700, page 4. (emphasis added)

After a maximum Adoption Support Subsidy Rate is determined by the Adoption Subsidy Office, the ongoing Adoption Support Subsidy Payment will be negotiated with the adoptive parent(s). A negotiated DHS-4113, Adoption Assistance Agreement must be signed by the adoptive parent(s) and the DHS designee before the Adoption Support Subsidy ongoing payment and any retroactive payments may be paid. AAM Item 700, page 5.

Policy does not give the Administrative Law Judge the discretion to determine the maximum rate of Adoption Support Subsidy or to negotiate an Adoption Subsidy Agreement. The negotiation must take place between the Petitioner and the Department of Human Services designee. AAM Item 700, page 5.

It should also be noted that Director [REDACTED] did not establish a Determination of Care rate in excess of the amount that Child A received in Foster Care in her Final Decision and Order. In addition, on June 5, 2006, [REDACTED] of DHS sent Petitioner a letter outlining the maximum rates available for Adoption Support Subsidy Rates for the periods of time in question with an offer to pay those rates, along with a proposed Adoption Support Subsidy Agreement. Petitioner did not accept the offer. Finally, on September 8, 2006, [REDACTED] of DHS sent Petitioner's attorney another letter, in response to an August 23, 2006 meeting to negotiate a rate, explaining that DHS was offering the maximum applicable subsidy rate. Enclosed with that letter was another letter from [REDACTED] stating the maximum foster care rates from April 28, 1995 through September 30, 2006, along with a proposed Adoption Support Subsidy Agreement. Once again, Petitioner did not accept this offer.

This Administrative Law Judge finds that the Department did in fact negotiate in good faith with Petitioner. The fact that Petitioner did not agree with the Department's proposed Adoption Subsidy Agreements or rates does not negate the fact that the Department did negotiate with Petitioner.

Michigan Law clearly establishes that an Adoption Support Subsidy may not exceed the amount that the child received in foster care. MCL 400.115g(2)

After a child is determined eligible for Adoption Support Subsidy as a special needs child, an Adoption Support Subsidy payment rate is determined. A two-step process is used to establish the ongoing monthly Adoption Support Subsidy payment. First, the Adoption Subsidy Office determines the maximum Adoption Support Subsidy Rate. The rate may not exceed the foster care maintenance payment which was paid, or would have been paid if the child had been in a foster family home. Second, the prospective adoptive parent(s) and the adoption worker

negotiate the ongoing monthly Adoption Support Subsidy payment by considering the circumstances of the adoptive parents and the needs of the child being adopted, up to the maximum rate set. The agreed upon monthly payment is documented on the DHS-4113, Adoption Assistance Agreement. The DHS-4113 must be signed by the adoptive parent(s) and the DHS designee prior to the finalization of the adoption.

MAXIMUM RATE DETERMINATION

Prior to negotiation, the Adoption Subsidy Office determines a maximum rate for the child's Adoption Support Subsidy. The Adoption Support Subsidy maximum rate is determined without regard to the income of the adoptive family. The rate is determined by one of the following:

- The foster care rate the child received in foster care at the time of rate determination.
- In cases where a child is eligible for but not receiving a foster care payment, the foster care payment the child would receive if placed in a licensed foster family home at the time of rate determination.

Both of the above determinations include any determination of care (DOC) rate that is approved for the child.

The adoption worker must submit supporting documentation to the Adoption Subsidy Office with the DHS-1341, Adoption Assistance and Medical Subsidy Application, for determination of the maximum Adoption Support Subsidy rate. The documentation must support the requested maximum Adoption Support Subsidy rate.

Required Documentation of Child's Needs

The following documentation must be attached to the DHS-1341, Adoption Assistance Application, in order to establish the maximum Adoption Support Subsidy rate.

- No DOC Rate
- A copy of the most recent (within the last 6 months) DOC assessment (DHS-470, 470-A, or 1945) must be submitted.

DOC Rate

- Any foster care rate that exceeds the DHS current standard maintenance payment is considered a DOC rate (see Foster Care Payment Resources, FOM 903-3). If a child has care needs above a standard foster care maintenance rate, copies of the following foster care documents must be attached.

DOC I, II, III

A DOC Level I, II, or III requires:

- A copy of a current DHS-approved DOC assessment (DHS-470, 470A, or 1945) dated within six months.
- A copy of the professional documentation that supports the DOC rate.
- A copy of the current Updated Service Plan (USP).
- A copy of the DHS-67, Parent-Agency Treatment Plan & Service Agreement (for children receiving foster care payments).

DOC Rate Above Level III

A DOC above Level III requires all of the above, plus:

- A copy of the supporting documents that were submitted to the designated DHS manager to justify the rate.
- A copy of the approval memo from the designated DHS manager.
- Specific information showing how the exceptional rate was calculated.

The Adoption Subsidy Office may request additional information in order to clarify information in the DOC determination.

Negotiated Ongoing Monthly Payment

The negotiated ongoing Adoption Support Subsidy payment is determined through a discussion between the adoptive parents and the adoption worker. The discussion will consider the needs of the child and the circumstances of the adoptive family. It cannot be based on a

means test of the adoptive family. The ongoing payment may be set at any rate up to the maximum Adoption Support Subsidy rate determined by the Adoption Subsidy Office.

The adoption worker assists the prospective adoptive family in determining the amount that is needed to support the addition of the child to the family. Negotiation may take into account any additional benefits the child may receive such as Retirement, Survivors, Disability Insurance (RSDI) and Veterans Administration (VA) benefits (through birth parent eligibility), insurance settlements or income from trusts. Negotiation must also take into account any additional expenses the family may have after adoption.

During negotiation, the adoptive parent(s) may agree to less than the maximum support subsidy amount depending on the family's personal circumstances. Renegotiation (up to the maximum monthly amount set by the Adoption Subsidy Office) is available in the future if the family's circumstances change.

After discussion of the ongoing monthly Adoption Support Subsidy payment the prospective adoptive parent(s) may request any amount up to the maximum support subsidy amount indicated on the DHS-4113, Adoption Assistance Agreement.

The agreement includes both the maximum rate set by the Adoption Subsidy Office and the negotiated ongoing monthly rate agreed upon by the prospective adoptive parent(s) and DHS. The agreement must be signed by the adoptive parent(s) and the DHS designee prior to the final order of adoption.

Base Rate Increases after Adoptive Placement

Adoption Support Subsidy base rates automatically increase when the child has a birthday which would affect the base Adoption Support Subsidy rate or when the legislature

authorizes an increase in the base Adoption Support Subsidy rate. DOC rates are set prior to finalization of the adoption and are not subject to increases after the adoption finalization.

Renegotiation

The ongoing monthly Adoption Support Subsidy payment may not exceed the maximum rate determined prior to the final order of adoption. The rate may include any increases to the base Adoption Support Subsidy rate due to legislated or age-appropriate increases.

If adoptive parents agree to an ongoing monthly payment that is less than the maximum rate indicated on the DHS-4113, they may request a renegotiation of the payment at a later date by writing to the address below.

If the adoptive family's circumstances change and the family decides that the ongoing monthly Adoption Support Subsidy payment may be reduced, they may request a renegotiation of the ongoing monthly Adoption Support Subsidy payment.

Requests for renegotiation must be made in writing and sent to:

Adoption Subsidy Office
Michigan Department of Human Services
Grand Tower, Suite 412
P.O. Box 30037
Lansing, MI 48909

The effective date of a renegotiated rate is based on the date of DHS approval, but no more than 30 calendar days after the date the written request for renegotiation was received by the DHS Adoption Subsidy Office. The child is not eligible for an increased payment prior to the effective date. The renegotiated rate is activated when both the DHS designee and adoptive parents have signed the new agreement. (AAM Item 210 pp1-5)

This Administrative Law Judge finds that the department cannot negotiate a rate that is higher than the statutory maximum that was in effect at the time of the adoption.

Policy that was in effect at the time of Child A's adoption

RATE DETERMINATION FOR SUPPORT SUBSIDY

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 by matching 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 amount cannot be less than the intensive care rate that was paid for the adoptee while in foster care.

Negotiation of Rates

In Michigan, the adoption support subsidy rate offered to 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 FIA/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. CF Adoption Services Manual, Item, 751, p. 4.

Rate Increases

Support subsidy base rates will be increased when the child has a birthday which would affect the standard foster care rate, or when the legislature authorizes increases in the standard foster care payment rates.

Difficulty of care supplements are not subject to increases after the adoptive placement.

When a child's foster care rate increases or decreases after a subsidy agreement has been issued, but before the petition for adoption is filed, the adoption worker may request a rate change. CF Adoption Services Manual, Item 751, p. 4.

SUBSIDY AGREEMENTS

State law requires that the Agency enter into an agreement with the adopting parent or parents as a condition of eligibility for Adoption Support Subsidy, Nonrecurring Adoption Expenses, and Adoption Medical Subsidy. An Adoption Subsidy Agreement is a legally binding arrangement between the Agency and the adoptive parent(s) which sets forth the type of subsidy to be paid, the amount of Adoption Support Subsidy to be paid, the nature and amount of Nonrecurring Adoption Expenses to be paid, the medical conditions covered by Adoption Medical Subsidy (if any), and the conditions for continued payment of subsidy. CF Adoption Services Manual, Item 780, p. 1.

Adoption Support Subsidy Agreements

Adoption Support Subsidy/Nonrecurring Adoption Expenses Agreements (FIA 4113) are issued by the Adoption Subsidy Program Office. The adoption worker obtains this agreement by submitting an Adoption Support Subsidy/Nonrecurring Adoption Expenses Eligibility Certification Request (Form FIA-1341) to the Adoption Subsidy Program Office.

Adoption Support Subsidy is paid in the amount requested by the parent, up to the maximum amount offered in the Adoption Support Subsidy Agreement. The Adoption Subsidy Program Office indicates on the Adoption Support Subsidy Subsidy/Nonrecurring Adoption Expenses Agreement, FIA 4113, the maximum approved Adoption Support Subsidy rate. At the time the agreement is signed, the parent(s) indicate on the

agreement the amount of Adoption Support Subsidy they are requesting.

After the petition for adoption has been filed, an Adoption Support Subsidy Agreement amount cannot be changed.

Because the Adoption Support Subsidy rate offered to the family is the maximum rate that can be paid under state law, rates are not negotiable after adoptive placement except in those instances where the family has elected a lower rate than was offered. CF Adoption Services Manual, Item 780, p. 1.

Subsidy Agreement Signatures

Adoption Support Subsidy - An Adoption Support Subsidy Agreement must be signed by the parent(s) and the Agency director/designee before the Final Order of Adoption date. If the Adoption Support Subsidy Agreement is signed prior to the date of the adoptive placement, Adoption Support Subsidy payment is effective on the date of placement or the date of the Order Placing the Child After Consent - PCA 320, whichever is later. If the Adoption Support Subsidy Agreement is signed after the adoptive placement, but before the adoption is finalized, Adoption Support Subsidy payment is effective on the date the agreement is signed by the Agency director/designee. CF Adoption Services Manual, Item 780, pp. 2 and 3.

Pursuant to CFA Adoption Services Manual Item 751, page 1, rate of determination for a support subsidy: The Adoption Subsidy program office determines the support subsidy rate based on the foster care rate being paid for the child at the time of eligibility determination. Further, pursuant to CFA Item 751, page 1, the support subsidy rate is established by matching the daily or monthly rate paid for the child's foster care on the date of certification. The support subsidy amount cannot exceed the amount that was paid to support the child while in foster care. MCL 400.115(g). Finally, pursuant to CFA Item 744, page 1, rates established on the Adoption Subsidy certification are not subject to an administrative review. The Administrative Law Judge is further directed to CFA Item 751, page 5 which specifically notes that determination of care supplements are not subject to increases after the adoptive placement.

CFA Item 751, page 4 states that:

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.

Support subsidy is paid in the amount requested by the parent, provided that amount does not exceed the approved Adoption Subsidy rate. The Adoption Subsidy program office indicates on the Adoption Subsidy/Non-Recurring Adoption Expenses Agreement, FIA-4113, the maximum approved Adoption Subsidy rate. At the time the agreement is signed, the parent indicates on the agreement how much support subsidy he/she is requesting.

Also CFA, Item 744, page 1 states support subsidy rates are agreed to by parents or legal guardians by the act of signing the adoption support subsidy agreement (FIA-4112 or FIA-4113). Rates are not negotiable and therefore do not qualify for administrative hearings. It was outside the authority of Administrative Hearings (AH) to renegotiate support subsidy and/or foster care rates. Because of the change in Department Policy the Administrative Law Judge can address support subsidy rates. However, nowhere in policy or law is the Administrative Law Judge given the authority to order the department to pay to Petitioner or to negotiate a support subsidy in excess of the maximum allowed by statute or law.

The department has established by the necessary competent, material, and substantial evidence on the record that it was acting in compliance with department policy when it denied the Petitioner's request for a Post-Adoption Support Subsidy in excess of the maximum allowed by statute. The Adoption Support Office was acting in compliance with department policy and therefore, its actions must be AFFIRMED.

The Administrative Law Judge has carefully considered the statements of the adoptive parent at the hearing and has carefully considered the many pages of exhibits entered at this hearing. The Administrative Law Judge has most specifically considered the fact that the adoptive parents consider that Child A was misdiagnosed while in foster care and that the adoptive parents also consider that the determination of the difficulty of care supplement was incorrect and insufficient. Now that the adoptive parents have a more appropriate diagnosis of the condition of the Child A, they believe that the Adoption Support Subsidy should be granted to meet what they now believe is the correct level of care required for the adopted child.

Although the Administrative Law Judge sympathizes with the adoptive parent and his stated need for an Adoption Support Subsidy, to order the department to grant an Adoption Support Subsidy for the child in excess of the statutory maximum would require the Administrative Law Judge to ignore or set aside state law and department policy in this matter. The Administrative Law Judge does not have the authority to do this.

The claimant's grievance centers on dissatisfaction with the agency's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the FIA/DHS, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

RECOMMENDED DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the FIA/DHS Adoption Subsidy program office properly denied Petitioner's post-adoption request for Post-Adoption Support Subsidy in excess of the maximum allowed by statute. Therefore, it is recommended that the department's denial of Petitioners' request for Adoption Support Subsidy in excess of the maximum allowed by statute be AFFIRMED.

/s/

Landis Y. Lain
Administrative Law Judge
for Marianne Udow, Director
Department of Human Services

Date Signed: February 1, 2010

Date Mailed: February 1, 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.

LYL/vmc

cc:

