

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED] (child)
[REDACTED],
Petitioners

Reg. No. 2007-18553
Issue No. 6004
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date:
June 25, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Rhonda P. Craig

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. After due notice an in-person hearing was held on June 25, 2009. This decision is a RECOMMENDED HEARING DECISION and not a final determination of the relevant issues.

ISSUE

Did the Department of Human Services (DHS) properly deny petitioners' request for an Adoption Support Subsidy because the child was not in "state care"?

FINDINGS OF FACT

- (1) Petitioners were licensed foster care parents when the child (Date of Birth [REDACTED]) was placed by court order in their care on February 16, 1999. The child was made a ward of the court and a petition was made for adoption.
- (2) The placement was a voluntary placement by the birth mother through [REDACTED] [REDACTED] (hereinafter referred to as Agency). This is a private agency licensed as a child placing agency by the State of Michigan.

- (3) A sibling of the child was also placed in the petitioner's home.
- (4) Petitioners were told by the Agency that they did not qualify for an adoption support subsidy.
- (5) Petitioners adopted the child on [REDACTED].
- (6) On March 15, 2000, petitioners applied for an adoption support subsidy
- (7) On April 1, 2000, DHS (hereinafter referred to as the department) denied the request.
- (8) On June 21, 2000, the petitioners request that the application be reconsidered.
- (9) Petitioners continued to request an adoption subsidy on several occasions up to the present time.
- (10) On March 8, 2005, the department reviewed claimant's request for an adoption support subsidy and again denied the request because the child was not in "state's care" when the petition for adoption was filed.
- (11) A hearing was not scheduled for the petitioners until 2007.

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. CFS 100.

State law (MCLA 400.115f-m, r, s) requires that, “adoption support subsidy eligibility be certified prior to the filing of the petition for adoption and requested prior to adoption finalization. There are certain limited circumstances in which the DHS may approve an adoption support subsidy request that is made after the placement of an adopted child. The process is limited to children who were in the state’s care (see definition in CFG Glossary) when the petition for adoption was filed. Cases in which a child was in legal guardianship at the time the petition for adoption was filed do not qualify for adoption support subsidy.” CFS 200 p. 5. The policy goes on to indicate that one of specific errors listed must be present for approval of adoption support subsidy after adoptive placement. CFS 200 p. 5.

Under policy in CFS 130, the department 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 department 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. By law ([MCL 400.115k](#)), administrative hearings may be requested by the adoptee, the adoptee’s guardian, or the adoptive parent(s). Prospective adoptive parents or foster parents do not have the right to a hearing regarding subsidy prior to the Family Court’s signing of the Order Placing Child After Consent (PCA 320). After adoptive placement by the Family Court’s order, the adoptive parent (or legal guardian appointed under MCLA 700.422 and 700.424), does have the right to appeal decisions they believe are contrary to law or DHS policy. Administrative Hearings (AH) may grant or deny the hearing request.

Only AH has the authority to deny a hearing request. AH will deny requests signed by unauthorized persons and requests without original signatures (faxes or photocopies of signatures are unacceptable) and requests received over 90 calendar days after the date of the decision of the Adoption Subsidy Program Office. CFS 130.

The Child and Family Services Glossary (CFS) effective March 1, 2009 indicates that the definition of Foster Care Placement is “Court-approved removal of a child from the parental home and placement in foster care, a shelter home, a hospital, or with a private treatment agency.” CFS p.5. Pursuant to policy effective in January 1999, Foster Care is defined as “placement outside the parental home by and under the supervision of a licensed child placing agency, a probate court, the Family Independence Agency or the Department of Community Health.” Services Manual, Children and Youth, Item 737 p. 2.

The first issue to be determined is whether the petitioners’ request for a hearing is timely. Under policy cited above, a hearing for adoption subsidies must be requested within 90 days of the denial. Evidence at the hearing indicated that the petitioners attempted to appeal the department’s denial of a support subsidy as early as March 15, 2000 and continued to appeal up to and after 2005. This initial appeal should have been processed as a request for a hearing. It was not, and consequently, the petitioners did not have a hearing. Since the petitioners attempted an appeal within the 90 day time limit, I must find that the petitioners’ request for a hearing is timely. It should be noted that although the basis for finding timeliness involves dates in 2000, petitioners’ request for adoption support subsidy continued though 2006 and beyond.

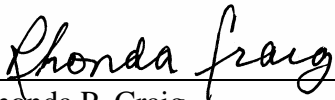
Petitioners continue to request an adoption support subsidy citing that they fall within the limited circumstances in which the department may approve an adoption support subsidy request that is made after the placement. The department has denied that request because the child “was not in the ‘state’s care’ when the petition for adoption was filed and is not included in that

limited circumstance”. The department argues that the child was in a private, voluntary foster care arrangement between the birth parents and [REDACTED] at the time the petition for adoption was filed and the child was not a “state ward”. Under CFA 750, as cited above, the process is limited to “children who were in the state’s care (See definition in CFG) when the petition for adoption was filed”. Under CFG, there is no definition of “state care”. The department representative testified that the department uses the definition of Foster Care in determining whether a child is under “state care” or a “state ward”. The department further argues that under CFG in effect on March 1, 2009, the definition of “state care” does not include petitioner’s situation at the time of the adoption petition. Therefore, the question is whether the child was in the state’s care **when the petition for adoption was filed** (emphasis added). Under CFA 737, effective the date when the petition for adoption was filed, the definition of Foster Care is “placement outside the parental home by and under the supervision of a licensed child placing agency, a probate court, the Family Independence Agency or Department of Community Health.” Therefore at the time of the adoption petition, the child’s placement was considered “foster care” and therefore met the definition of “state ward”. The department also argues that the agency that supervised the placement did not have a contract with the state for adoption placement. However, the agency was a “licensed child placing agency” and again, according to policy cited above, the placement falls within the definition of “foster care”. Therefore the department was in error for denying petitioners’ request for adoption subsidy on the basis that child was not in “state’s care”. The department should proceed to process petitioners’ request under the guidelines set forth in policy and make a determination of eligibility based on factors other than the “state care” requirement.

RECOMMENED DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, recommends to the director of the Department of Human Services that the department was in error in denying petitioners' request for an adoption support subsidy based on not meeting the "state care" requirement since the child was in "state care".

IT IS RECOMMENDED that the department reprocess petitioners' request for an adoption support subsidy and make a determination of eligibility based on factors other than the "state care" requirement.


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

Date Signed: 09/14/09

Date Mailed: 10/05/09

NOTICE

If a party chooses to file Exceptions to this Recommended Hearing Decision, the Exceptions must be filed within ten (10) days after the Recommended Hearing Decision is issued and entered. All Exceptions must be filed for consideration by the Director of the Department of Human Services, mailed to the Office of Legal Affairs Lansing, Suite 715 Grand Tower, PO Box 30037, Lansing, MI 48909 and served on all parties to the proceeding and to the Administrative Law Judge.

RC/dj

cc:

