

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: 2008-17668
Issue No: 6004
Case No: [REDACTED]
Load No:
Hearing Date:
May 14, 2009
Adoption Subsidy, Lansing AH

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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, a telephone hearing was held on May 14, 2009. Petitioners appeared and testified.

ISSUE

Whether the Department of Human Services (the department) was acting in compliance with department policy when it denied the petitioners' request for a Pre-Adoption Support Subsidy for their adopted child?

FINDINGS OF FACT

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

(1) Petitioners' adoptive parents (hereinafter petitioners) adopted a child hereinafter referred to as Child A.

- (2) Child A's date of birth is [REDACTED].
- (3) Child A entered foster care on [REDACTED] and was placed with petitioners.
- (4) Child A became a permanent court ward at a hearing held on [REDACTED].
- (5) Child A received foster care payments at a standard daily rate of \$14 per day plus a \$5 Level 1, difficulty of care rate. (Exhibit A – 5 pages)
- (6) The Adoption Support Subsidy application was received at the Department of Human Services Adoption Subsidy Unit on [REDACTED]. (Exhibit B—2 pages)
- (7) The Adoption Support Subsidy application was reviewed and denied on [REDACTED] and a notice of denial and the right to appeal was sent to the adoption worker on February 23, 2004. (Exhibit C – 2 pages)
- (8) Petitioners signed an acknowledgement of the Adoption Support Subsidy denial on March 10, 2004. (Exhibit C)
- (9) The Adoption Petition was filed with the court on [REDACTED]. (Exhibit D)
- (10) The court signed the Order placing Child A on [REDACTED]. (Exhibit E)
- (11) The court signed the Order of Adoption on [REDACTED]. (Exhibit F)
- (12) The request for appeal was received in the Adoption Subsidy Program Office on [REDACTED].

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 Support Subsidy programs: Adoption Support Subsidy; Adoption Medical Subsidy; and Non-Recurring Adoption Expenses Reimbursement. The purpose of support of 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 Non-Recurring Adoption Expense Reimbursement Program is to assist in paying 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 adopted parent.

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 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 (DCH) 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. (AAM, Item 100. p. 1)

Under the department policy in effect at the time of the request for Adoption Support Subsidy eligibility for the Adoption Subsidy Program requires the following: A child may be certified eligible for an Adoption Support Subsidy if all of the following are met at the time of the request, FIA 1341, as received in the Adoption Subsidy Program Office:

- 1) A child has been in foster care (see definitions in CFA 743) for at least 4 months immediately prior to the certification request. Guardianship is not considered foster care for purposes of Adoption Support Subsidy eligibility.
- 2) Certification is approved by the Adoption Subsidy Program Office before the child's 18th birthday.
- 3) Certification is approved by the Adoption Subsidy Program Office before the Petition for Adoption is filed.
- 4) A reasonable, unsuccessful effort was made to place the child with an appropriate adoptive family without providing an Adoption Support Subsidy or the prospective adoptive placement is the only placement in the best interest of the child and the adopted parent or parents are requesting an Adoption Support Subsidy.

ELIGIBILITY FACTOR DETAILS

The following policies detail the criteria for each eligibility factor.

Child with Special Needs

At the time of eligibility determination, the child must be a child with special needs. This means that the child must meet each factor in a - c as follows:

- a. The child is under age 18 years.
- b. The court has determined that the child cannot or should not be returned to the home of the child's parents by one of the following specific judicial determinations:
 1. Termination under MCL 712A.19b for a child under court jurisdiction pursuant to MCL 712A.2(b), or

2. Release and termination under MCL 710.29 for a child under court jurisdiction pursuant to MCL 712A.2(b), or
 3. Release and termination under MCL 710.29 and the child is eligible for and receiving SSI.
- c. The child has one of the following specific factors or conditions:
- c-1. The child is SSI eligible as determined by the Social Security Administration.
 - c-2. The child has a special need for medical, mental health, or rehabilitative care that equals or exceeds the DHS foster care Level 2 Determination of Care (DOC), and:
 - . is documented by the DHS-approved DHS 470, 470A, or 1945, and
 - . is supported by the current DHS Updated Service Plan (USP), and
 - . is being paid through the DHS foster care payment system.
 - c-3. The child is age 3 years or greater.
 - c-4. The child has been in foster care for at least 2 years since the termination of parental rights and efforts to locate a family willing to adopt without subsidy have failed.
 - c-5. The parental rights for the child were terminated prior to 8/1/ 02 and the child has lived with the prospective adoptive parent for 12 months or more.
 - c-6. The child is being adopted by a relative (CFF 721).
 - c-7. The child is being adopted by the parent(s) of his/her previously adopted sibling.

- c-8 The child is a member of a sibling group being adopted together and at least one sibling group member qualifies for Adoption Support Subsidy through this program. CFA, Item 750, pp. 1-2.

In the present case, the petitioner's request for an Adoption Support Subsidy was prior to the Petition for Adoption. The department denied the petitioners' request because the petitioners' child could not be certified for a Support Subsidy. The department specifically found that Child A was not eligible or receiving SSI at the time of the certification request. Child A received a standard foster care rate plus a Level 1, \$5 difficulty of care rate. Child A was 24 months old at the time of the certification request. Child A was not a member of a sibling group being adopted together and at least one sibling group member qualified under the previous categories and the adopting parents had requested Adoption Support Subsidy. Child A was adopted by his foster parents and not a relative. Child A was not being adopted by a previously adopted sibling. Child A had not been in the foster care system for 2 years or more as Child A was made a permanent court ward on [REDACTED] and was adopted on [REDACTED] and Child A's biological parental rights were terminated [REDACTED]. Child A was certified with the Adoption Medical Subsidy Program for the conditions of prenatal drug exposure and otitis media/ear problems. Petitioners signed the Adoption Medical Subsidy agreement on [REDACTED]. (Exhibit H)

Pursuant to policy as cited above, the child must meet one of the 8 criteria to qualify for an Adoption Support Subsidy. The petitioners' child failed to meet any of these 8 criteria. Therefore, the child could not be certified for a Support Subsidy and the petitioners were not eligible for an Adoption Support Subsidy. The petitioners argued that the child has severe problems and should have had a higher level or higher standard of care during his foster care because Child A was drug exposed.

The claimant's grievance centers on dissatisfaction with the department'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 Department of Human Services Director, 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).

This Administrative Law Judge has no equity powers. Therefore, the department decision must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department appropriately determined that the petitioners' request for Adoption Support Subsidy should be denied based upon the fact that the child did not meet the certification requirements.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: March 18, 2010

Date Mailed: March 18, 2010

2005-11966/LYL

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:

