

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:



Reg No. 200818850
Issue No. 6004
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: August 20, 2009
Adoption Subsidy
Lansing Michigan

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 the petitioner's request for a hearing. After due notice, an in-person hearing was held on August 20, 2009. Petitioner personally appeared and testified.

ISSUE

Did the Department of Human Services' (department's) Adoption Subsidy Unit act in compliance with law and policy in denying petitioner's Adoption Support Subsidy request?

FINDINGS OF FACT

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

1. On June 25, 2005, petitioner's child was initially placed with her in pre-adoptive foster care as a newborn ([REDACTED]).
2. This foster parent (petitioner) petitioned the Court for the right to adopt (Department Exhibit D).
3. On May 11, 2006, the Court entered an Order of Adoption, thus finalizing petitioner's status as the child's legal parent (Department Exhibit F).

4. All during this child's time in foster care, the department certified eligibility for a standard daily pay rate without a "Difficulty of Care" (DOC) premium attached because this child's existing asthma/GERD (diagnosed in late 2005) were not severe enough to meet the level necessary to qualify for an enhanced pay rate (Client Exhibit A and C).
5. This child's mother agreed to the standard rate when she signed the department's determination of care assessment form.
6. Before this child's adoption was finalized, specifically on January 5, 2006, the department received petitioner's application for an Adoption Support Subsidy (Department Exhibit B, pgs 1-3).
7. After the department reviewed this application in light of the required eligibility factors set forth at CFA 750, pgs 1 and 2, they determined petitioner's child did not meet any of the factors listed in CFA 750, c (1)-(8).
8. This departmental policy mandates the minor child must meet at least one of the following factors at the time his/her eligibility for Adoption Subsidy (AS) is being determined:
 - 1) The child is SSI eligible.
 - 2) The child has a foster care difficulty of care payment rating at Level Two or higher.
 - 3) The child is 3 years old or older.
 - 4) The child has been in foster care for at least 2 years since the termination of parental rights.
 - 5) The child's biological parents' rights were terminated before August 1, 2002.
 - 6) The child is being adopted by a relative.
 - 7) The child is being adopted by the same parents who previously adopted one of his or her siblings.
 - 8) The child is a member of a sibling group being adopted together.

9. On January 27, 2006, the department denied petitioner's Adoption Subsidy request; consequently, she filed a timely hearing request to dispute this denial (Department Exhibits C and G).
10. Petitioner's hearing was held in [REDACTED] [REDACTED], on August 20, 2009, at which time she stipulated on the record as follows:

I think that it was denied correctly but I think because his medical condition did become severe afterwards, which I did inform the adoption worker, she told me that I can always appeal this decision since his medical condition got severe after the denial and that's what I did.

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 for the State Office of Administrative Hearings and Rules (SOAHR) conduct the hearings and complete the decisions. The purpose of the Adoption Subsidy (AS) program is to remove financial barriers to the adoption of foster children with special needs.

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.

At the time the eligibility determination was being made in this case, the child at issue met none of the above-referenced criteria.

Specifically, this child's biological parents' rights were not terminated until long after 2002 since he wasn't even born until 2005 (c5 not met). Additionally, petitioner was not related to this child, nor had she previously adopted any of his siblings, nor was she planning to do so at the time this AS eligibility determination was being made (c6, c7, c8 not met).

Furthermore, the child never spent the requisite two years (or longer) in foster care between being designated a Permanent Court Ward on December 5, 2005 and the adoption finalization date, that being May 11, 2006 (c4 not met).

Likewise, this child was not eligible for or receiving SSI at the time his AS eligibility determination was being made, nor did the department ever find him eligible for a premium Level of Care payment at any time during his placement in foster care (c1 and c2 not met). Lastly, the child was not at least three years old at the time AS certification was being requested in January 2006. In fact, he was still less than a year old at that time (DOB=6/11/05)(c3 not met). Consequently, the department had no alternative but to deny the disputed application.

This Administrative Law Judge carefully considered the exhibits petitioner submitted at hearing in addition to her compelling, equitable arguments. Now that petitioner has a more appropriate diagnosis of her son's condition she feels an Adoption Support Subsidy should be granted. Although this Administrative Law Judge sympathizes with petitioner's stated needs, for her to order the department to grant this request would require her to ignore (set aside) the governing laws and policy. Administrative Law Judges simply do not have the authority to do so, 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.

This is because 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).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department acted in compliance with law and policy in denying petitioner's Adoption Support Subsidy request.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: November 1, 2010

Date Mailed: November 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. 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

cc:

