

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]
Petitioner

Reg. No: 2008-29610
Issue No: 6004
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 24, 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. After due notice, an in-person hearing was held on September 24, 2009.

ISSUE

Whether the Department of Human Services (the department) was acting in compliance with department policy when it denied the petitioner's request for a Post Adoption Support Subsidy for her 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) Petitioner's adoptive parent (hereinafter petitioner) adopted a child hereinafter referred to as Child A (date of birth [REDACTED]).
- (2) Child A was adopted by petitioner on [REDACTED].

(3) The adoption was finalized on [REDACTED].

(4) In a letter dated March 15, 2006 (Exhibit A) petitioner requested an administrative hearing regarding the Post Adoption Support Subsidy denial for Child A.

(5) Prior to submitting a hearing summary, the Adoption Subsidy Program office learned that petitioner's parental rights for Child A were terminated at a court hearing held [REDACTED] (Exhibit B).

(6) Child A was placed in a guardianship placement at that time (Exhibit C).

(7) The Adoption Subsidy Program office was advised by Administrative Law Judge Martin Snider that termination of the adoptive parent's parental rights terminated the parent's right to represent the child's interest or to pursue any pending appeal.

(8) On April 28, 2008, the Adoption Subsidy Program office sent a letter to petitioner explaining that she had lost her right to an administrative hearing (Exhibit D).

(9) On July 28, 2008, the Adoption Subsidy Program office received a letter dated July 24, 2008 from petitioner requesting an administrative hearing concerning the loss of her right to an administrative hearing due to termination of her parental rights (Exhibit E).

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.

Department policy indicates that if the adoption of a child is ended through termination of parental rights, the adoption support subsidy ends. If a child is subsequently matched with another adoptive family, a DHS-1341 must be submitted for the new placement, a new determination of special needs eligibility must be made and a DHS-4113 must be signed prior to the final order of adoption. If a child is eligible for Title IV-E funding to support subsidy in the previous adoption, the title IV-E funding eligibility is carried forward to the subsequent adoption if the child continues to be a special needs child. The only circumstance under which an adoption support subsidy could continue is if a legal guardian is appointed after the death of the adoptive parent under MCL 400.115j(5)(CAAM 620).

After termination, a parent's custodial rights are completely abolished. The order of the court terminating parental rights divests the parent of all legal rights, privileges and obligations with respect to the child. Once a parent voluntarily releases his or her child to the Department of Human Services or to a child placement agency under the adoption code, the release is accepted by the court and the court enters an order terminating that parent's rights to the child, that parent no longer has any parental rights with regards to that child.

This Administrative Law Judge finds that because department policy indicates that if the adoption of a child is ended for termination of parental rights, the adoption support subsidy ends, there is no eligibility for adoption support subsidy in this case. Therefore, the department has established by the necessary, competent, material, and substantial evidence on the record that petitioner has no eligibility or standing to bring a request for a post adoption subsidy because her parental rights had been terminated effective September 27, 2007. Department policy indicates that if the child is subsequently matched with another adoptive family, a DHS-1341 must be

submitted for the new placement, a new determination of special needs eligibility must be made, and a DHS-4113 must be signed prior to the final order of adoption.

In the instant case, Child A's date of birth is [REDACTED] and he is over 18 and was 18 years of age on the date of hearing and, therefore, would no longer be eligible to receive adoption support subsidy.

RECOMMENDED DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department was correct in its assessment that claimant would not be eligible for a hearing in this case because petitioner's parental rights have been terminated.

Accordingly, the department's decision in this regard is AFFIRMED.

/s/

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

Date Signed: January 14, 2010

Date Mailed: January 14, 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:

[REDACTED]