

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

████████████████████

Petitioner

Reg. No.: 2008-17676

Issue No.: 6004

Case No.: ██████████

Load No.: ██████████

Hearing Date:

August 27, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Rhonda Craig

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on August 27, 2009. The claimant appeared and testified.

ISSUE

Did the Department of Human Services (DHS or department) properly determine that petitioner's child did not meet the requirement for an Adoption Subsidy Support?

FINDINGS OF FACT

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

- 1) The petitioner requested an Adoption Support Subsidy on March 13, 2003 for their minor child (Date of Birth ██████████).
- 2) The child was placed in the Foster Care on September 8, 2000 and made a permanent court ward on April 24, 2002.

- 3) The child was placed with the Petitioners on May 24, 2002 with no “difficulty of Care” designation.
- 4) The parental rights of the parents were terminated on April 24, 2002.
- 5) A Petition for Adoption was filed on May 5, 2004.
- 6) The department denied Petitioner’s request for an Adoption Subsidy Support on April 21, 2003.
- 7) The Petitioners acknowledged receipt of the denial on July 7, 2004.
- 8) The Adoption Order granting the adoption by Petitioners for the child was signed on July 30, 2004.
- 9) Petitioners appealed the denial of Adoption Support Subsidy on July 16, 2004.

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; .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. 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. Some children do not qualify for any subsidy program based on their individual circumstances. Subsidy is

available without respect to the income of the adoptive parent(s). 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 of 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 unit 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

Under the department policy in effect at the time of the request for an Adoption Support Subsidy Eligibility for the Adoption Support Subsidy program requires the following:

Determination of eligibility (Certification) for support subsidy by the Adoption Subsidy Program Office before the Petition for Adoption is filed with the court.

A written agreement between the parent(s) and the State Agency setting forth the amount of Adoption Support Subsidy to be paid, signed by both parties prior to the finalization of the adoption.

Direct placement adoptions facilitated by attorneys, private adoptions, and adoptions directly between parties do not meet the Adoption Support Subsidy eligibility criteria and are ineligible for Adoption Support Subsidy. See CFA-731 for the definition of Direct Placement.

A child may be certified eligible for an Adoption Support Subsidy if all of the following are met at the time the request (FIA 1341) is received in the Adoption Subsidy Program Office:

The child has been in foster care (see Definitions, CFA 743) for at least four (4) months immediately prior to the certification request. Guardianship (see Definitions, CFA 743) is not considered foster care for purposes of Adoption Support Subsidy eligibility.

Certification is approved by the Adoption Subsidy Program Office before the child's eighteenth birthday.

Certification is approved by the Adoption Subsidy Program Office before the petition for adoption is filed.

A reasonable but 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 adoptive parent or parents are requesting an Adoption Support Subsidy. CFA 750.

One of the following criteria must be met in order to meet the requirement of #4 above:

The child is eligible for SSI and the adopting parent(s) have requested Adoption Support Subsidy by signing the FIA 4081 Adoption Support Subsidy Intent Statement.

The child has a special need for medical, mental health, or rehabilitative care that equals or exceeds the foster care Level 2 Difficulty of Care and is supported by the Updated Service Plan attached to the certification request and the adopting parent(s) have requested Adoption Support Subsidy by signing the FIA 4081 Adoption Support Subsidy Intent Statement. The Adoption Subsidy Program Office will determine if the above documentation complies with FIA's DOC policy and is sufficient to meet certification criteria.

The child is age 3 or more at the time the certification request is received in the Adoption Subsidy Program Office and the adopting parent(s) have requested Adoption Support Subsidy by signing the FIA 4081 Adoption Support Subsidy Intent Statement.

The child is a member of a sibling group being adopted together and at least one sibling group member qualifies under one of the previous categories and the adopting parent(s) have requested Adoption Support Subsidy by signing the FIA 4081 Adoption Support Subsidy Intent Statement.

The child is being adopted by a relative and the adopting parent(s) have requested Adoption Support Subsidy by signing the FIA 4081 Adoption Support Subsidy Intent Statement.

The child is being adopted by a previously adopted sibling's adoptive family and the adopting parent(s) have requested Adoption Support Subsidy by signing the FIA 4081 Adoption Support Subsidy Intent Statement.

The child has been in the foster care system for two years or more since termination of parental rights and efforts to locate an appro-

priate family to adopt the child without Adoption Support Subsidy have failed.


For children whose parental rights were terminated prior to 8/1/02 only: The child is being adopted by the child's long-term (one year or more) foster parents and the adopting parent(s) have requested Adoption Support Subsidy by signing the FIA 4081 Adoption Support Subsidy Intent Statement. CFA 750.

In the present case the petitioner's requested an Adoption Support Subsidy 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 the child did not meet certification condition number four (4) regarding "a reasonable but unsuccessful effort was made to place the child with an appropriate adoptive family without providing an Adoption Support Subsidy..." Pursuant to policy as cited above, the child must meet one of the eight (8) criteria to qualify for this requirement. The petitioners' child failed to meet any of these eight criteria. Therefore the child could not be certified for a support subsidy and the petitioners are not eligible for an Adoption Support Subsidy. The petitioners argue that they were unaware of the process of certification and could have waited until the child met the criteria before petitioning for the subsidy. However department policy does not allow for reconsideration of denials based upon the department's failure to inform potential parents of all criteria for an Adoption Support Subsidy.

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 denying the petitioners' request for an Adoption Support Subsidy based upon the fact that the child did not meet the certification requirements.

IT IS ORDERED that the department's decision in this regard be and is hereby AFFIRMED.


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

Date Signed: 09/28/09

Date Mailed: 09/29/09

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

RC/dj

cc:

