

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: 2008-18859
Issue No: 6004
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 16, 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, an in-person hearing was held on July 16, 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 children?

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 children hereinafter referred to as Child A and Child B.

- (2) Child A, D.D., has a birth date of [REDACTED].
- (3) Child B., G. D. has a birth date of [REDACTED].
- (4) Child A initially entered foster care on [REDACTED]. He returned to foster care on [REDACTED] and was placed with petitioners as a foster care placement on [REDACTED].
- (5) Child B entered foster care on [REDACTED] and was placed with petitioners.
- (6) Child A and Child B became permanent court wards on [REDACTED].
- (7) Child A received foster care payments at a standard daily rate of \$14.24 per day with no difficulty of care rate. (Exhibit A1)
- (8) Child B received foster care payments at a standard daily rate of \$14.24 per day with no difficulty of care rate. (Exhibit A2)
- (9) The Adoption Support Subsidy/Non-Recurring Adoption Expenses applications were received at the Department of Human Services Adoption Subsidy Unit on September 12, 2006. (Exhibit B—4 pages)
- (10) The Adoption Support Subsidy applications/Non-Recurring Adoption Expenses were reviewed and denied on October 16, 2006.
- (11) The notice of denial and right to appeal was sent to the adoption worker on August 18, 2006. (Exhibit C—4 pages)
- (12) Petitioners signed the acknowledgement of the Adoption Support Subsidy/Non-Recurring Adoption Expenses denials on October 30, 2006. (Exhibit C)
- (13) The court signed the Orders placing Child A and Child B on [REDACTED]. (Exhibit D—2 pages)

(14) The court signed the Orders of Adoption for Child A and Child B on [REDACTED] [REDACTED]. (Exhibit E—2 pages)

(15) The request for appeal was received in the Adoption Subsidy Program Office on December 11, 2006. (Exhibit F)

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 care 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 upon 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 parents.

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 an Adoption Support Subsidy eligibility for the Adoption Support Subsidy Program requires the following:

- Determination of eligibility for a Support Subsidy by the Adoption Support Program Office before the Petition for Adoption is filed with the court.
- A written agreement between the parents and the State agency setting forth the amount of Adoption Support Subsidy to be paid, signed by both parties, and 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.
- A child may be certified for an Adoption Support Subsidy if all of the following are met at the time of the request.

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 petitioners requested an Adoption Support Subsidy prior to the Petition for Adoption. The department denied the petitioners' request because the petitioners' children could not be certified for a Support Subsidy. The department specifically found that Child A and Child B did not meet any of the eligibility criteria to qualify for an Adoption Support Subsidy. The children were not eligible for SSI. They were not documented as special needs because they each received a standard foster care rate with no difficulty of care rate. The children were not 3 years of age or greater because Child A was 28 months old at the time of the certification request and Child B was 19 months old at the time of the certification request. The children had not been in foster care for at least 2 years since the termination of parental rights because they were made permanent court wards on [REDACTED] and were adopted on [REDACTED]. The children's parental rights were not terminated prior to August 1, 2002 as they were made permanent court wards on [REDACTED]. The children were not adopted by a relative; they were adopted by their foster parents. The children were not adopted by parents of previously adopted siblings. The children were being adopted together but neither sibling group member qualified for the Adoption Support Subsidy through this program. They did not meet any factors under special needs Section C.

Therefore, the children could not be certified for a Support Subsidy and the petitioners were not eligible for an Adoption Support Subsidy. The petitioners argued that both children have special needs and that they have adopted the children's cousins on their biological maternal side. Petitioners argued that Child A has some delay issues and is afraid to stay with others and that Child B is delayed and has speech problems and anger management issues and oppositional defiance disorder.

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 does not have equity power. Child A and Child B do not meet any of the 8 criteria to qualify for an Adoption Support Subsidy. Therefore, the department's 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 denied the petitioners' request for Adoption Support Subsidy based upon the fact that the children 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 19, 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:

