

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: 2008-19446
Issue No: 6004
Case No: [REDACTED]
Load No:
Hearing Date:
June 25, 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 June 25, 2009. Petitioner personally appeared and testified.

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 Pre-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.

(2) Child A's date of birth is [REDACTED]

(3) Child A entered foster care on [REDACTED] and was placed with petitioner on [REDACTED]

(4) Child A became a permanent ward of the State of Michigan on [REDACTED].

(5) Child A receives foster care payments at a standard daily rate of \$14.24 per day with no difficulty of care rate.

(6) An Adoption Support Subsidy certification request for Child A was received in the Adoption Subsidy Unit at Department of Human Services on June 19, 2006.

(7) The request was reviewed under policy CFA 750 and denied on July 17, 2006.

(8) The department caseworker sent petitioner notice that the Support Subsidy certification request was denied.

(9) On September 11, 2006, petitioner filed a request for a hearing to contest the department's negative action.

(10) The court signed the Order placing Child A 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 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 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 adopted parent.

The Adoption Support Subsidy is intended to assist with the payment of expenses of caring for and raising the child. The Adoption Support Subsidy 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 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. (AAM, Item 200, p. 1)

Michigan has specific requirements to meet both the Federal definition and the State's special needs eligibility.

Who is Eligible?

Michigan's Adoption Support Subsidy eligibility criteria includes:

- the child's identification as a "child with special needs".
- certification of the child's Adoption Support Subsidy eligibility by the Adoption Subsidy Program Office before the Petition for Adoption is filed with the court.
- a written Adoption Assistance agreement between the parent(s) and the department specifying the amount of Adoption Support Subsidy to be paid, signed by the parent(s) and DHS before the finalization of the adoption.

Note: It is required that the agreement be signed before the Petition for Adoption is filed for the adoptive family to begin receiving Adoption Support Subsidy payments effective on the adoption placement date.

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 requested an Adoption Support Subsidy prior to the Petition for Adoption. The department denied the petitioner's request because the petitioner's child could not be certified for a Support Subsidy. The department specifically found that Child A was not eligible for receiving SSI at the time of the eligibility determination, that Child A received the standard foster care rate with no difficulty of care rate. Child A was not 3 years or greater at the time of his adoption as he was 17 months old at the time of eligibility request. Child A was not in foster care for at least 2 years as he was made a permanent ward on [REDACTED] and was adopted on [REDACTED]. Child A was made a permanent ward of the court on [REDACTED] and the parental rights for the child were not terminated prior to [REDACTED]. Child A was not adopted by a relative as he was adopted by his foster parent. Child A was not adopted by parents of his previously adopted sibling. Child A did not meet any factors under special needs in Section C. Pursuant to policy as cited above, the child must meet one of the 8 eligibility criteria to qualify for an Adoption Support Subsidy. The petitioner's Child A failed to meet any of these 8 criteria. Therefore, the child cannot be certified for a Support Subsidy and the petitioner is not eligible for an Adoption Support Subsidy under the circumstances. The petitioner argues that the child does have health problems and should have had a higher difficulty of care foster care rate because he does incur considerable medical expenses based upon a severe skin condition.

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 powers and cannot make a determination in contravention of department policy. Department policy does not allow for reconsideration or denials, based upon the department's determination of the standard foster care rate.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has acted in accordance with department policy when it determined that petitioner was not eligible to receive an Adoption Support Subsidy under the circumstances. Child A does 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:

