

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2008-20347
Issue No: 6004
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 30, 2010
Lansing AH

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37; MCL 400.115 f-g upon claimant's request for a hearing. After due notice, an in-person hearing was held on July 30, 2009, in Lansing, Michigan.

ISSUE

Is claimant entitled to an administrative hearing to review and/or renegotiate the foster care rates that her adopted children were receiving as foster children at the time the Department of Human Services (DHS) denied claimant's Adoption Support Subsidy/Nonrecurring Adoption Expenses Applications?

FINDINGS OF FACT

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

(1) Claimant is the adoptive parent of two siblings whose dates of birth are as follows: November 5, 2004; February 17, 2006.

(2) Both children entered foster care on February 27, 2006.

(3) Both children entered foster care with claimant on June 2, 2006.

(4) Both children became wards of [REDACTED] on November 14, 2006. Exhibit A.

(5) On July 31, 2007, the DHS received an Adoption Support Subsidy/Nonrecurring Adoption Expenses Applications filed by claimant on behalf of both children. Exhibit C.

(6) On September 6, 2007, the DHS denied the applications on the grounds that the children did not meet any of the criteria outlined in CFA 750. Exhibit D.

(7) On November 29, 2007, the [REDACTED] signed the Order Placing Child for both children. Exhibit F.

(8) On December 28, 2007, the DHS received claimant's request for an appeal/administrative hearing based on the department's denial of claimant's applications for Adoption Subsidy. Exhibit H.

(9) On February 28, 2008, the [REDACTED] signed the Order of Adoption for both children. Exhibit G.

(10) On June 26, 2009--one and one-half years after receiving claimant's hearing request--SOAHR scheduled an administrative hearing for July 30, 2009.

(11) Unrefuted evidence on the record is that the only Adoption Subsidy criteria that could trigger Adoption Subsidy eligibility for both of these children is CFA 750 c-2, requiring a DHS-470 documentation that claimant's children equaled or exceeded a DHS foster care DOC Level 2.

(12) Both children received foster care payments at a standard daily rate of \$14.24 for the entire time in foster care with no Determination of Care (herein after DOC) rate in place as documented on four different DHS-470 verifications. Exhibit B.

(13) Claimant signed the DHS-470-Assessment for Determination of Care Children and [REDACTED] acknowledging the standard daily rate for both children on the following dates: 6/28/06; 12/21/06; 5/22/07; and 11/29/07.

(14) DHS policy does not allow an Administrative Law Judge to renegotiate support subsidy rates.

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).

PROGRAM OVERVIEW

Purpose

The State of Michigan administers three adoption subsidy programs: Adoption Support Subsidy, Adoption Medical Subsidy, and the Nonrecurring Adoption Expenses Reimbursement program. The purpose of support and medical subsidies is to remove financial barriers to the adoption of Michigan foster children with special needs. 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 FIA, 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.

Claimant applied in July, 2007. DHS policy and procedure is in constant flux, and has changed significantly over the years. Thus, this ALJ will apply the DHS policy and procedure in effect at the time of claimant's application in July, 2007.

Pertinent adoption subsidy program overview policy and procedure states in part:



ADMINISTRATIVE HEARINGS

Issues Subject to Administrative Hearings

The FIA has an administrative hearing process to provide for the right to contest an Agency decision or case action when a client believes the decision is contrary to law or FIA policy. The issues of eligibility, computation of subsidy rates, case closure, and/or reduction of benefits are issues subject to administrative hearings. The adoptive parent or guardian has the burden of proof in an adoption subsidy hearing.

Support subsidy rates are agreed to by parents or legal guardians by the act of signing the Adoption Support Subsidy Agreement (FIA 4112 or FIA 4113). Rates are not negotiable and therefore do not qualify for administrative hearings. It is outside the authority of Administrative Hearings (AH) to renegotiate support subsidy rates.

Who may request an Adoption Subsidy Hearing

By law (MCLA 400.115k), administrative hearings may be requested by the adoptee, the adoptee's guardian, or the adoptive parent(s). Prospective adoptive parents or foster parents do not have the right to a hearing regarding subsidy prior to the [REDACTED]'s signing of the Order Placing Child After Consent (PCA 320). After adoptive placement by the [REDACTED] order, the adoptive parent (or legal guardian appointed under MCLA 700.422 and 700.424), does have the right to appeal decisions they believe are contrary to law or FIA policy.

The Adoption Subsidy Program Office.

Determination of Care Supplements

Any foster care rate that exceeds the FIA's current standard rate is considered a Determination of Care (DOC) supplement (pursuant to foster care Payment Resources, CFF Item 903-3). When the adoption worker submits Form FIA 1341, Adoption Support Subsidy/Nonrecurring Adoption Expenses Eligibility Certification Request, copies of the following foster care documents must be attached.

For a DOC supplement at Level I, II, or III:

A copy of the most recent (within last six months) Determination of Care (FIA-470, FIA-470A, or FIA-1945) that was submitted to the FIA for approval and reflects the current foster care payment
For a DOC supplement above Level III:

- a. The most recent (within last six months) Determination of Care (Forms FIA-470, FIA-470A, or FIA-1945) that was submitted to the FIA for approval and reflects the current foster care payment
- b. A description of the child's specific problems
- c. The most recent request (within last six months) for approval to the Zone manager which documents the unusual care and supervision required and explains how the reimbursement amount was determined

For court wards supervised by FIA and funded by the [REDACTED], court wards under court supervision, and private agency wards:

- a. A current payment voucher indicating the daily rate being paid
- b. Documentation describing the special items and services covered by the rate

[REDACTED]

In this case, claimant's children at all times they were in foster care received a standard rate. At no time during any time that the children were in foster care did they receive a Level I, II, or III.

Negotiation of Rates

In Michigan, the negotiated adoption support subsidy rate agreed upon by the family is the maximum rate that can be paid under state law. Therefore, rates are not negotiable after adoptive placement except in those instances where the family has elected a lower rate than was offered. Parents may enter an agreement at a lower support subsidy rate and renegotiate the rate up to the maximum subsidy rate at a later date. The renegotiated rate will be effective when both the FIA and parents have signed the new agreement. The child will not be eligible for retroactive payments at the higher rate.

Rates established on the adoption subsidy certification are not subject to administrative review.

It is noted that claimant's children were never approved an adoption subsidy agreement. Thus, rate negotiation policy is not directly applicable to the facts herein. At the same time, there are some renegotiation opportunities with regards to medical subsidy:

If a child's needs increase after the adoption placement due to pre-existing physical or emotional problems, the parents may apply for Adoption Medical Subsidy to assist with the increased expenses of the child. See CFA 738, Medical Subsidy Eligibility.

Claimant's children do have a medical subsidy agreement on record. There is no issue herein regarding the medical subsidy agreements.

Time Frames

For pre-adoption support subsidy denials only, the hearing request must be submitted in writing within 90 calendar days of the date the [REDACTED] signed the Order Placing Child After Consent (PCA 320).

In this case, as noted in the findings of facts, SOAHR scheduled an administrative hearing one and one-half years after receiving claimant's hearing request.

Specific criteria in policy applicable to the case herein involves the following:

Introduction

Adoption Support Subsidy eligibility is based on five specific criteria. [REDACTED] provides the basis for this policy. This policy states in part:

[REDACTED]

Who is Eligible?

Michigan's Adoption Support Subsidy eligibility criteria include:

- 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 ([REDACTED]).
- 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.

Detailed information about agreements is in [REDACTED].

Unrefuted evidence on the record is that the only Adoption Subsidy criteria that could trigger Adoption Subsidy eligibility for both of these children is [REDACTED], requiring a DHS-470 documentation that claimant's children equaled or exceeded a DHS foster care DOC Level 2.

As discussed above, adoption support subsidy rates are triggered by the amount of the foster care rate children received while in foster care.

At the administrative hearing, claimant requested that the undersigned Administrative Law Judge review the foster care rates. Claimant disputed the actions taken by the department with regards to the setting of these rates. Claimant wanted to bring forth much medical evidence to support her position and renegotiate the rates.

As noted in the Findings of Fact, claimant signed the DHS-470--Assessment for Determination Care for Children in Foster Care on four different occasions: On 6/26/06; 2/21/06; 5/22/07; and 11/29/07. Policy requires that the rates are reviewed every six months. Evidence on the record indicates that the department followed its policy and procedure in this case by renegotiating and assessing the rates every six months. Claimant's children were assessed and approved at the standard care rate. At no time did the children equal or excel a DOC Level 2 or above which is necessary to be eligible for adoption support subsidy.

The purview of an Administrative Law Judge is to review the department's actions and to make a determination if those actions are correct under policy and procedure. Pursuant to the State of Michigan, Department of Human Services Delegation of Hearing Authority:

Administrative Hearing officers have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or overrule or make exceptions to Department policy. Ismael Ahmed, Director of Department of Human Services. 6/25/08.

As noted in [REDACTED] "It is outside the authority of administrative hearings to renegotiate support subsidy rates." Thus, this Administrative Law Judge has no jurisdiction to review the foster care rates as requested by claimant where policy and [REDACTED] specifically prohibit the same.

For these reasons, and for the reasons stated above, the department's actions are upheld.

It is noted that this Decision in no way is impacted by subsequent changes in policy. Nor is this decision impacted by any subsequent federal reviews and/or audits, or by the Settlement Agreement reached between Governor Granholm in a class action suit in [REDACTED]

[REDACTED].

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department's actions were correct.

The claimant's and the department's actions are UPHELD.

/S/ _____
Janice G. Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 13, 2010

Date Mailed: August 17, 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.

JGS/tg

cc:

