

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: 2008-22054
Issue No: 6004
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 4, 2008
Adoption Subsidy
Lansing, Admin. Hearings

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 claimant's request for a hearing. After due notice, an in-person hearing was held on December 4, 2008. Petitioners personally 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 adoption support subsidy for Child A?

FINDINGS OF FACT

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

- (1) Child A [REDACTED] birth date is [REDACTED]
[REDACTED]
- (2) Child A entered foster care on [REDACTED] and was placed with petitioners.
- (3) Child A became a permanent court ward on June 22, 2007.
- (4) Child A received foster care payments at a standard daily rate \$14.24 with no difficulty of care rate. (Exhibit A)
- (5) The Adoption Support Subsidy /Non-Recurrent Adoption Expenses Application was received at the DHS Adoption Subsidy Unit on October 25, 2007. (Exhibit B, pages 1 and 2)
- (6) The Adoption Support Subsidy/Non-Recurrent Adoption Expenses Application was reviewed and denied on December 5, 2007 and notice of denial and right to appeal was sent to the adoption worker on December 5, 2007. (Exhibit C, pages 1 and 2)
- (7) Petitioners signed and acknowledgement of the Adoption Support Subsidy/Non-Recurrent Adoption Expenses Application denial on January 3, 2008. (Exhibit C)
- (8) The court signed the Order placing the child after consent on [REDACTED].
The Court Order indicated that Child A is made a ward of the court for purposes of adoption and placement in the home of petitioners and was approved. The inspection of Child and Family Services was supervised the adoptee in the home and make reports to the court regarding the adjustment of Child A in the home every three months and that the adoptive parents could consent to all medical, surgical, dental, optical, psychological, education and related services for Child A. (Exhibit D)
- (9) On December 5, 2007, the department caseworker notified petitioners that their request for an adoption subsidy was denied.

(10) On March 13, 2008, the petitioners filed a request for a hearing to contest the denial of the adoption subsidy.

CONCLUSIONS OF LAW

The adoption subsidy program is established by MCL 400.115 , *et seq.*, and is administered by the Department of Human Services pursuant to MCL 400.10 *et seq.* Department's policies regarding adoption subsidy are found in the Adoption Services Manual, CFA and CFS 200, Support Subsidy Eligibility. 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 the decision.

Adoption support eligibility is based on five specific criteria. Michigan Law MCL 400.115(f-g) provides the basis for this policy.

Michigan's adoption support eligibility criteria include:

- . the child identification as a "child with special needs".
- . certification of the child adoption subsidy eligibility by the Adoption Subsidy Program before the petition for adoption is filed with the court.
- . a written adoption assistance agreement between the parents and the department specifying the amount of adoption support subsidy to be paid, signed by the parents and DHS before the finalization of the adoption. (CFS Item 200, page 1)

A child with special needs is defined as a person who 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 one through three as follows:

- (1) The child is under 18 years of age.

(2) The court has determined that the child cannot or should not be returned to the home with the child's parents by one of the following specific judicial determinations:

- . Termination under MCL 712.19(b) for a child under court jurisdiction pursuant to MCL 712A.2(b).
- . Release and termination under MCL 710.29 for a child under court jurisdiction pursuant to MCL 712A.2(b).
- . Release or termination under MCL 710.29 and the child is eligible for receiving SSI.

(3) The child has one of the following specific factors or conditions:

- . The child is SSI eligible as determined by the Social Security Administration.
- . The child has special needs for medical, mental health or rehabilitative care that equals or exceeds the DHS foster care level 2 determination of care (DOC), and is billable and documented by the DHS approved DHS-470, 470A or 1945 (RFF 470, 470A, 1945); and
 - .. Supported by the current DHS updated service plan (UFC); and
 - .. Being paid through the DHS foster care payment system.
- . The child is age three years or greater.
- . The child has been in foster care for at least two years since the termination of parental rights and efforts to locate a family willing to adopt without subsidy have failed.
- . The parental rights for the child were terminated prior to to August 1, 2002 and the child has lived with perspective adoptive parents for 12 months or more.
- . The child is being adopted by a relative (CFF 721, foster care parents).
- . The child is being adopted by the parents of his/her previously adopted sibling.

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 CFF, Item 200, page 2.

In the instant case, Child A did not meet the criteria under #1 which identifies a child as a child with special needs. Child A is a child under 18 years of age. Child A did not meet the SSI eligible factor and condition as he was not eligible for or receiving SSI at the time of the certification request.

The child did not meet the special needs for medical, mental health, or rehabilitative care that equals or exceeds the DHS foster care level to determination of care DOC, as he receives the standard foster care rate with no difficulty of care rate. The child is not three years or older as he was 8 months old at the time of the certification request. The child was made a permanent ward on [REDACTED] and was adopted on [REDACTED] and the child was not in foster care for at least two years since the termination of parental rights and efforts to locate a family willing to adopt without subsidy have failed. The child's parental rights were not terminated prior to August 1, 2002 and the child did not live with the perspective adoptive parents for 12 months or more as the child was made a permanent ward of the court on [REDACTED]. The child was not adopted by a relative as he was adopted by his foster parents. The child was also not adopted by the parents of his or her previously adopted sibling. The child was not a member of a sibling group being adopted together and at least one sibling group member qualified for adoption support subsidy through the program. The Child A did not meet any factors under special needs Section C.

Child A's adopted parents did sign the DHS/FIA-4081 on October 17, 2007. The adoption support applications were that Child A was received in the adoption support program office on October 25, 2007, which was prior to the adoption petition being filed with the court.

In conclusion, Child A is in the process of being certified with the adoption medical subsidy program for the conditions of asthma and prenatal drug exposure. However, the child did not meet any of the adoption support subsidy/non-recurrent adoption expenses eligibility criteria in #1(c) of CFA 750. Therefore, the adoption support subsidy request was denied on December 5, 2007.

Petitioners testified that Child A does have some health issues and that he should be eligible for a higher standard of foster care based upon those health issues and therefore should be eligible to receive an adoption support subsidy. The process of adoption began when the child was approximately 8 months old, and was too young to manifest his alleged current conditions. At no time have petitioners thought to terminate the adoption of Child A based upon his physical, mental and/or emotional problems, either before or after the adoption. The department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it denied the petitioners request for an adoption support subsidy. The adoption support office was acting in compliance with department policy and therefore its actions must be affirmed. The Administrative Law Judge has carefully considered the statements of the adoptive parents at the hearing and has carefully considered the exhibits entered at this hearing. The Administrative Law Judge most specifically has considered the fact that the adoptive parents consider Child A was misdiagnosed while in foster care and

that the adoptive parents also consider that determination as a difficulty of pure self admit was incorrect and insufficient. Now that the adopted parents have a more appropriate diagnosis of the condition of Child A, they believe that the adoption support subsidy should be granted to meet what they now believe is the correct level of care required for the adopted child that is the subject in this hearing.

Although the Administrative Law Judge sympathizes with the adoptive parents and their stated need for an adoption support subsidy, to order the department to grant an adoption support subsidy for the child will require the Administrative Law Judge to ignore and set aside state law and department policy in this matter. The Administrative Law Judge does not have the authority to do this.

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 finds that there is no erroneous written determination of the child's ineligibility for adoption support subsidy by the DHS adoption support subsidy office. The department's decision in regards to the adoption support subsidy issue must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services Adoption Subsidy Program office properly denied petitioners request for adoption subsidy under the circumstances.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
Landis Y. Lain
Administrative Law Judge

Date Signed: March 11, 2009

Date Mailed: March 12, 2009

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.

LYL/vmc

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