

STATE OF MICHIGAN

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 200913047
Issue No: 6004
Case No: [REDACTED]
Hearing Date: March 19, 2009
Lansing AH

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

RECOMMENDED 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 March 19, 2009. Petitioners were represented at the administrative hearing by [REDACTED].

ISSUE

Did the Department of Human Services (DHS) properly deny Petitioners's post-adoption application for Adoption Support Subsidy/Nonrecurring Adoption Expenses?

FINDINGS OF FACT

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

1. On February 22, 2007, Petitioners adopted a child pursuant to a Final Order of Adoption signed by the [REDACTED]. The child was born on [REDACTED]. Exhibit 22.4.
2. On [REDACTED], the child entered foster care with Petitioners.
3. As of the entry date into foster care, the child received the standard foster care rate with no determination of care [DOC] rate. Exhibit A.
4. On [REDACTED], the parental rights of the biological parents were terminated after reunification efforts.
5. Petitioners's adoption caseworker knew that the court would not approve adoption placement outside of the Petitioners's home. See Exhibit 19.

6. DHS knew that the child's biological mother used marijuana during pregnancy and that the biological father was a chronic drug user who suffered from psychological issues and ADHD. Evidence indicates a diagnosis for the child at foster care placement of failure to thrive. The child was also diagnosed with attachment issues (RAD), bonding issues, allergies, reflex problems, and weak muscle development in the arms and legs. The probate court judge often referred to the child as "medically fragile." Exhibits 3, 4, 5.
7. The DHS caseworker stipulated at the administrative hearing that she failed to file an application on behalf of the Petitioners prior to the finalization of the adoption as required by DHS policy and procedure in effect at that time. Petitioners's caseworker informed Petitioners that the child would not be eligible even though the caseworker had no authority to make such assessment(s) pursuant to DHS policy and procedure. Petitioners's caseworker informed the Petitioners that they made good money and could handle another child
8. On February 10, 2006, Petitioners inquired for the first time about an Adoption Support Subsidy eligibility certification. On February 8, 2007, Petitioners called the caseworker inquiring as to the status of the subsidy. The caseworker never returned Petitioners's call. Petitioners's Brief.
9. On February 20, 2007, Petitioners wrote a letter to the DHS Adoption Subsidy Office inquiring as to the status/"official determination" of the subsidy request. The letter is date stamped February 23, 2007. Exhibit L.
10. The Adoption Subsidy failed to respond to Petitioners's inquiries.
11. Pursuant to Petitioners's inquiry letter, he Adoption Subsidy office instructed the caseworker to file an application on behalf of Petitioners. Exhibit M.
12. On March 31, 2007, the Adoption Subsidy Program Office received an application on behalf of Petitioners.
13. More than two years after Petitioners's initial inquiry--on April 21, 2008, the DHS Adoption Support Subsidy Office mailed a denial letter to Petitioners denying the request for Adoption Support Subsidy on the grounds that the child did not meet the eligibility criteria in DHS policy CFA 750 and 760 in effect at the time of the adoption. Exhibit O.
14. On July 17, 2008, Petitioners filed a hearing request. Exhibit P.
15. DHS failed to respond to Petitioners's hearing request.

16. On October 15, 2008, Petitioners's filed another request for an administrative hearing. Exhibit Q.
17. On October 8, 2008, Petitioners filed a request for Medical Subsidy. On [REDACTED] DHS approved a Medical Subsidy for Reactive Attachment Disorder, Attention Deficit Hyperactivity Disorder with an effective date of [REDACTED]. Petitioners's brief indicates the only program in dispute is the Adoption Subsidy; there is no medical subsidy issue herein.
18. Prior to February 2011, Adoption Subsidy cases were not classified by SOAHR under the 90 day federal guidelines.

CONCLUSIONS OF LAW

Policy in effect at the time of Petitioners's adoption and/or time at which Petitioners would have filed an application is found in what was then titled DHS POLICY-CFA. This policy states in part:

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). CFA, 740.

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. CFA, 740.

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. CFA, 740.

The Adoption Subsidy Program office administers these programs, and is located in the Central Office of the Family Independence Agency (FIA). The Agency makes all decisions regarding eligibility for subsidy payment and nonrecurring expenses. CFA, 740.

Legal requirements in effect at that time are found primarily in CFA 741 which states:

LEGAL REQUIREMENTS

The Adoption Subsidy program is implemented under the authority of the following state and federal laws and regulations:

280 P.A. 1939, Section 115f-115m,r,& s (MCLA 400.115f), also known as the Social Welfare Act, as amended by:

292 P.A. 1980 effective 11/18/80 established the adoption subsidy program, set eligibility, and pay requirements

356 P.A. 1990 effective 12/26/90

40 P.A. 1992 effective 6/28/92

238 P.A. 1994 effective 6/5/94

207 P.A. 1994 effective 1/1/95

648 P.A. 2002 effective 12/23/02

Public Law 96-272, also known as the Adoption Assistance and Child Welfare Act of 1980 [42 U.S. C. 620 - 35, & 670-741 et. seq.] amends the Social Security Act and provides the federal legal base for placement services to children. The intent of this law is to strengthen permanency planning

for children within each of the states. The law also established federal funding for a portion of the costs of adoption subsidy payments for eligible children in the child welfare system.

Public Law 105-89, known as the Adoption and Safe Families Act of 1997, amends Titles IV-B and IV-E of the Social Security Act [42 U. S. C. 620-635 and 670-679]. The law establishes that safety, permanency, and well being are the goals for children in the child welfare system. The Act includes:

Requirements that states provide health care coverage for children with medical or rehabilitative needs receiving an adoption support subsidy not funded by Title IV-E.

Authorization of continued eligibility for Title IVE adoption subsidy payments when the adoption disrupts or the parents die.

45 CFR 1355 and 1356.40.

Title IV-E State plan

Public Law 99-514, also known as the Tax Reform Act of 1986

Public Law 103.432, Section 474 of the Title IV-E Adoption Assistance Program of the Social Security Act

Public Law 103.66

CFA, 741.

See also Section 473 of the Social Security Act; 45 CFR 1356.

Adoption Support Subsidies are funded through state and federal funds including Title IVE and TANF (Temporary Assistant for Needy Families). Funding policy and procedure is found primarily in what was then identified under DHS Policy and Procedure as CFA, 742.

With regards to administrative hearings, policy in effect at the time of Petitioners's adoption is found primarily in CFA, 744. This relevant policy 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. CFA 744.

If hearing requests are filed in the local FIA office they should be date stamped and immediately forwarded to the Adoption Subsidy Hearings Coordinator at:

Grand Tower Building
235 S. Grand Ave., Ste. 413
Lansing, MI 48909

CFA 744.

In the instant case, as noted in the Findings of Fact, the caseworker stipulated that she failed to follow DHS policy by failing to file a pre-adoption subsidy application. The caseworker further stipulated at the administrative hearing that contrary to DHS Policy and Procedure, she informed Petitioners that their child would not be eligible for Adoption Subsidy.

DHS Policy and Procedure in effect at that time in fact anticipates such errors by requiring a very specific analysis which must be applied in such instances. Relevant policy in CFR 750 states in part:

Initial Support Subsidy Application Received After Adoptive Placement

Policy Statement

State law (MCLA 400.115f-m, r, s) requires that Adoption Support Subsidy eligibility be certified prior to the filing of the

petition for adoption and requested prior to adoption finalization.

There are certain limited circumstances in which the DHS may approve an Adoption Support Subsidy request that is made after the placement of an adopted child. **The process is limited to children who were in the state's care (see definition in CFG) when the petition for adoption was filed...**

Approval of Adoption Support Subsidy after adoptive placement will be given only in cases in which the Department has determined that one of the specific errors as listed below was made and the child's pre-adoptive circumstances met Adoption Support Subsidy eligibility requirements. If the child's circumstances did not meet Adoption Support Subsidy eligibility requirements prior to the filing of the petition for adoption, the presence of an error is not relevant. Department determination of an error listed below for an ineligible child will not change the child's ineligibility. CFR 750.

Specific Errors

The errors that may be considered by the Department are limited to the following:

- an erroneous written determination of a child's ineligibility by the DHS Adoption Subsidy Program Office prior to June 1, 2002.
- the documented denial of eligibility by the Adoption Subsidy Program Office based on a means test of the adoptive family.
- *For children who were under the care and custody of DHS and placed for adoption after January 1, 1995 only: failure by the DHS local office adoption program (or private agency under contract with the DHS to provide adoption services) to notify or advise the adoptive parent(s) of the availability of Adoption Support Subsidy. Documented receipt of DHS Publication 538-Michigan Adoption Subsidy Program Information Guide is deemed irrebuttable evidence of notice of the above. CFA 750, p. 5.*

DHS argues that no error existed. Petitioners argue that the first and second factor cited in above CFA 750 policy were met.

This ALJ finds that an error existed constructively based upon the caseworker's stipulated testimony that she failed to file an application. In the alternative, this Administrative Law Judge finds constructive error based on the caseworker's representations that Petitioners were financially able to adopt this child.

Once an error exists, policy in effect at the time of Petitioners's adoption requires an assessment as to whether or not there would have been eligibility had an application been filed preadoption. Applicable eligibility criteria to the issues herein is found in CFA 750 which states:

ELIGIBILITY FACTOR DETAILS

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. CFA, 750.

There is no dispute in this case that the required factors in a and b are met. However, the child must meet one of the factors found in the c-1—c-8 criteria:

- 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 8/01/02 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, 750.

The parties stipulated at the administrative hearing that the only factor in dispute is c-2. The department argues that there was no DOC equal to or exceeding a Level 2 DOC documented by the required forms. Exhibit A. Petitioners argue that the child should have met c-2 had the caseworker properly assessed the child and is supported by the current updated services plan. Petitioners also argue that this factor is in violation of federal law (discussed below).

CFA 750 c-2 requires documentation of a DOC that equals or exceeds a Level 2 pursuant to documentation found at DHS 470, 470A, or 1945. Exhibit A. Exhibit A does not show that the child was classified at a Level 2 or greater DOC. Thus, the child does not meet at least one of the items in CFA 750 policy that was in effect at the time of the application. The department's denial was consistent with its policy at the time of the adoption.

As to Petitioners's argument that the child should have been classified at a Level 2 or greater, policy cited above specifically denies the right of an Administrative Law Judge to review or to renegotiate support subsidy rates. See CFA 744.

It is noted that Administrative Law Judges have no jurisdiction to overrule DHS policy and procedure, federal statutes, pursuant to the Michigan DHS Delegation of Hearing Authority Letter:

...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...signed by Ismeal Ahmed, Director, 6/25/08.

It is also noted that this Delegation of Hearing Authority requires:

...In post-adoption support subsidy cases, administrative hearing officers shall only issue recommendations for decisions...

With regards to worker error or incompetence, Administrative Law Judges have no authority to review the conduct of an employee pursuant MAC R 400.

Last, it is noted that Petitioners argue that DHS policy in effect at the time period reviewed herein violates federal law and rules. On January 16, 2008, the Michigan DHS was informed by the Department of Health and Human Services (DHHS) that Michigan's adoption policy was being cited as being in conflict with federal requirements, including timeframes for determination; duration and extension of adoption assistance; rate setting; content of agreements; and administrative hearing rights. Following this, Michigan significantly revised its Adoption Subsidy policy and procedure. The entire policy was retitled and reorganized.

Among the changes in the new and revised policy was a specific change with regards to the primary issue herein—whether the child meets the c-2 eligibility requirements.

In part, Michigan was required to allow Administrative Law Judges to review and renegotiate DOC rates. Michigan was also required to allow renegotiation at different points in time. However, as already noted by this Administrative Law Judge, this policy was not in effect at the time of Petitioners's adoption, and thus, this Administrative Law Judge has no authority to apply this policy to the facts herein.

RECOMMENDED DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the department was correct in denying Petitioners's post-adoption request for an Adoption Support Subsidy under policy that was in effect at the time of Petitioners's adoption in February, 2007.

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It is recommended that the department's decision in this regard be and is, hereby, AFFIRMED.

/S/

Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: February 28, 2011

Date Mailed: February 28, 2011

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/db

cc: BRENT & TAMARA BRONKEMA
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