

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: 2009-27841
Issue No: 6004
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 15, 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 October 15, 2009. The hearing was continued and completed on March 2, 2011. Petitioner appeared and testified. Petitioner was originally represented at the hearing by M [REDACTED] [REDACTED] withdrew his representation and petitioner chose to complete the hearing process in Pro Per.

ISSUE

Whether the Department of Human Services (the department) was acting in compliance with department policy when it denied the petitioner's request for residential placement 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) Child A was born on [REDACTED]
- (2) Petitioner adopted child A when the child was three years old, after natural parental rights were terminated.
- (3) Child A has a history of running away from petitioner's home. She left the petitioner's home in [REDACTED] and did not return until [REDACTED]. [REDACTED] During the time she was out of petitioner's home, Child A worked as a stripper and was delinquent.

- (4) Child A suffers from severe mental and emotional problems and is diagnosed with: fetal alcohol syndrome, Bipolar 2 disorder with homicidal threats; conduct disorder, childhood onset; oppositional defiant disorder; cannabis abuse; alcohol abuse and a Global Assessment of Functioning of 20 when evaluated on [REDACTED] and [REDACTED] respectively. (Petitioner's Exhibit 6, pages 28 and 48)
- (5) Child A had been hospitalized three times at [REDACTED] for suicidal and homicidal ideation. She had also been in a residential treatment program in the past.
- (6) Petitioner filed at least four police reports in [REDACTED] because Child A ran away and disappeared for extended periods of time. (Petitioner's Exhibits 21-24)
- (7) On June 3, 2007, petitioner filed a request for out of home placement for Child A because of her behavior. The DHS worker took no action.
- (8) On [REDACTED] Child A was hospitalized at [REDACTED] after she assaulted her adoptive sister, and she threatened to commit suicide and homicide. (Administrative Law Judge Exhibit 21)
- (9) Police removed Child A from the petitioner's home and took her to [REDACTED] where she spent 28 hours in the mobile crisis center. [REDACTED] transferred Child A to [REDACTED] for stabilization.
- (10) On [REDACTED] [REDACTED] requested that Child A be released from the hospital.
- (11) On May 30, 2008, petitioner requested that the Adoption Subsidy Office approve that Child A be placed into residential placement because she felt that the child was threatening, unstable and could not be properly cared for in her home.
- (12) Petitioner refused to take custody of the child at that time because she felt that she could not safely house Child A in her home, and in order to protect the second child in petitioner's home.
- (13) Residential placement was secured at [REDACTED] for [REDACTED] for Child A, but the Adoption Subsidy Office refused to authorize payment under Child A's medical subsidy.

- (14) On [REDACTED] DHS filed a Child Protective Services complaint against petitioner for neglect because s he refused to take custody of Child A from [REDACTED]
- (15) Private insurance paid for the child's stay at [REDACTED] from [REDACTED] only.
- (16) On [REDACTED] the Adoption Subsidy Office approved residential placement at [REDACTED] for Child A f or three months, effective [REDACTED] (Petitioner's Exhibit 6-pages 39-40)
- (17) A June 20, 2008, Discharge Summary indicates that Child A had a Global Assessment of Functioning of 20 and that she had gradually responded to treatment. (Administrative Law Judge exhibit 26)
- (18) Child A incurred a bill for [REDACTED] for her stay at [REDACTED] from [REDACTED] [REDACTED] which has been charged to Petitioner.
- (19) On March 25, 2009, Petitioner requested an administrative hearing with the Department of Community Health, claiming that Child A's placement at [REDACTED] resulted in a Child Protective Services Referral for refusing to pick up Child A from placement ([REDACTED] [REDACTED]).
- (20) On May 6, 2009, a memorandum from the State Office of Administrative Hearings and Rules for the Departm ent of Community Health (DCH) was sent to the Adoption Subsidy Program.
- (21) DCH determined that jurisdiction for the hearing issue rested with the Department of Human Services (DHS). (Department Exhibit B)
- (22) The Adoption Subsidy Office decided that it was not responsible for the cost of Child A's placement at [REDACTED] according to CFS 640 8 & 9 of 17. (Department Exhibit C)
- (23) The Adoption Subsidy Office determined that the petitioner placed Child A at [REDACTED] without prior approval from the Adoption Subsidy Program.
- (24) The Adoption Subsidy Office determined that placement at [REDACTED] could not be made unless a written request was provided and s ubmitted that funding was not available by the public mental health system.
- (25) The Adoption Subsidy Office determined that an adoptive child with Medicaid must have approval for ment al health hospitalization determined by the Community Mental Health department.

- (26) On March 27, 2009, the Adoption Subsidy Office sent petitioner notice of the negative action.
- (27) On May 6, 2009, Petitioner filed a request for a hearing to contest the Adoption Subsidy Office's negative actions.

CONCLUSIONS OF LAW

The regulations governing the hearing and a ppeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An oppor tunity for a hearing shall be granted to an ap plicant who requests a hearing because his or her clai m for assistance has been den ied. MAC R 400.903(1). The following polic ies must be used when an administrative hearing regarding adoption support subs idy, medical subsidy or nonrecurring adoption expenses is requested. Bridges Administrative Manual (BAM) 600 policy does not apply to adoption subsidy cases. AAM, Item 700, page 1

The Adoption Subsidy program is established by MCL 400. 115, *et seq.* , and is administered by the Department of Hum an Services (formerly Family Independenc e Agency (the department or agen cy) 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 St ate Office of Administrative Hearings and Rules (SOAHR) conducts the hearing and completes this decision.

The State of Michigan administers three Adoption Support Subs idy programs: Adoption Support Subsidy; Adoption Me dical Subs idy; and Non-Recu rring Adoption Expens es Reimbursement. The purpose of support of medical subsidies is to remove financ ial barriers to the adoption of Michigan foster children with special needs as defined by MCL 400.115f. The purpose of the Non-Rec urring Adoption Expense Reimbursement Program is to assist in paying out-of-pocket expens es of adoption of special need s children. Based on each indiv idual 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 progr am based on their indivi dual circumstances. Subsidy is available without respect to the income of the adopted parent. AAM 100, page 1. Adoption Medical Subsidy - Elig ibility details for this program are based on spe cific criteria as defined in Michigan law (MCL 400.115f - m, *et seq.*) and DHS policy AAM 400. Funding for this program is through state funds. AAM, Item 100, page 1.

The **adoption medical subsidy** is a reimbursement program that assists in paying for medical costs for adopted childr en who have an identified physical, mental or emotional condition which existed, or the cause of wh ich existed, before the adoption petition was filed. Routine expenses for typical childhood illnesses, over-the-counter medical supplies or expens es that may be cov ered by Medica id or other available resources are not covered. Eligibility may be determined bef ore and/or after the adoption but must be made prior to the child's 18th birthday. This s ubsidy is payment of last resort after all other medical coverage options are exhausted.

Program Administration

The DHS adoption subsidy office in central office administers these programs. The department makes decisions regarding eligibility for all adoption subsidy programs and reimbursements. AAM, Item 100, page 2.

A child may be eligible for a medical subsidy if all of the following are met:

- The child was in foster care (see CFG Glossary for definition) at the time the petition for adoption was filed. (This is not a requirement for adoptions finalized in a Michigan court prior to June 28, 1992.)
- A child adopted directly from guardianship whose adoption is finalized after June 28, 1992, is not eligible for adoption medical subsidy.
- Certification was requested before the child's eighteenth birthday.
- The expenses to be covered by the medical subsidy are necessary because of an identified physical, mental, or emotional condition of the child which existed, or the cause of which existed, before the adoption petition was filed.

Application

The application procedure for medical subsidy depends on whether the child's adoption is pending or the child is already placed in adoption. Procedures are as follows:

- **For children whose adoption is pending,** the child's adoption worker shall submit an DHS-1341M, Adoption Medical Subsidy Certification Request/Disposition and required documentation.
- **For children already placed in adoption,** the adoptive parent(s) must submit a DHS-1341A, Request for Medical Subsidy for An Adopted Child. The adoption worker will assist the adoptive parent(s) by:
 - a. Providing the form DHS-1341A.
 - b. Helping the parent(s) to complete the form.
 - c. Informing the parent(s) that the effective date of the agreement will be the date the DHS-1341 A,

Request for Medical Subsidy for an Adopted Child, is received by the adoption subsidy program office if the required documentation is received by the program office within 90 days of that date.

The application will be denied if documentation is not received within 90 days.

Documentation Requirements

Documentation requirements for medical subsidy certification include:

All documentation (with the exception of medical birth records of prenatal drug exposure) must be signed by the appropriate diagnosing professional:

- Physical conditions must be documented by licensed physicians, certified physician's assistants, or registered nurse practitioners, unless specified below.
- Emotional conditions (i.e., anxiety disorder, adjustment disorder, oppositional defiant disorder, post traumatic stress disorder, attachment disorder) must be documented by a licensed psychologist, limited licensed psychologist, psychiatrist, certified social worker, or licensed professional counselor, unless specified below. In cases where the diagnosing professional is not in Michigan, an equivalent state license is required.
- Psychiatric conditions (i.e., bipolar disorder, schizophrenia) must be documented by a licensed psychiatrist.
- Education/learning conditions (i.e., mental impairment, speech & language impairment, learning disability, developmental delay, emotional impairment, autism) must be documented by a current IEPC (individual education planning committee) or IFSP (individual family service plan) document or a comprehensive evaluation by a psychologist or psychiatrist.
- Attention deficit disorder /ADHD must be documented by either a licensed physician or by a fully licensed psychologist in a comprehensive evaluation.
- Fetal alcohol syndrome/effects must be documented by a medical geneticist, a licensed physician, or a licensed psychiatrist.

- Hearing loss must be documented by an audiologist or licensed physician.
- Vision problems must be documented by an optometrist ophthalmologist, or licensed physician.
- Motor impairments and sensory problems must be documented by an occupational therapist or licensed physician.
- Prenatal drug exposure must be documented with lab reports or hospital records from the birth.
- The documentation must identify the condition and, for an adopted child, explain how the condition, or its cause, existed prior to the adoption.

The adoption subsidy program office will determine if the documentation submitted is sufficient to meet certification criteria. AAM, Item 400, pages 1-3.

State law requires that the Department of Human Services (DHS) enter into Adoption Assistance Agreements (DHS-4113), Nonrecurring Adoption Expenses Agreements (DHS-4814) and Adoption Medical Subsidy Agreements (DHS-3013) with adopting parent(s) as a condition of eligibility for:

- Adoption support subsidy.
- Nonrecurring adoption expenses.
- Adoption subsidy-related Medicaid.
- Adoption medical subsidy.

Adoption subsidy agreements include the agreement provisions and are legally binding arrangements between the department and the adoptive parent(s). AAM, Item 500, page 1.

The following provisions are included in adoption medical subsidy agreements:

- Covered medical conditions.
- Conditions for continued payment.
- Continuation of eligibility regardless of a change in state residency.
- Duration of the agreement.

- Reimbursement requirements. AAM, Item 500, page 2.

An adoption medical subsidy agreement can be signed any time after the child is certified eligible. If the adoption medical subsidy agreement is signed before the date of the adoptive placement, the effective date of the agreement will be the date of the PCA-320, Order Placing the Child After Consent.

If the adoption medical subsidy agreement is signed after the adoptive placement, the effective date of the agreement will be the date of the PCA-320, Order Placing the Child After Consent, or the date entered on the agreement by the adoption subsidy office, whichever is later. AAM, Item 500, page 5.

Adoption medical subsidies are not title IV-E funded or subject to title IV-E regulations.

Adoption medical subsidy eligibility exists until one of the following conditions occurs:

- The child becomes 18 years of age.
- The child has not yet reached his/her 18th birthday but is emancipated by any of the following:
 - Court order.
 - Marriage.
 - Entering the military service.
- The child dies.
- The adoption is terminated.
- A determination of ineligibility is made by the Department of Human Services based on one or more of the following: The medical condition no longer exists.
- The family receives a Family Support Subsidy for the child from the Michigan Department of Community Health.
- The adoptee is removed from his/her home as a temporary court ward due to delinquency or due to a child protective proceeding (MCL 712A.2(a) or 2(b)).

- The adoptive parent(s) dies, unless a full legal guardian is appointed by the court and requests continuation of the adoption medical subsidy.

Reporting Changes

The parent must notify the adoption subsidy office in writing within 30 days after any of the above changes occur. Recoupment procedures will be followed for changes not reported timely.

Adoption Medical Subsidy

Adoption medical subsidy must be closed if a child is removed from the home as a temporary court ward due to delinquency or a child protective proceeding. The adoption medical subsidy may be reopened upon the child's return to the home. AAM, Item 620, page 3.

Adoption medical subsidy is intended to assist with paying for services related to the treatment of physical, mental, or emotional conditions certified by the Adoption Subsidy Program Office. State law makes it the payer of last resort (MCLA 400.115h). Parents retain responsibility for making treatment arrangements for their child, seeking prior approval for services when required, and making payment arrangements with providers.

The quality of services is the responsibility of parents and the services provider.

Adoption medical subsidy assists with medical, surgical, hospital and related expenses only for condition(s) certified by the Adoption Subsidy Program Office. Related expenses may include pharmaceutical expenses, prescriptions, medical supplies, or laboratory expenses.

Adoption medical subsidy assistance for psychological or mental health treatment may be approved for specific mental or emotional conditions that existed prior to the adoption or the **cause** of which existed prior to the adoption and that have been certified by the Adoption Subsidy Program Office.

State law (MCL 400.115h) limits payment for treatment of emotional or mental conditions to outpatient treatment unless one of the following applies: (emphasis added)

- The child was certified eligible for an adoption support subsidy.
- The Adoption Subsidy Program Office approved certification for the emotional or mental condition before the date of the final order of adoption.
- The child was placed in foster care as a result of a finding of abuse or neglect by a Michigan Family

Court before the petition for adoption was filed. AAM, Item 640, page 1.

Payment requirements for temporary out-of-home placement are : (emphasis added)

- Prior authorization by the Adoption Subsidy Program Office based on a local office worker's written recommendation.
- The temporary out-of-home placement is consistent with a treatment plan developed for the child by one of the following professionals; a licensed physician, psychologist, or limited or licensed master social worker.
- The temporary out-of-home placement is not less than 24 or more than 72 consecutive hours. The placements are not to exceed 96 hours per month. The maximum number of hours in a 12-month period cannot exceed 384 hours (16 days).
- Daily subsidy payment rates for temporary out-of-home placement are set by the department.

Temporary Out-of Home Rates:

- Child 0-12 is \$50.00 per day/per child maximum.
- Child 13 plus is \$60.00 per day/per child maximum.
- A day is 24 hours or less than 24 hours. The maximum is 384 hours (16 days) in a 12-month period.

PLACEMENT OUTSIDE THE FAMILY HOME

The adoption medical subsidy program is intended to assist the adoptive parents with the cost of treating emotional or mental conditions that pre-existed the adoption of a child who had been in foster care in Michigan. The adoption medical subsidy program is intended to assist the adoptive parents with the cost of treating emotional or mental conditions that pre-existed the adoption of a child who had been in foster care in Michigan.

Eligibility Timeframe

Short-term treatment outside the family home can be covered as a last resort when treatment goals are not being achieved in the family setting. Adoption medical subsidy

policy limits the amount of coverage to six months. Approvals will not be granted for periods of more than six months and may be granted for lesser periods of time. AAM, Item 640, page 7 (Formerly CFA, Item 794, page 7)

In the instant case, petitioner did file a request for out of home placement for Child A on [REDACTED] because she did not want to take custody of the child because she felt that her safety and the safety of the second child in the home was compromised by Child A's assaultive and threatening behavior. Residential placement was secured at [REDACTED] for [REDACTED] for Child A but the Adoption Subsidy Office refused to authorize payment under Child A's medical subsidy. Subsequently, on June 11, 2008, the Adoption Subsidy Office approved residential placement for Child A for three months, effective June 20, 2008. Child A incurred a bill for [REDACTED] for her stay at [REDACTED] from [REDACTED] which has been charged to Petitioner. Petitioner seeks reconsideration of the initial denial of residential placement by the Adoption Subsidy Office for May 29-June 19, 2008.

The evidence indicates:

1. The Adoption Subsidy Office determined that the petitioner placed Child A at White Pines without prior approval from the Adoption Subsidy Program.
2. The Adoption Subsidy Office determined that placement at White Pines could not be made unless a written request was provided and submitted that funding was not available by the public mental health system.
3. The Adoption Subsidy Office determined that an adoptive child with Medicaid must have approval for mental health hospitalization determined by the Community Mental Health department.

The evidence contained in the file indicates that [REDACTED] placed Child A at [REDACTED] for treatment and not petitioner. In addition, it is not clear to this Administrative Law Judge why residential placement was approved for Child A for June 20, 2008, forward and not for at least May 31-June 19, 2008, when the request was made by petitioner on May 30, 2010. There was no apparent change in the condition of the Child A. Granted, there was no prior approval made when the child was originally placed into the hospital. However, she was placed in the hospital on an emergent basis via police custody. Private pay insurance took care of Child A's placement from May 20-May 28, 2008, based on medical necessity. The request for residential placement was made in a timely manner by petitioner. Petitioner refused to take physical custody of Child A because Child A had exhibited assaultive and dangerous behavior. Consequently, a Child Protective Services (CPS) petition for neglect was filed against petitioner on May 28, 2008.

The CPS investigation was conducted from May 28-June 11, 2008, during which time the Post Adoption Worker, [REDACTED] requested that the Child A be held at [REDACTED] if at all possible because of her homicidal and suicidal threats. [REDACTED] reported that she was working with the medical subsidy office to try and get authorization for residential placement for the child, because she was not safe in public given her behaviors, mental state and history. It had been determined that there were no county funds available because the child was not a court ward. (Petitioner's Exhibit 1C) On May 28, 2008, the CPS worker contacted Adoption Subsidy [REDACTED] and explained that [REDACTED] was holding a residential placement for Child A for Monday June 2, 2008, and that there was need for approval of the medical subsidy to pay for residential treatment at [REDACTED] until the residential placement at [REDACTED] was available.

The CPS worker indicated to [REDACTED] that without authorization of payment the petitioner would have to be charged with child neglect in Family court for refusing to care for the child and it was unfair to so charge petitioner when Child A had been approved for medical subsidy and had a history of needing residential treatment. [REDACTED] and the Adoption Subsidy office declined to authorize payment. (Petitioner's Exhibit 1D) The CPS worker then contacted [REDACTED] Acting District Manager to see if [REDACTED] authorize payment for the child. The request was denied. The CPS worker then contacted [REDACTED] to see if the child could remain at [REDACTED] until residential placement could be affected. [REDACTED] notified [REDACTED] (a registered nurse at [REDACTED] that a neglect petition would be filed against petitioner and the child taken under temporary court jurisdiction. Subsequently, [REDACTED] declined to file the petition for neglect, because payment for the child's care would have had to come out of Saginaw County Child Care funds. (Petitioner's Exhibit 1G) Petitioner testified on the record that she went to pick the child up from [REDACTED] she was told that Adoption Subsidy would not authorize payment for the residential treatment and that she was told that there was a CPS case pending and the child could not be released to her.

On June 11, 2008, Adoption subsidy approved Child A to be moved to [REDACTED] At that time [REDACTED] would not accept the child because of an \$ [REDACTED] payment standard discrepancy. Adoption Subsidy workers then looked for another placement for Child A. After the Adoption Subsidy Office approval for a three month extension, Child A was housed in residential care at [REDACTED] Care facility from June 20, 2008-December 22, 2008. Child A ran away again and as of March 27, 2009, has been returned to the foster care system where she has been AWOL from nine foster care placements. (Testimony of [REDACTED] Adoption Subsidy Office)

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Adoption Subsidy Office has not established by the necessary competent, material and substantial evidence on that record that it was acting in compliance with Department policy when it determined that the petitioner's request for Adoption Medical Subsidy payment for out of home placement of Child A should be denied based upon the fact that the child did not meet the certification requirements.

The evidence contained in the file indicates that Hurley hospital placed Child A at [REDACTED] for treatment and not petitioner. In addition, it is not clear to this Administrative Law Judge why residential placement was approved for Child A for June 20, 2008, forward and not for at least [REDACTED] when the request was made by petitioner on May 30, 2010. There was no apparent change in the condition of the Child A. In addition, petitioner originally requested residential placement for Child A on June 3, 2007. The DHS worker took no action at that time.

Accordingly, the department's decision is REV ERSED. It is ORDERE D that the petitioner's request for an Adoption Medical Subsidy for out of home placement of Child A be reinst ated and a determination made as to her eligibi lity based u pon the timely request made by petitioner for residential treatment.

/s/

Landis Y. Lain
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 17, 2011

Date Mailed: March 18, 2011

NOTICE: The law pr ovides 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 re sident of the State, the petition may be filed in the probate court for the c ounty in which the ado ptee is found. Administrative Hearings, on its own motion , or on request of a par ty within 60 days of the mailing date of this Decision and Order, may order a rehearing.

LYL/alc

cc:

[REDACTED]