

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: 2009-37008
Issue No: 6004
Case No: [REDACTED]
Load No:
Hearing Date:
January 7, 2010
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 January 7, 2010. 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].
- (4) Child A was placed in petitioner's foster home on [REDACTED].
- (5) The parental rights of Child A's biological parents were terminated on [REDACTED].
[REDACTED].
- (6) Child A received foster care payments at the Level 2, Medically Fragile Rate, from [REDACTED].
- (7) Child A received foster care payments at a standard daily rate of \$14.24 per day from [REDACTED] forward. (Exhibit A)
- (8) An Adoption Support Subsidy/Non-Recurring Adoption Expenses Application for Adoption with petitioner was received at Department of Human Services on [REDACTED]. (Exhibit B—2 pages)
- (9) The Adoption Support Subsidy/Non-Recurring Adoption Expense eligibility determination for subsidy with petitioner was completed by Department of Human Services on April 26, 2007. (Exhibit C—2 pages)
- (10) The Adoption Petition was filed with the court on [REDACTED]. (Exhibit D)
- (11) On [REDACTED], the court signed the Placement Order. (Exhibit E)
- (12) On [REDACTED], the court signed a Final Order of Adoption. (Exhibit F)
- (13) On [REDACTED], petitioner sent a letter to the Adoption Support Office requesting an appeal for the denial of the Adoption Support Subsidy. (Exhibit G)
- (14) The Department sent petitioner notice that her request for an Adoption Support Subsidy was denied 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 barrier to the adoption of Michigan foster 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 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 or parents.

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 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.

Adoption Support Subsidy eligibility is based on 5 specific criteria. Michigan Law (MCL 400.115f-g) provides the basis for this policy.

After eligibility for Michigan's Support Subsidy Program has been determined, Federal policy is applied to determine the funding source of the Adoption Support Subsidy and whether Medicaid will be provided through the Adoption Support Subsidy Program. Funding determination is based on the State's federally approved title for E Plan. Funding determination details are in CFA 754. Adoption Support Subsidy—Related Medicaid Eligibility details are in CFA 755.

Michigan's Adoption Support Subsidy eligibility criteria include:

- The child's identification as a child with special needs.
- Certification of a child's Adoption Support Subsidy eligibility by the Adoption Support Program Office 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 the Adoption Support Subsidy to be paid, signed by the parents and the Department of Human Services before the finalization of the adoption.
- It is required that the agreement be signed before the Petition for Adoption is filed for the adopted 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 instant case, Child A was not SSI eligible as determined by the Social Security Administration, nor was he determined to have a special need for medical, mental health, or rehabilitative care that equals or exceeds the DHS foster care Level 2 Determination of Care at the time the Adoption Subsidy Application was filed.

Child's Need for Adoption Assistance

The need for Adoption Assistance in order for the child to be placed for adoption is verified by the adopting parent(s) signature(s) in Section 1 of the Adoption Support Subsidy Intent Statement - DHS 4081.

Petition

The Petition for Adoption (PCA-301) has not been filed with the court.

Agreement

After eligibility determination, but before finalization of the adoption, the Adoption Support Subsidy/Nonrecurring Adoption Expenses Agreement must be:

- signed by the parent(s) and
- signed by the DHS authorized representative

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

Detailed information about agreements is in CFA 780. CFA, Item 750, pp. 2-3.

It should be noted that Child A was not 3 years or greater at the time of his adoption. He was 1 year and 8 months at the time of the eligibility determination and he had not 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 had failed. Child A also did not meet the c-5, the parental rights for the child where terminated prior to August 1, 2002 and the child has lived with the perspective adopted parent for 12 months or more and he was not adopted by a relative, the factor in c-6, and he was not being adopted by the parents of his or her previously adopted sibling in c-7 and c-8.

In the present case, the petitioner's request for an Adoption Support Subsidy was 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 petitioner's child did not meet certification conditions in c-1 through c-8 pursuant to department policy. The petitioner's child failed to meet any of these eight criteria. Therefore, the child could not be certified for a Support Subsidy and the petitioner was not eligible for an Adoption Support Subsidy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department was correct in denying the petitioner's request for an Adoption Support Subsidy based upon the fact that the child did not 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

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

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