

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: 2009609
Issue No: 6004
Case No: [REDACTED]
Load No: 8400000000
Hearing Date: August 27, 2009
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 upon Petitioners' request for a hearing. After due notice, a in-person hearing was held on August 27, 2009. Petitioners were not represented.

ISSUE

Did the Department of Human Services (DHS) properly deny Petitioners' request for an Adoption Support Subsidy?

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 [REDACTED] Petitioners adopted twins (date of birth for both [REDACTED]).
2. The two children were never in Petitioners' care as foster children.
3. The children entered foster care on [REDACTED]
4. On [REDACTED] the children became permanent court wards.
5. The children both received foster care payments at a standard daily rate with no difficulty of care rate.
6. On December 10, 2007, Petitioners' filed an Adoption Support Subside/Nonrecurring Adoption Expenses Applications for each child [hereinafter Adoption Support Subsidy Applications].

7. On January 30, 2008, the DHS denied Petitioners' Adoption Support Subsidy Applications.
8. On January 30, 2008, the DHS issued notice of denial.
9. On July 2, 2008, Petitioners filed an appeal.
10. The DHS denied the request for adoption support subsidy on the grounds that the children did not meet the eligibility criteria as set forth in CFA 750.

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 known as the Family Independence Agency) pursuant to MCL 400.10, et seq. Department policies in effect at the time of the substantive issues disputed herein are found in the Adoption Services Manual (ASM). Manual code numbers are referred to as "CFA." The federal law upon which Michigan law is based is Title IV-E of the Social Security Act, Section 473(c).

The State of Michigan administers three adoption subsidy programs: Adoption Support Subsidy, Adoption Medical Subsidy, and Nonrecurring Adoption Expenses Reimbursement. The purpose of support in medical subsidies is to remove financial barriers to the adoption of Michigan foster children with special needs, as defined by MCL 400.115f. The purpose of nonrecurring 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 MA subsidy program based on their individual circumstances. Subsidy is available without respect to the income of the adoptive parent(s). CFS Manual Item 100.

The following policy was in effect at the time that Petitioners applied for the adoption subsidy reimbursement:

INTRODUCTION

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

After eligibility for Michigan's Adoption 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 Subsidy Program. Funding determination is based on the state's federally-approved Title IVE plan.

Funding determination details are in [CFA 754](#).

Adoption Support Subsidy-related Medicaid eligibility details are in CFA 755.

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.

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 (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

In the present case, both children adopted by Petitioners did not meet any of the adoption subsidy eligibility criteria in (c-1 through c-8 found in CFA 750) for the following reasons.

As to c-1, neither child was SSI eligible as determined by the Social Security Administration.

As to c-2, both children did not meet those factors/conditions as they each received a standard foster care rate with no difficulty of care rate.

Regarding c-3, both children were [REDACTED] old at the time of the certification request. Thus, c-3 was not met.

c-4 requires a showing that each child or children have been in foster care for at least two years since the termination of parental rights in efforts to locate a family willing to adopt without subsidy have failed. In the instant case, the children were made permanent court wards on [REDACTED] and were adopted on [REDACTED]. Thus, were not in foster care for at least two years since the termination of parental rights. The C-4 burden is not met.

Regarding c-5, the children did not meet this factor/condition as they were made permanent court wards on [REDACTED]. Petitioners were not foster care parents.

c-6 is not met as the Petitioners are not relatives of the children.

c-7 is not met as there was no previous adoption of either child which would trigger eligibility herein.

c-8 is not met as neither child qualified for adoption support subsidy.

After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge finds that the department correctly denied Petitioners' application. Under CFA 750 in effect at the time of the application, these children did not meet any of the criteria found in CFA 750 c-1 through c-8 and thus, there is no eligibility for the reasons set forth above.

DECISION AND ORDER

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

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Request for an Adoption Support Subsidy/Nonrecurring Adoption Expenses Applications as the children did not meet the eligibility requirements..

Accordingly, the department's denial in this matter is, hereby, UPHELD.

/S/

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

Date Signed: February 17, 2011

Date Mailed: February 17, 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.

JGS/db

cc:

