

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE HEARINGS

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-13880

Issue No: 6004

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 11, 2010

Adoption Subsidy

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

RECOMMENDED HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MCL 400.37 and Administrative Procedures Act of 1969, PA 306 of 1969.

Petitioners requested a hearing contesting a decision by the Adoption Support Policy Office (ASPO) of the Department of Human Services (DHS) denying their request for an adoption support subsidy for Petitioner's adopted children. After due notice, a hearing was held October 11, 2010.

FINDINGS OF FACT

1. On [REDACTED], the Petitioner finalized the adoption of her child. The Petitioner had guardianship granted to her from the child's biological mother prior to the adoption and had the child since the child was approximately 4 months old. The child was never placed in foster care.
2. On October 29, 2008, Petitioner requested an adoption support subsidy for her child (born [REDACTED]).

3. On November 21, 2008, DHS sent a letter requesting additional information regarding the adoption of the Petitioner's child.
4. On July 13, 2009, DHS denied the Petitioner's request for adoption subsidy after the Petitioner failed to respond to DHS request for additional information regarding the adoption.
5. On October 5, 2009, the Petitioner requested an administrative hearing.

CONCLUSIONS OF LAW

The Department of Human Services administrative hearing process is provided for a client to challenge an adverse determination by the Department. For issues relating to adoptions, MCL 400.115k requires that the contested Department action is subject to the Administrative Procedures Act of 1969, Act 306 of Public Act 1969, MCL 24.201-24.328.

The Adoption Subsidy program is established by MCL 400.115, *et seq.*, and is administered by the Department of Human Services (DHS or Department) pursuant to MCL 400.10, *et seq.* Department policies regarding adoption subsidy are found in the Children Family Adoption Services Manual (CFASM). The federal law upon which Michigan law is based is Title IV-E of the Social Security Act, Section 473(c). The Department's manual contains the following relevant policy statements:

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). CF Adoption Services Manual, Item 740, p. 1.

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. CF Adoption Services Manual, Item 740, p. 1.

LEGAL REQUIREMENTS

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

1. 280 P.A. 1939, Section 115f-115m (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
2. Public Law 96-272, also known as the Adoption Assistance and Child Welfare Act of 1980 [42 U.S. C. 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.

3. 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 IV-E adoption subsidy payments when the adoption disrupts or the parents die.
4. 45 CFR 1355 and 1356.40.
5. Title IV-E State plan
6. Public Law 99-514, also known as the Tax Reform Act of 1986
7. Public Law 103.432, Section 474 of the Title IV-E Adoption Assistance Program of the Social Security Act.
8. Public Law 103.66. CF Adoption Services Manual, Item 741, pp. 1 and 2.

ADMINISTRATIVE HEARINGS

Issues Subject to Administrative Hearings

The DHS has an administrative hearing process to provide for the right to contest a Department decision or case action when a client believes the decision is contrary to law or DHS 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. CF Adoption Services Manual, Item 744, p. 1.

SUPPORT SUBSIDY REQUESTS RECEIVED AFTER ADOPTIVE PLACEMENT

Policy Statement

State law (MCLA 400.115f-m) 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 foster care (see definition in CFG Glossary) when the petition for adoption was filed. Cases in which a child was in legal guardianship at the time the petition for adoption was filed do not qualify for Adoption Support Subsidy.**

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. CFS Adoption Services Manual, Item 200, p. 5.

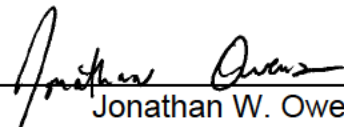
As cited above, the Michigan Adoption Subsidy program eligibility requirements begin with the child must have been in the foster care system. In this case, the Petitioner's child was never placed in foster care. The Petitioner was granted guardianship of the child and after years of being the child's guardian was allowed to adopt the child.

This Administrative Law Judge finds that the Department acted in accordance with Department policy and law in denying petitioners' request for an adoption support subsidy.

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 petitioner's request for an adoption support subsidy.

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


Jonathan W. Owens
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 10/12/10

Date Mailed: 10/13/10

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.

JWO/dj

cc:

