

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

IN THE MATTER OF:



Reg. No: 2010-30705
Issue No: 6004
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 3-October 20, 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 June 3, 2010. The hearing was continued on August 26, 2010 and concluded on October 20, 2010. Petitioner appeared and testified. Petitioner was represented at the hearing by [REDACTED]

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 the 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 2/28/08.
- (2) The birth mother of Child A admitted that Child A was exposed to cocaine and heroin throughout the pregnancy. Child A had problems with constipation.
- (3) Child A entered foster care under petitioner's care.
- (4) On October 16, 2008, the birth mother and father's parental rights were terminated and Child A became a state ward of the Michigan Children's institute (MCI).

- (5) The Child A became available for adoption October 16, 2008. His placement remained with Petitioner.
- (6) On November 26, 2008, the Adoption Subsidy Office received a DHS 1341 Adoption support/Nonrecurring Adoption Expenses Application Packet for Child A, along with the required DHS-4081 Adoption Assistance and Non-recurring Adoption expenses Intent statement signed by Petitioner. (Exhibit A)
- (7) The Adoption Support Subsidy Office returned the packet to Alternatives for Children and Families, Inc. because the application packet was lacking a Determination of Care (DOC) Assessment. (Exhibit B)
- (8) On January 13, 2009, The Adoption Subsidy Office received a FAX from Holy Cross Children's Services which indicated: Assessment for Determination of Care (DOC) for Medically Fragile children which scored Child A at level I DOC rate of \$ [REDACTED] per day. The assessment was signed by Petitioner and the HCCS foster care worker [REDACTED] and supervisor [REDACTED] on September 18, 2008 and by DHS foster care monitor [REDACTED] On 9/23/08 and supervisor [REDACTED] on October 6, 2008.
- (9) Child A was diagnosed with torticollis, severe cradle cap, eye duct problems, heart murmurs with bidirectional (sic) requiring ongoing monitoring by the parent and cardiac physician, and ongoing congestion as the result of asthma. The child was referred to an asthma specialist and the foster mother was required to monitor the child closely as well as complete medication forms for all daily medications administered. (Exhibit C)
- (10) On January 14, 2009, the Adoption Subsidy Office received the previously returned DHS-1341 Adoption Support Subsidy/Nonrecurring Adoption Expenses Application for Child A. (Exhibit A)
- (11) On 3/18/09 the Adoption Subsidy Office received an Assessment from Determination of Care for Medically Fragile Children in Foster Care DHS-1945. The DHS-1945 scored Child A and reflected that Child A met the medically fragile DOC rate of \$ [REDACTED]. It was signed by petitioner on 2/02/09; HCCS supervisor [REDACTED] on 2/27/09; DHS monitor [REDACTED] On 3/02/09 and DHS supervisor [REDACTED] on 3/06/09. (Exhibit D)
- (12) On 3/18/09, the Adoption Subsidy Office received a Foster Care Structured Decision Making Permanent Ward Service Plan covering the period of 11/27/08-2/24/09 which identified child A's medical and physical needs were pre-natal drug exposure, heart murmurs, blocked tear duct, with foster care mother doing exercises with the child as needed, child

being seen by an asthma specialist, and continuing to have congestion. He reported language skills delay. The cardiologist continued to monitor Child A's heart. He had complete physical therapy for his Torticollis but continued to do in home physical therapy and exercise with the foster mother. He had minor delays in the areas of cognition, language/communication, emotions, feelings and coping behavior. (Exhibit E)

- (13) On 3/28/09, Adoption Subsidy worker [REDACTED] e-mailed the foster care worker, and advised that the child was showing level II DOC rate of \$ [REDACTED] [REDACTED] requested the worker to FAX the current DHS 1945 Assessment for Determination of Care for Medically Fragile Children to Foster Care and all supporting professional or other documentation used to justify the boxes checked on the assessment. Clarification was requested as to why boxes in Section I (4 and 9) were checked.
- (14) B.W. determined that nebulizer treatments do not warrant checking the daily injections box on the form and asthma is not understood to be an infectious disease. (Exhibit D)
- (15) On 4/02/09 and 4/07/09, [REDACTED] (foster care worker) FAXED [REDACTED] a DHS-1945 qualifying the child for medically fragile level II DOC rate at \$ [REDACTED] due to the child's respiratory condition and related care needs. Boxes checked on the DHS-1945 under Section I were Box #1: physical/medical impairment requiring an average of at least ½-1 hour of daily medically prescribed therapy or procedures by the foster parents, etc.; Box #4: Daily injections (insulin, asthma, allergies); and Box #9: sporadically active infectious diseases requiring sterile procedures when active, such as Herpes-type viruses. Section II Box 2A was also checked: Respiratory problems (asthma or allergies) requiring major dietary and/or environmental restrictions. Attached to the DHS-1946 was a one page paper titled Amended Request for a Medically Fragile DOC Level 2. Stated in the request was the time required to administer Albuterol medication by nebulizer four times a day and cleaning equipment totaling approximately 30 minutes each time. Also stated as necessary to insure that home remained free of trigger factors: (pets, dust, smoke, etc.) States dusting is done daily, and floors are mopped or vacuumed approximately four times per week (taking 30-40 minutes each time). States must change child's crib sheets every two days and change furnace filter approximately every 30-45 days. (Exhibit D)
- (16) On 4/04/09, the Adoption Subsidy Office approved Adoption Medical Subsidy for Child A for prenatal drug exposure, tear duct obstruction, and heart murmur. An adoption Medical Subsidy Agreement was issued to Alternatives for Children and Families.

- (17) [REDACTED] advised the foster care worker that because the nebulizer medication was injected into the nebulizer and not the child directly that the provided reason regarding the child's asthma treatment was unacceptable and because asthma was not an infectious disease that a new DOC level of care assessment needed to be completed.
- (18) On June 2, 2009, a new DOC assessment was requested by [REDACTED].
- (19) [REDACTED] received no reply and withdrew the application for Adoption Subsidy.
- (20) On 8/24/09, the Petition for Adoption was filed in Genesee County Court. Petitioner had expressed her willingness to proceed with the adoption even though [REDACTED] had withdrawn the application for Support subsidy. (Exhibit J)
- (21) Child was placed for adoption with Petitioner (the foster care parent) per Order Placing Child and finalization Order for Adoption on 9/02/09. The adoption occurred without an Adoption subsidy in place. (Exhibit K)
- (22) On 9/17/09, The adoption Subsidy Office mailed a letter to Alternatives for Children and Families, Inc., notifying the agency that the DHS-1341 application received 1/14/09 was again withdrawn because the Determination of Care Assessment requested on 6/02/09 was not received in the requested time frame and the child was also adopted without an adoption subsidy. (Exhibit L)
- (23) On 10/19/09, the Adoption subsidy Office received a letter from Petitioner requesting a review of child A's case and asking for an administrative hearing for Adoption Support Subsidy. The letter indicated that the Child A's difficulty of Care (DOC) payment was medically fragile level II (\$ [REDACTED]) and that payments did not stop until a few weeks after the adoption became final. (Exhibit N)
- (24) On 12/09/09, the Adoption Subsidy Office denied Petitioner's request for Adoption support Subsidy certification.
- (25) On 12/15/09, Petitioner filed a request for a hearing to contest the Adoption Subsidy Office's negative action.
- (26) At all times relevant to this case, Petitioner was employed with the Michigan Department of Human Services and was a licensed foster care parent.

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 barriers 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. AAM 100, page 1

Before an Adoption support subsidy may be granted, the department must determine the level of care that a child required in foster care.

A determination of care (DOC) supplement may be justified when extraordinary care or expense is required of the foster parents or relative (foster care provider) who is eligible for a foster care payment. The supplement must be based on one or more of the following case situations where additional care is required of the foster care provider or an additional expense exists:

- Physically handicapped children for whom the foster care provider must provide measurably greater supervision and care.
- Children with special psychological or psychiatric needs which require extra time and measurably greater amounts of child care and attention in the home.
- Children requiring special diets which are more expensive than a normal diet and which require extra time and work to obtain and prepare.
- Children whose severe acting out or antisocial behavior requires a measurably greater amount of care and attention.
- The receipt of Social Security Income (SSI) benefits by a ward requires DOC assessments. When a determination of care supplement is due to a physical or mental disability, screen the youth for SSI eligibility. (See FOM 902-10, SSI benefits Determination.)

To assess the need for a determination of care supplement, complete the DOC form that most closely fits the case situation:

- DHS-470 for children ages one day through 12 years with behavioral difficulties.
- DHS-470A for children age 13 and over with behavioral difficulties.
- DHS-1945 for children who are medically fragile (all ages) or who have a documented medical condition which threatens health, life or independent functioning.

A DOC assessment must be done at the initial case opening **and** at least every six months or if the child's care needs or level change or the child moves. This includes all children in purchased foster care programs. Each DOC assessment must be filed in the child's case record.

DOC rates are **not** to be authorized for any time period that exceeds six months. If a DOC supplement continues to be necessary at the end of the authorized time period, a new assessment must be done, appropriate approval obtained, and the payment authorization using SWSS/FAJ completed.

Justify the continuation of the level for a determination of care on the DHS-470, DHS 470-A, or DHS-1945. Since the DOC rate is based on the extraordinary care required of the foster care provider, all tasks and additional expenses must be documented in detail under the caregiver activities section of the SWSS-FAJ report, Children's Foster Care Parent Agency Treatment Plan and Service Agreement.

As part of the re-determination of the funding source eligibility (every six months) an assessment of the need for a DOC supplement is required for every child age 0-18 regardless of the initial assessment not warranting a DOC.

The total reimbursement provided to the foster care provider is to be based on the above criteria and process. In all case situations, the foster care worker is to involve the foster care provider in completion of the form and to have the foster care provider sign the assessment form.

REQUEST FOR REVIEW OF DOC

A foster care provider or supervising agency/DHS staff may initiate a request for review of a DOC at any time other than the six month review. The request must be done in writing. Action must be taken within 30 days of the receipt of the request.

The requestor (such as the foster parent, relative or foster care worker) must be notified in writing of the disposition of the DOC request within 30 days of the receipt of the request (60 days if the requested DOC is over level III). If approved, the DOC supplement is effective the date of the request. If the DOC request was received within the first 30 days of a child's placement with a specific foster family, the effective date of payment may be the first day of that placement. The requestor may initiate an administrative review if not notified timely

If the appropriate DOC assessment does not justify an initial or continuation of the DOC level, the level is to be reduced thirty calendar days following the date the completed assessment is received by DHS. The DHS worker must notify the foster care provider or private agency within five working days in writing of any decrease in level.

ADMINISTRATIVE REVIEW PROCESS

If the foster care provider or the agency disagrees with the level of care determination, an administrative review process may be initiated within 30 calendar days of the decision.

For private agency supervised family foster care, the agency must initiate the request for the administrative review. For DHS supervised family foster care, an administrative review may be requested by the foster parent. Administrative review decisions by the federal compliance office are final.

If an administrative review is requested, payment will not be reduced until the administrative review is complete. The DHS local office has 14 calendar days to review the DOC assessment and complete the DHS-669, Local DHS Response to Administrative Review Request for Determination of Care Denial form. If, after review, the local DHS office does not concur with the original assessment and agrees with the private agency, the local DHS office must authorize all necessary changes to the assessment and payments. No further action is necessary.

If the local DHS office agrees with the original assessment the local DHS worker's supervisor must forward the DOC, DHS-669, and relevant case materials to the Federal Compliance Office (FCO).

The FCO has 14 calendar days to review the administrative request from the DHS local office. The FCO will immediately notify the agency and local DHS director of the decision using the DHS-670, FCO Decision to Administrative Review Request for Determination of Care (DOC) Denial form.

State Agency Supervised Process

The foster care provider requests an administrative review by completing and submitting the DHS-668 to the foster care worker's supervisor.

The DHS local office has 14 calendar days to review the DOC assessment and complete the DHS-669. If, after review, the local DHS office does not concur with the original assessment and agrees with the foster parent, the local DHS office must authorize all necessary changes to the assessment and payments. No further action is necessary.

If the DHS local office agrees with the original assessment, the DHS worker's supervisor must forward the DOC, DHS-669, and relevant case materials to the FCO.

The FCO has 14 calendar days to review the administrative request from the DHS local office. The FCO will immediately notify the local DHS director of the decision using the

DHS-670. When the resolution of a request for change in level occurs, the local office is to initiate a payment authorization request and DHS-634 (if applicable), retroactive to **the original date of request** for change in level of care. The original date of the request is the date a signed DHS-470, DHS-470A or DHS-1945 is date stamped into the local office. A copy of the DHS-626 is to be sent to the provider. FOM, Item 903-3 pages 1-8

There was no evidence presented at hearing that an administrative review of the DO C level was formally requested, or conducted. B.W. of the Adoption subsidy Office requested that an additional assessment be done, but it does not appear that an administrative review was conducted.

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 (DCH) that has responsibility under Michigan's law for the care and supervision of the child is responsible for submitting the application for Support Subsidy. CF S Manual, Item 100. (AAM, Item 100. p. 1)

AAM, Item 200, pages 1-9, states:

The Michigan Department of Human Services (DHS) provides both title IV-E funded and state funded adoption support subsidies for special needs children. Title IV-E adoption support subsidy is based on federal title IV -E funding guidelines. State funded adoption support subsidy is based on state guidelines and provides subsidies for special needs children who do not qualify for title IV-E funded support subsidy. Eligibility for either of these programs results in issuance of a DHS-4113, Adoption Assistance Agreement.

In order for a child to be eligible for an adoption support subsidy, eligibility must be determined by DHS and the DHS-4113, Adoption Assistance Agreement, must be negotiated and signed by the adoptive parent(s) **and** the DHS adoption subsidy manager or designee prior to the final order of adoption.

Applications for adoption support subsidy are submitted by the adoption worker that is responsible for the care and supervision of the child. In cases where the prospective adoptive family is working with an agency that does not have care and supervision of the identified child, the application for subsidy may be submitted by either the child's or the family's worker, through a cooperative effort between the agencies. The application is submitted when the child is legally free for adoption through termination of all parental rights and an appropriate family has been identified. For an American Indian child who can be adopted without termination of parental rights, the tribe must document a valid reason why the child cannot or should not be returned to the home of the parents.

The adoption agency must submit the DHS S-1341, Adoption Assistance and Medical Subsidy Application, and required supporting documentation for every child whose prospective adoptive parent(s) are requesting a subsidy determination.

The Adoption Subsidy Office located in DHS central office makes all eligibility determinations.

CHILD WITH SPECIAL NEEDS

A child's eligibility for either title IV-E funded or state funded adoption support subsidy is based, in part, on a determination by the state that the child has special needs.

Federal Definition

A determination of special needs is a three-part requirement established in section 473(c) of the Social Security Act (42 USC 673(c)). All three parts of the special needs provision must be met to be considered a child with special needs. The determination of special needs must be made by DHS and a negotiated adoption support subsidy agreement must be signed prior to the final order of adoption.

The three parts of the federal special needs determination are as follows:

- The child cannot or should not be returned to the home of his or her parents.
- A specific factor or condition exists which makes it reasonable to conclude that the child cannot be adopted without providing title IV-E adoption subsidy or title XIX medical assistance.
- The state must make a reasonable, but unsuccessful, effort to place the child for adoption with appropriate adoptive parent(s) without providing adoption support subsidy, except in cases where it would be against the best interests of the child due to the existence of significant emotional ties with the prospective adoptive parent(s).

Michigan Special Needs Requirements

Michigan has specific requirements to meet both the federal definition and the state's special needs eligibility.

At the time of eligibility determination, the child must have special needs. A child has special needs if DHS has determined **all** of the following:

- The child is under age 18 years.
- The parental rights to the child have been terminated.
- If an American Indian child can be adopted in accordance with tribal law without a termination of parental rights and the tribe has documented a valid reason why

the child cannot or should not be returned to the home of the parents, termination is not required.

- State funded eligibility requirement: Termination of parental rights must be under MCL 712A.19b (abuse and neglect) or MCL 710.29 (release) while the child was under court jurisdiction for an abuse or neglect proceeding.

The child has **one** of the following specific factors or conditions:

- Eligibility for Supplemental Security Income (SSI), based solely on the medical and disability requirements, as determined by the Social Security Administration.
- **A DHS foster care level II or_ above determination of care (DOC) rate that meets all of the following: (emphasis added)**
- Documented by the DHS-470, 470A or 1945.
- Supported by the current foster care updated service plan (USP).
- Approved in accordance with DHS foster care policy.
- The child is at least 3 years old.
- The child is being adopted by a relative.
- The child is being adopted by the parent(s) of his/her previously adopted sibling.
- The child is a member of a sibling group being adopted together and at least one sibling group member has been determined eligible for adoption support subsidy as an individual.
- An effort to place the child without providing adoption support subsidy is demonstrated by the adoptive parent(s) signature(s) in Section 1 of the DHS-4081, Adoption Assistance Intent Statement.

TITLE IV-E FUNDING ELIGIBILITY REQUIREMENTS

Effective October 1, 2009, the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P. L. 110-351) phases in revised title IV-E funding eligibility requirements for specific special needs children over a nine-year period. A special needs child to whom the revised eligibility requirements apply is referred to in the federal law as an **applicable child**. In order to qualify for adoption support subsidy funded by title IV-E, a child who meets the state's special needs requirements must also meet either the **applicable child** or **not applicable child** requirements.

Applicable Child Requirements

An **applicable child** is a special needs child who meets one or more of the following requirements immediately prior to finalization of the adoption:

- Meets the applicable age requirements (as indicated in the [Appendix](#)).
- Has been in foster care during any 60 consecutive months prior to the finalization of the adoption.
- Is a sibling to either such child if both are to have the same adoption placement.

The **applicable child** must also meet **one** of the following title IV -E funding eligibility requirements:

- The child, at the time of the initiation of the adoption proceedings, was in the care of a public or private licensed child placing agency or Indian tribal organization pursuant to one of the following:
 - An involuntary removal in accordance with a judicial determination to the effect that it was contrary to the child's welfare to remain in the home.
 - A voluntary placement agreement or voluntary relinquishment.
- The child meets all medical and disability requirements of Supplemental Security Income (SSI).
- The child was residing in a foster family home or child care institution with his/her minor parent and the minor parent was removed from the home pursuant to either:
 - An involuntary removal in accordance with a judicial determination to the effect that it was contrary to the child's welfare to remain in the home.
 - A voluntary placement agreement or voluntary relinquishment.
- The child was adopted and was determined eligible for title IV-E adoption assistance in a prior adoption and is available for a adoption because the prior adoption has been dissolved or the child's adoptive parents have died. (The child must be re-determined to be a special needs child by DHS in order to be eligible for adoption assistance in the subsequent adoption.)

A written adoption subsidy agreement:

- Is negotiated between the parent(s) and DHS or contracted private adoption agency.
- Specifies the negotiated amount of adoption support subsidy to be paid.

- Must be signed by the parent(s) and DHS subsidy manager or designee prior to the final order of adoption.
- Specifies whether the child has been determined eligible for title IV-E or state funded adoption support subsidy, nonrecurring adoption expenses reimbursement and Medicaid.

Detailed information about the agreement is in AAM 500, Adoption Subsidy Agreements - All Programs.

Effective Date

If the adoption support subsidy/nonrecurring adoption expenses agreement is signed **before** the adoptive placement date, the adoption support subsidy payment is effective the date of adoptive placement or the date of the PCA 320, Order Placing Child After Consent, whichever is later.

If the adoption support subsidy/nonrecurring adoption expenses agreement is signed **after** the adoptive placement date, but prior to or on the date of the adoption finalization, the adoption support subsidy payment is effective the date the DHS designee signs the agreement.

Although policy allows for determination of adoption support subsidy eligibility after the petition for adoption is filed, DHS and private contract agency workers are expected to have adoption support subsidy agreements signed by all parties before the court signs the PCA 320, Order Placing Child After Consent. This practice allows adoption support subsidy payments to begin at the earliest allowable date.

In the present case, the petitioner's request for an Adoption Support Subsidy was made prior to the Petition for Adoption. The department denied the petitioners' request because it determined that the petitioners' child could not be certified for a Support Subsidy. Policy states that child may receive an Adoption Subsidy if they have a DHS foster care level II or above determination of care (DOC) rate that is documented by the DHS-470, 470A or 1945.

AAM, Item 70, page 1 states:

The Department of Human Services 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 denials, notice of the subsidy program to prospective adoptive families, failure of DHS to complete required paperwork prior to the finalization of the adoption, 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 negotiated, agreed to and signed by adoptive parent(s) or legal guardians (state funded subsidy after the death of the adoptive parent) by the act of signing the Adoption Assistance Agreement (DHS-4113 or DHS-4113G).

For pre-adoption eligibility denials, the adoptive parent(s) must submit their request for a hearing within 90 days after the court order placing the child for adoption. The hearing request must be submitted in writing. For all denials and other appeals based upon departmental action **after** the placement for adoption, an applicant has the right to request a hearing within 90 calendar days of the written notice of the denial decision by the adoption subsidy office.

A hearing request does not cancel or change a decision made by the department. The decision will stand until a hearing decision has been made that determines a different action should be taken. AAM, Item 700, page 2. The request for a hearing is timely made herein.

For hearings concerning adoption support subsidy and/or nonrecurring adoption expenses eligibility after the finalization of the adoption, there are certain limited circumstances in which an ALJ may grant approval of the program through the administrative hearing process. An approval may be granted only in cases in which there has been a determination that:

- One of the specific errors below was made, and
- The child's pre-adoptive circumstances met the adoption support subsidy/nonrecurring adoption expenses eligibility requirements.

If the child's circumstances did not meet adoption support subsidy/nonrecurring adoption expenses eligibility requirements prior to the date of the finalization of the adoption, the presence of an error is not relevant. Determination of an error listed below will not change the child's ineligibility.

Specific Errors

The errors that may be considered in the administrative hearing for adoption support subsidy and/or nonrecurring adoption expenses after adoption finalization are limited to the following:

- An error in the written determination of a child's ineligibility by the DHS adoption subsidy office.
- The documented denial of eligibility by the DHS adoption subsidy 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 DHS to provide adoption

services) to notify or advise the adoptive parent(s) of the availability of adoption support subsidy and/or nonrecurring adoption expenses. Documented receipt of DHS Publication 538, Michigan's Adoption Subsidy Programs, is deemed evidence of notice of the above.

- An administrative error on the part of the adoption agency.
- Relevant facts regarding the child were known by the State or child placing agency and not presented to the adoptive parent(s) prior to the finalization of the adoption.

Adoption Support Subsidy Specific Error Determination

If it is determined that a specific error as listed above did occur in a case, the ALJ will review the child's circumstances to determine whether the child would have been eligible for an adoption support subsidy and/or nonrecurring adoption expenses at the time of, or prior to, the adoption finalization. The eligibility policy in the adoption subsidy manual (AAM) that was in effect at the time of the child's adoption finalization will be used to determine eligibility.

If a child's circumstances did not meet eligibility criteria for adoption support subsidy and/or nonrecurring adoption expenses prior to the date of the court order finalizing the adoption but there is evidence of an error as listed above, eligibility can not be granted.

Adoption Support Subsidy Rates for Children Found Eligible

If an ALJ determines that a specific error was made and the child met the eligibility requirements for adoption support subsidy, the adoption subsidy office will determine the maximum adoption support subsidy rate. The maximum rate will be determined consistent with the foster care maintenance rate that the child received, or would have received, in a foster family home at the time immediately prior to the final order of adoption. In addition, any legislative increases or decrease to the standard base rate that were authorized since the child's adoption placement will be considered in the rate setting. AAM, Item 700, page 4-7

For a child who was adopted from a residential treatment facility, the maximum adoption support subsidy rate will be determined consistent with policy in AAM 210, Adoption Support Subsidy Rate Determination.

After a maximum adoption support subsidy rate is determined by the adoption subsidy office, the ongoing adoption support subsidy payment will be negotiated with the adoptive parent(s). A negotiated DHS-4113, Adoption Assistance Agreement must be signed by the adoptive parent(s) and the DHS designee before the adoption support subsidy ongoing payment and any retroactive payments may be paid.

AAM, Item 220, page 1, states:

After a child is determined eligible for adoption support subsidy as a special needs child, an adoption support subsidy payment rate is determined. A two-step process is used to establish the ongoing monthly adoption support subsidy payment. First, the adoption subsidy office determines the maximum adoption support subsidy rate. The rate may not exceed the foster care maintenance payment which was paid, or would have been paid if the child had been in a foster family home. Second, the prospective adoptive parent(s) and the adoption worker negotiate the ongoing monthly adoption support subsidy payment by considering the circumstances of the adoptive parents and the needs of the child being adopted, up to the maximum rate set. The agreed upon monthly payment is documented on the DHS-4113, Adoption Assistance Agreement. The DHS-4113 must be signed by the adoptive parent(s) and the DHS designee prior to the finalization of the adoption.

Prior to negotiation, the adoption subsidy office determines a maximum rate for the child's adoption support subsidy. The adoption support subsidy maximum rate is determined without regard to the income of the adoptive family. The rate is determined by one of the following:

- The foster care rate the child received in foster care at the time of rate determination.
- In cases where a child is eligible for but not receiving a foster care payment, the foster care payment the child would receive if placed in a licensed foster family home at the time of rate determination.

Both of the above determinations include any determination of care (DOC) rate that is approved for the child.

The adoption worker must submit supporting documentation to the adoption subsidy office with the DHS-1341, Adoption Assistance and Medical Subsidy Application, for determination of the maximum adoption support subsidy rate. The documentation must support the requested maximum adoption support subsidy rate.

In the instant case, at the time of the Application, the foster Care rate that the child was approved for and receiving was DOC Level II Medically fragile (\$13.00). The adoption worker determined that the documentation did not support the requested adoption support subsidy rate, because she disagreed with the Level II Medically fragile determination which was established at the foster care level. The facts are not at issue. The child was certified for the Level II Medically Fragile rate of care during Foster care. However, the Adoption subsidy office is not in agreement with the certification. The issue then becomes whether or not department policy allows the adoption subsidy office the authority and ability to override the Foster care determination of care rate.

Department policy requires the following documentation for certification of eligibility for Adoption Support Subsidy:

Required Documentation of Child's Needs

The following documentation must be attached to the DHS-1341, Adoption Assistance Application, in order to establish the maximum adoption support subsidy rate.

- A copy of the most recent (within the last 6 months) DOC assessment (DHS-470, 470-A, or 1945) must be submitted.

DOC Rate

- Any foster care rate that exceeds the DHS current standard maintenance payment is considered a DOC rate (see Foster Care Payment Resources, FOM 903-3). If a child has care needs above a standard foster care maintenance rate, copies of the following foster care documents must be attached.

A DOC Level I, II, or III requires:

- A copy of a current **DHS-approved** DOC assessment (DHS-470, 470A, or 1945) dated within six months.
- A copy of the professional documentation that supports the DOC rate.
- A copy of the current Updated Service Plan (USP).
- A copy of the DHS-67, Parent-Agency Treatment Plan & Service Agreement (for children receiving foster care payments). AAM, Item 210, page 5.

This Administrative Law Judge finds that the evidence contained in the record indicates that child A was approved for Level II Determination of Care rate – Medically Fragile. No place in policy is there authority that allows the Adoption subsidy office to override the Foster care determination and make a unilateral decision that a child does not deserve or qualify for the level of care that he has received. Although petitioner proceeded with the adoption even in light of the fact that she was denied the Adoption Support Subsidy the record is clear that she very much intended to try to qualify Child A for an Adoption subsidy before the filing of the Adoption Petition and before the finalization of the adoption. The Adoption subsidy office intimates that since Petitioner actually works for the Department of Human Services that she somehow provided inaccurate information to qualify Child A for the medically fragile rate of care. However, in this case, petitioner was acting only as the Foster care parent. The case was handled through a separate agency to avoid the appearance of impropriety. Although the foster care parent did sign the Determination of Care assessments as was proper, the assessments were also signed by all of the other appropriate Department personnel who regularly make Determination of Care Assessments. There is no evidence of collusion or wrongdoing brought forth anywhere in the record. There is no evidence that the appropriate

documentation was not provided to establish the Level of Care on the Assessment forms. Merely, the determination boils down to a disagreement between two Department offices. In this case, there is no policy which indicates that the Adoption Subsidy Office may over-rule or supersede a decision which has been established at the foster care level. If there were such a policy it was not brought to this court's attention. In fact there is a procedure for DOC level determinations. The Adoption Subsidy office could have requested an administrative review of the DOC level under foster care policy, but did not do so. Administrative review of the DOC level was never completed before the child was adopted. Therefore, the DOC level II which was in place at the time of the filing of the Adoption Petition (8/24/09) should stand.

The department's decision must be REVERSED under the circumstances.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Adoption Subsidy department 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 petitioners' request for Adoption Support Subsidy should be denied based upon the fact that the child did not meet the certification requirements.

Accordingly, the department's decision is REVERSED. It is ORDERED that the petitioners request for an Adoption Support subsidy be reinstated and a determination made as to her eligibility based upon the Foster Care Rate Determination of Care Assessment Rate that was in place at the time of the filing of the Petition. If petitioner is otherwise eligible, the Adoption Subsidy is ORDERED to negotiate an Adoption Support Subsidy for Child A as is appropriate to his circumstances.

/s/

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

Date Signed: February 8, 2011

Date Mailed: February 8, 2011

2010-30705/LYL

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/alc

cc:

