

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.: 2010-45962
Issue No.: 6004
Case No.: [REDACTED]
Hearing Date: October 21, 2010
Wayne County (SOAHR)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Petitioners' request for a hearing. After due notice, a hearing was held in Detroit, Michigan on Thursday, October 21, 2010. The Petitioners appeared and testified. The Petitioners were represented by attorney [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly processed the Petitioners' Requests 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 May 16, 1995, the Probate Court entered Consent to Adoption Order which provided that [REDACTED] ("CSM") had voluntarily consented to the adoption of Child (D.O.B. [REDACTED]) by the Petitioners.
2. On May 22, 1996, an Order terminating Parental Rights of CSM was entered by the Probate Court.
3. On this same date, an Order Placing Child After Consent was entered which approved the adoption and placement of Child in the Petitioners' home.
4. On November 27, 1996, an Order of Adoption was entered by the Probate Court.

5. On March 30, 2009, the Petitioners filed a request for Title IV-E Adoption Support Subsidy.
6. On June 30, 2009, the Petitioners filed a second request for Title IV-E Adoption Support Subsidy.
7. On April 28, 2010, the Department sent a letter in response to the Petitioners' request for adoption assistance stating the department would proceed with formally making a decision.
8. The Adoption Support Subsidy was never formally denied.

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 (at the time) regarding adoption subsidy are found in the Child & Family Services Manual ("CFS") and the Adoption Subsidy Manual ("AAM"). The federal law upon which Michigan law is based is Title IV-E of the Social Security Act, Section 473(c).

Issues of eligibility, computation of subsidy rates, case closure, and/or reduction of benefits are subject to administrative hearings. CFS 130 The adoptive parent(s) or guardian has the burden of proof in an adoption subsidy hearing. *Id.* For pre-adoption support subsidy denials, the hearing request must be submitted in writing within 90 calendar days of the date the Family Court signed the Order Placing Child After Consent. *Id.* For all other denials, the request for hearing must be submitted in writing 90 calendar days from the date of the written notice of the *decision* of the Adoption Subsidy Program Office. *Id.*

There are certain limited circumstances in which the Department may approve an adoption support subsidy request that is made after the placement of an adopted child. CFS 200 The process is limited to children who were in the state's care when the petition for adoption was filed. *Id.* 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. *Id.* Approval of adoption support subsidy after adoptive placement will be given in cases in which the department has determined that one of the specific errors (see below) was made *and* the child's pre-adoptive circumstances met adoption support subsidy eligibility requirements. *Id.* The specific errors are limited to the following:

1. An erroneous written determination of a child's ineligibility by the DHS Adoption Subsidy Program Office prior to June 1, 2002.
2. The documented denial of eligibility by the DHS Adoption Subsidy Program Office based on a means test of the adoptive family.
3. For children 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.¹
4. An administrative error on the part of the adoption agency.

If an adoptive parent asserts that an error as describe above was made, they may choose to apply for an adoption support subsidy. The Adoption Subsidy Program Office will review the request, determine if additional information is necessary and request additional information in order to determine the circumstances of the adoption. CFS 200 The adoptive parents are responsible for providing the documentary evidence. *Id.* After review of the documents, the Adoption Subsidy Program Office will send written response of their findings to the adoptive family. All denials will include information about the right to appeal the determination by requesting an administrative hearing. *Id.* A request for hearing shall be made within 90 days of the denial. *Id.*

In this case, the Petitioners filed two Requests for Adoption Support Subsidy for the child at issue (D.O.B. [REDACTED]) after the adoption finalization. The Department did not send written notice of whether a specific error was made and/or a denial of the application. The Department acknowledged this requirement in a letter sent to the Petitioners on April 28, 2010. The filing of the hearing summary does not fulfill the Department's obligation to process the Adoption Support Subsidy Request(s). In light of the foregoing, the Department failed to establish it acted in accordance with department policy when it processed the Petitioners' Requests for Adoption Support Subsidy. Accordingly, the Department's actions are not upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Department failed to establish it acted in accordance with department policy in the processing the Petitioners' Requests for Adoption Support Subsidy.

Accordingly, it is ORDERED:

¹ Documented receipt of DHS Publication 538, Michigan's Adoption Subsidy Programs, is deemed irrebuttable evidence of notice

1. The Department's actions are not upheld.
2. The Department shall process the Petitioners' Request for Adoption Support Subsidy in accordance with department policy.
3. The Department shall, in writing, notify the Petitioners and their attorney of the determination in accordance with department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 1/20/2011

Date Mailed: 1/20/2011

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. 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.

CMM/jlg

cc:

