

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

IN THE MATTER OF:

DHS Req. No: 2010-5410
SOAHR Docket No. 2010-5426 REHD

████████████████████

Petitioner

_____ /

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 24.287(1) and 1993 AACS R 400.919 upon the request of the Department.

ISSUE

Did the Administrative Law Judge properly determine that the Petitioner was entitled to a Medical Subsidy payment for her adopted child?

FINDINGS OF FACTS

This Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On October 16, 2009, ALJ Spodarek issued a Hearing Decision in which the ALJ reversed the Department of Human Services' (DHS) denial of Petitioner's request for a Medical Subsidy.
2. On September 25, 2009, the State Office of Administrative Hearings and Rules (SOAHR) for the Department of Human Services received a Request for Reconsideration submitted by the Department of Human Services.
3. On November 19, 2009, SOAHR granted the Department's request for reconsideration and issued an Order for Reconsideration.
4. Findings of Fact 1 - 11 from the Hearing Decision, mailed on October 16, 2009, are hereby incorporated by reference.

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 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).

The State of Michigan administers three adoption subsidy programs: Adoption Support Subsidy; Adoption Medical Subsidy and Nonrecurring Adoption Expenses Reimbursement. The purpose of support and medical subsidies is to remove financial barriers to the adoption of Michigan foster children with special needs, as defined by MCL 400.115f.

Adoption medical subsidy is intended to assist with paying for services related to the treatment of physical, mental, or emotional conditions certified by the Adoption Subsidy Program Office. State law makes it the payer of last resort (MCLA 400.115h). Parents retain responsibility for making treatment arrangements for their child, seeking prior approval for services when required, and making payment arrangements with providers. The quality of services is the responsibility of parents and the services provider.

Adoption medical subsidy assists with medical, surgical, hospital and related expenses only for condition(s) certified by the Adoption Subsidy Program Office. Related expenses may include pharmaceutical expenses, prescriptions, medical supplies, or laboratory expenses.

Adoption medical subsidy assistance for psychological or mental health treatment may be approved for specific mental or emotional conditions that existed prior

to the adoption or the **cause** of which existed prior to the adoption and that have been certified by the Adoption Subsidy Program Office.

State law (MCL 400.115h) limits payment for treatment of emotional or mental conditions to outpatient treatment unless one of the following applies:

The child was certified eligible for an adoption support subsidy.

The Adoption Subsidy Program Office approved certification for the emotional or mental condition before the date of the final order of adoption.

The child was placed in foster care as a result of a finding of abuse or neglect by a Michigan Family Court before the petition for adoption was filed.

Adoption medical subsidy payments are made in response to specific bills submitted by the parents or by the service provider. Payments are made at the rate approved by the department and sent directly to the service provider unless the parent requests direct payment. Frequency and duration of treatment are subject to review by the Adoption Subsidy Program Office.

Adoption medical subsidy does not pay for missed appointments.

Payment is approved only if **all** of the following are met:

The service is **necessary** to treat a certified condition (as defined in CFG, Glossary).

The date of service is on or after the effective date of the adoption medical subsidy agreement.

If required by department policy, the family has obtained prior approval for the services from the Adoption Subsidy Program Office. Services requiring prior approval include, but are not limited to:

Assisted care services.

Educational costs and services, such as speech therapy, physical therapy, occupational therapy, tutoring, or educational equipment and supplies.

Durable medical equipment such as wheelchairs, ramps, van lifts, etc.

Placement outside the family home.

Summer camp.

Professional service providers are appropriately licensed or certified by the state agency responsible for regulating professionals in the state where the services are provided. In Michigan, the agency responsible for regulating professional service providers is the Michigan Department of Community Health. Residential placement facilities are licensed as child caring institutions by the state where the child is placed. In the State of Michigan, the DHS Bureau of Children and Adult Licensing (BCAL) is responsible for licensing child caring institutions.

Warrants will only be issued when the reimbursement amount totals \$10.00 or more. Claims or bills submitted in the amount of \$9.99 or less will not be reimbursed.

All other payment resources have been exhausted. In general, before payment can be authorized, parents must use all other available resources, including:

Private health insurance.

Medicaid.

Children's Special Health Care Services.

Local and intermediate school districts.

Other public resources.

The adoption medical subsidy program does not reimburse an adoptive parent for providing treatment/services to his or her own adopted child.

Medical subsidy payments may be modified based on items included in the child's adoption support subsidy (i.e., special food, medication, supplies, services, and transportation).

Under PAM manual item 600 the Department, AHR or, if none, the client may file a written request for rehearing/reconsideration. The client may request a rehearing/reconsideration when one of the following exists:

Newly discovered evidence that existed at the time of the original hearing, and that could affect the outcome of the original hearing decision.

Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion.

Typographical, mathematical, or other obvious error in the hearing decision that affects the rights of the client.

Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

A rehearing is a full hearing which is granted when:

The original hearing record is inadequate for purposes of judicial review; or

There is newly discovered evidence that could affect the outcome of the original hearing decision.

A reconsideration is a paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties believes the ALJ failed to accurately address all the issues. PAM 600. The Administrative Procedures Act indicates that: A decision or order shall not be made except upon

consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material and substantial evidence. MCL 24.285. Under Michigan Administrative Code R 400.917 A decision shall be based exclusively on the administrative law judge's opinion, evidence, and other material introduced at the hearing.

In the present case I cannot find that the Administrative Law Judge misapplied policy and law or failed to handle all relevant issues. The Petitioner submitted a request for payment of medical expenses for their adopted child. The services provided had been approved by the Department. The child received medical services with a provider that had been used by the Department for the child while in foster care. The Department failed to reimburse the Petitioner based on the failure to exhaust all other insurance options before submitting a request for payment of medical expenses under the Medical Subsidy program. Under the aforementioned policy a client is required to seek payment from other sources before seeking payment through the Medical Subsidy program. However, upon receipt of the denial for payment from other insurance, the Department should have provided payment for the medical services. The Department argues that the Petitioner should have made sure that the child was covered under Medicaid before undertaking treatment and indicates that since this was not done that the Petitioner is not entitled to payment. However, the policy does not state that a client must take this additional step in order to obtain payment under the Medical Subsidy Program. This Administrative Law Judge finds that the decision by ALJ Spodarek is in accordance with policy and law and was supported by sufficient evidence.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusion of law, decides that the Administrative Law Judge was correct in ordering the Department to provide Medical Subsidy payment for the treatment of the adopted child.

IT IS THEREFORE ORDERED:

That the Administrative Law Judge's decision mailed October 16, 2009 is hereby UPHELD.

IT IS FURTHER ORDERED:

That the Department issue a medical subsidy payment check/voucher to Petitioner on behalf of her adopted child in the amount of \$353.39.

/s/
Rhonda Craig
Administrative Law Judge
for Michigan Department of Human Services

cc: [REDACTED]

Date Signed: January 20, 2010
Date Mailed: January 20, 2010

***** NOTICE *****

The Appellant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.