

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: 2010-56026
Issue No: 6004
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 18, 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 November 18, 2010. Petitioner personally appeared and testified.

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 her 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) Petitioner's adoptive parent (hereinafter petitioner) adopted a child hereinafter referred to as Child A.
- (2) Child A's date of birth is October 29, 2006.
- (3) Child A received foster care payments at a standard daily rate of \$ [REDACTED] per day from April 17, 2007, forward. (Exhibit B1-5)
- (4) An Adoption Support Subsidy/Non-Recurring Adoption Expenses Application for Adoption with petitioner was received at Department of Human Services on December 9, 2008. (Exhibit 1-13)
- (5) The Adoption Support Subsidy/Non-Recurring Adoption Expense eligibility

determination for subsidy with petitioner was completed by Department of Human Services on July 13, 2009. The Adoption support subsidy office determined that Child A did not meet the eligibility requirements as a child with special needs pursuant to CFS 200 and CFS 300.

- (6) On July 13, 2009, the Adoption Subsidy office sent petitioner notice that her application for adoption support subsidy was denied.
- (7) On July 15, 2009, petitioner signed the notice and right to appeal.
- (8) On August 3, 2009, an order was signed by the court placing the child for adoption with supervision
- (9) On September 3, 2009, the Court signed the Order of Adoption.

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 or parents.

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 unit that has responsibility under Michigan's law

for the care and supervision of the child is responsible for submitting the application for Support Subsidy. AAM, Item 100, page 1.

The DHS adoption subsidy office in central office administers these programs. The department makes decisions regarding eligibility for all adoption subsidy programs and reimbursements.

Agency Responsibilities

The child placing agency, DHS or the Department of Community Health (DCH) unit that has responsibility for the care and supervision of the child is responsible for:

- Informing the prospective adoptive parent (s) about Michigan's adoption subsidy programs.
- Discussing the application process with the prospective adoptive parent(s).
- Submitting the application for adoption support subsidy/nonrecurring adoption expenses and medical subsidy on behalf of the child and prospective adoptive parent(s).
- Informing the prospective adoptive parent (s) of the adoption subsidy office's determination of the child's eligibility/ineligibility for the subsidy programs.
- Negotiating an appropriate adoption support subsidy rate if the child has been determined eligible for adoption support subsidy.
- Handling subsidy applications, agreements and claims within designated time frames.

Once a child is certified eligible for adoption support subsidy, nonrecurring adoption expenses and/or medical subsidy, the adoption worker must inform prospective adoptive parents of the availability of subsidy benefits for the child.

State law requires DHS to publish and distribute a pamphlet on adoption subsidy programs. The DHS Pub-538, Michigan Adoption Subsidy Programs - Information for Prospective Adoptive Parents brochure is available through the Office Services Unit of DHS. Publication 538 is also available online in the Adoption category from the DHS public web site: www.michigan.gov/dhs-publications.

State law requires this pamphlet be provided to prospective adoptive parents of children who are under the care and supervision of DHS prior to their adoptive placement. However, if Michigan does not have responsibility for placement and care, or is otherwise unaware of the adoption of a potential special needs child, it is incumbent upon the adoptive family to request adoption subsidy on behalf of the child. It is not the responsibility of the state to seek out and inform individuals who are unknown to the department about the possibility of adoption subsidy for special needs children who are not under the supervision of the department. This policy is consistent with the intent and

purpose of the statute to promote the adoption of special needs children who are in the public foster care system.

The State is required to inform prospective adoptive parents in writing at the time of the application and at the time of any action affecting their claim, of the right to an administrative hearing. The method of obtaining a hearing and the right to represent themselves or be represented by another person such as an attorney, relative, friend, or other spokesperson must be provided in the information. AAM, Item 100, pages 2-3

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-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:

- C-1. Documented by the DHS-470, 470A or 1945.

- C-2. Supported by the current foster care updated service plan (USP).
- C-3. Approved in accordance with DHS foster care policy.
- C-4. The child is at least 3 years old.
- C-5. The child is being adopted by a relative.
- C-6. The child is being adopted by the parent(s) of his/her previously adopted sibling.
- C-7. 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.
- C-8. 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.

Adoption Support Subsidy eligibility is based on 5 specific criteria. Michigan Law (MCL 400.115f-g) provides the basis for this policy. In the instant case, Child A was not SSI eligible as determined by the Social Security Administration, nor was he determined to have a special need for medical, mental health, or rehabilitative care that equals or exceeds the DHS foster care Level 2 Determination of Care at the time the Adoption Subsidy Application was filed.

It should be noted that Child A was not 3 years or greater at the time of his adoption. He was born October 29, 2006, and the Order Placing Child for Adoption was filed on August 3, 2009, and finalized on September 9, 2009. He was not being adopted by the parents of his or her previously adopted sibling in c-7 and c-8. He did not meet the criteria in C-1 through C-8.

In the present case, the petitioner's request for an Adoption Support Subsidy was prior to the Petition for Adoption. The department denied the petitioner's request because the petitioner's child could not be certified for a Support Subsidy. The department specifically found that the petitioner's child did not meet certification conditions in c-1 through c-8 pursuant to department policy. The petitioner's child failed to meet any of these eight criteria. Therefore, the child could not be certified for a Support Subsidy and the petitioner was not eligible for an Adoption Support Subsidy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department was correct in denying the petitioner's request for an Adoption Support Subsidy based upon the fact that the child did not meet the certification requirements.

Accordingly, the department's decision is AFFIRMED.

_____/s/_____

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

Date Signed: February 16, 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.

LYL/alc

cc:

