

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.: 2010-10811
Issue No.: 6004
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: February 18, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Rhonda P. Craig

RECOMMENDED 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 January 14, 2010, and Petitioners' representative appeared and testified.

ISSUE

Did the Department of Human Services (department) properly deny Petitioners' request for continued payment for out-of-state placement in a residential facility under the Adoption Medical Subsidy Program?

FINDINGS OF FACT

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

1. Petitioners' child ([REDACTED]) was adopted on [REDACTED]
2. The child has been diagnosed with bipolar disorder, identity disorder, borderline personality disorder of adolescence and reactive attachment disorder with a Global Assessment Functioning score of 30-35 to 65. The child evidences a high level of aggression (verbal and physical) when faced with any perceived conflict with peers and staff and continually verbalizes unsafe ultimatums (refusals, demands and outbursts).
3. The child is eligible for a medical subsidy and the department has found the child eligible for residential care. The department has made payments for the residential care of the child.

4. The child was placed in the [REDACTED] (hereinafter referred to as [REDACTED]), a residential facility for children in [REDACTED], on [REDACTED].
5. The department paid for the care at [REDACTED] beginning [REDACTED].
6. On or around August 31, 2009, the department indicated that they would not continue to make payment beyond September 5, 2009, for the care of the child at the [REDACTED] facility. The department indicated that payment for residential care could only be made if the child was in a Michigan facility and recommended placement at the [REDACTED] residential facility in [REDACTED], Michigan.
7. Petitioners requested that the department continue to pay for the child's treatment at [REDACTED].
8. On September 2, 2009, the department denied the request.
9. Petitioners requested a hearing contesting the denial of payment for continued treatment at the [REDACTED] residential facility.

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. AAM 640, p. 1.

The Adoption Medical Subsidy program is intended to assist the adoptive parents with the cost of treating emotional or mental conditions that pre-existed the adoption of a child who had been in foster care in Michigan.

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.

Short-term treatment outside the family home can be covered as a last resort when treatment goals are not being achieved in the family setting. Adoption Medical Subsidy policy limits the amount of coverage to six months. Approvals will not be granted for periods of more than six months and may be granted for lesser periods of time.

The goals of placement outside the family home are to address the child's emotional and behavioral problems, strengthen the adoptive family, and to facilitate the reunification of the child with his/her adoptive family. In order to meet these goals, it is required that adoptive parents be actively engaged in the treatment of their child. Parental involvement may include participation in family therapy, family weekends, and home visits. AAM 640, p. 7.

Adoption Medical Subsidy payment cannot be made for placements outside the family home in excess of six months unless an extension is granted by the Adoption Subsidy Program Office. Extensions are limited to situations where the child's emotional problems are so severe that placement outside the family home cannot be concluded in less than six months.

Before requesting an extension, the local department worker or the supervising agency must determine that the:

- Adoptive parents participated in the treatment of the child as required by the treatment plan, and the
- Adoptive relationship is still viable.

AAM 640, p. 11.

Pursuant to Public Act 248 of 2008, Section 513

“.....

- (2) The department shall not expend money appropriated in part 1 to pay for the direct placement by the department of a child in an out-of-state facility unless all of the following conditions are met:
 - (a) There is no appropriate placement available in this state, and an out-of-state placement exists within 100 miles of the child's home.
 - (b) The out-of-state facility meets all of the licensing standards of this state for a comparable facility.
 - (c) The out-of-state facility meets all of the applicable licensing standards of the state in which it is located.
 - (d) The department has done an on-site visit to the out-of-state facility, reviewed the facility records, and reviewed licensing records and reports on the facility and believes that the facility is an appropriate placement for the child.”

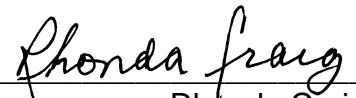
In the present case, the department was correct in denying continued payment for residential care in the out-of-state facility. Petitioners' child resides in a residential care facility in [REDACTED]. Petitioners live in [REDACTED], and [REDACTED]. Both parents live more than 100 miles from the facility. The department also established that there was an appropriate placement for the child within the State of Michigan. Therefore, according to the aforementioned Section (a) of Public Act 248 of 2008, the statutory requirements for payment of out-of-state care are not met. It should be noted that the child's clinical psychologist testified that the child should maintain contact with the father and be placed a center near the father to facilitate an increase in visitation. He further stated that the child would benefit from a community-based center, like [REDACTED], rather than a facility that is not community-based, like [REDACTED]. The psychologist indicated that there were appropriate facilities in Michigan including [REDACTED] that would be appropriate for the child.

Petitioners argue that the placement of their child at the [REDACTED] in [REDACTED] is illegal. They cite MCL 712A.2(b), MCL 712A.14, MCL 712A.15 and the Juvenile Justice Delinquency and Prevention Act of 1974, Title 37. These citations do not reference the facts in this case. The citations are concerning children in juvenile detention facilities where the children have been found to have committed civil or criminal infractions and may or may not have been considered delinquent. The child

here is not considered delinquent and the placement is not a mandatory or involuntary placement as a result of civil infractions or criminal proceedings. Petitioners further argue that the program at the [REDACTED] or any center in Michigan is not sufficient to meet the child's special needs. They indicate that [REDACTED] has specialized treatment that will address the unique needs of their child. It is acknowledged that the child has severe and extreme emotional disabilities which prevent her from returning to a family setting and which require intense therapeutic rehabilitation. However, the above-cited statute is clear regarding the payment for out-of-state placement of children in residential care. The [REDACTED] facility is more than 100 miles from either parent and there are facilities in Michigan that are appropriate for the child. The department's decision in denying payment for care of the child in the [REDACTED] facility is in accordance with departmental policy and state law.

RECOMMENDED DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department is correct in denying Petitioners' request for continued payment under the Medical Subsidy program for out-of-state residential treatment for their child. Therefore, IT IS RECOMMENDED THAT the department's denial of payment be AFFIRMED.



Rhonda Craig
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 11, 2010

Date Mailed: August 18, 2010

NOTICE: If a party chooses to file Exceptions to this Recommended Hearing Decision, the Exceptions must be filed within ten (10) days after the Recommended Hearing Decision is issued and entered. All Exceptions must be filed for consideration by the Director of the Department of Human Services, mailed to the Office of Legal Affairs Lansing, Suite 715 Grand Tower, P.O. Box 30037, Lansing, MI 48909, and served on all parties to the proceeding and to the Administrative Law Judge.

RPC/pf

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