

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2010-11687
Issue No: 6004
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 10, 2010
Lansing AH County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 claimant's request for a hearing. After due notice, an in-person hearing was held on on June 10, 2010, in Lansing, Michigan.

ISSUE

Did the DHS properly deny claimant's Adoption Support Subsidy and Nonrecurring Adoption Expenses Application?

FINDINGS OF FACT

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

- (1) Claimant is the adoptive parent of a child whose date of birth is April 12, 2007 [herein after [REDACTED]].
- (2) On November 7, 2007, [REDACTED], entered foster care and was placed with claimant.
- (3) On May 27, 2008, [REDACTED], became a permanent "ward."

- (4) [REDACTED] received the standard foster care payment rate while in foster care.
- (5) On March 9, 2009, claimant applied for the Adoption Support Subsidy/Nonrecurring Adoption Expenses programs with the Michigan DHS. (Exhibit B.)
- (6) On March 31, 2009, the Petition for Adoption was filed. (Exhibit D.)
- (7) On March 31, 2009, the Court signed the Order Placement Child Consent for [REDACTED] (Exhibit E.)
- (8) On April 21, 2009, the Court signed the Order of Adoption. (Exhibit F.)
- (9) On April 24, 2009, the DHS denied claimant's applications for the Adoption Subsidy/Nonrecurring Adoption Expense Application. (Exhibit C.)
- (10) On June 29, 2009, claimant filed an appeal.

CONCLUSIONS OF LAW

The Adoption Subsidy program is established by MCL 400.115, *et seq.*, and is administered by the Department of Human Services (DHS or department) 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).

PROGRAM OVERVIEW

CFS 100 2/01/2008

The State of Michigan administers three adoption subsidy programs:

- . Adoption Support Subsidy.
- . Adoption Medical Subsidy.
- . 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. The purpose of the

nonrecurring adoption expense reimbursement program is to assist in paying the 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 adoptive parent(s).

ADOPTION SUPPORT SUBSIDY

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 of 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.

Reimbursement

The adoption subsidy program may also reimburse up to \$2,000 of **nonrecurring expenses** related specifically to the adoption. Eligibility for reimbursement of these expenses is determined prior to adoption finalization.

ADOPTION MEDICAL SUBSIDY

The **adoption medical subsidy** is intended to assist in paying for medical costs for adopted children who have an identified physical, mental, or emotional condition which existed, of the cause of which existed, before the adoption petition was filed. It does not cover routine expenses or typical childhood illnesses. Eligibility may be determined before and/or after the adoption.

Program Administration

The adoption subsidy program office administers these programs, and is located in the central office of DHS. The department makes all decisions regarding eligibility for subsidy payment and nonrecurring expenses. CFS 100, 2/01/08.

The programs at issue in this case herein have to do with the Adoption Support Subsidy and the Nonrecurring Adoption Expenses Reimbursement Programs. The application for both programs is contained on one form. Claimant applied for both of these programs.

Applicable policy is found in CFS 200 and CFS 300. At the time claimant applied, the policy was titled Child and Family Services - CFS, subsequently changed by DHS to be identified as AAM policy and procedure.

CFS 200 lays out certain eligibility factors for the Adoption Subsidy Program. Specific to the nonrecurring adoption expenses eligibility program, CFS 300 lays out eligibility factors. What follows is the policy which identifies both of these programs. However, it should be noted, that the department testified that the requirements are identical. However, as they are laid out in policy, they are numbered and/or lettered differently and in some cases a dingbat rather than a number or letter. These are the primary differences between CFS 200 and CFS 300.

The support eligibility policy found in CFS 200 applicable to the case herein, states in part:

SUPPORT SUBSIDY ELIGIBILITY

INTRODUCTION

Adoption support subsidy eligibility is based on five specific criteria. Michigan Law (MCL 400.115f-g) provides the basis for this policy.

After eligibility for Michigan's Adoption Subsidy program has been determined, federal policy is applied to determine the funding source of the adoption support subsidy and whether Medicaid will

be provided through the adoption subsidy program. Funding determination is based on the state's federally-approved Title IV-E plan.

Funding determination details are in CFS 220, Support Subsidy Funding Source Determination.

Adoption support subsidy-related Medicaid eligibility details are in CFS 230, Medicaid Eligibility.

Who is Eligible?

Michigan's adoption support subsidy eligibility criteria include:

- . The child's identification as a child with special needs.
- . Certification of the child's adoption support subsidy eligibility by the adoption subsidy program office before the petition for adoption is filed with the court.
- . A written adoption assistance agreement between the parent(s) and the department specifying the amount of adoption support subsidy to be paid, **signed** by the parent(s) and DHS before the finalization of the adoption.

Note: It is required that the agreement be signed before the petition for adoption is filed for the adoptive family to begin receiving adoption support subsidy payments effective on the adoption placement date.

ELIGIBILITY FACTOR DETAILS

The following policies detail the criteria for each eligibility factor.

Child with Special Needs

At the time of eligibility determination, the child must be a child with special needs. This means that the child must meet each factor in 1 - 3 as follows:

1. The child is **under age 18 years**.
2. The court has determined that the child cannot or should not be returned to the home of the child's parents by one of the following specific judicial determinations:

- . Termination under MCL 712A.19b for a child under court jurisdiction pursuant to MCL 712A.2(b).
 - . Release and termination under MCL 710.29 for a child under court jurisdiction pursuant to MCL 712A.2(b).
 - . Release and termination under MCL 710.29 and the child is eligible for and receiving SSI.
3. The child has **one** of the following **specific factors or conditions**:
- . The child is SSI eligible as determined by the Social Security Administration.
 - . The child has a special need for medical, mental health, or rehabilitative care that equals or exceeds the DHS foster care level 2 determination of care (DOC), and is:
 - .. Documented by the DHS-approved DHS-470, 470A, or 1945 (RFF 470, 470A, 1945); and
 - .. Supported by the current DHS updated service plan (USP); and
 - .. being paid through the DHS foster care payment system.
 - . The child is age 3 years or greater.
 - . the child has been in foster care for at least 2 years since the termination of parental rights and efforts to locate a family willing to adopt without subsidy have failed.
 - . The parental rights for the child were terminated prior 8/1/02 and the child has lived with the prospective adoptive parent for 12 months or more.
 - . The child is being adopted by a relative (CFF 721, Foster Care).

- 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 qualifies for adoption support subsidy through this program. CFS 200, 2/01/2008.

The CFS 300 which addresses the Nonrecurring Adoption Expenses (NRE) eligibility lays out the eligibility criteria period applicable to the case herein, this policy states:

INTRODUCTION

Nonrecurring Adoption Expenses (NRE) program eligibility is based on specific criteria. Michigan law (MCL 400.115f, I) and the state's federally-approved Title IV-E plan provide the basis of this policy. The criteria includes:

- The child's identification as a child with special needs by the Adoption Subsidy Program Office.
- The child having one of four Title IV-E funding special factors.
- A written agreement between the parent(s) and the Agency setting forth the nature of the payment and the claim process, **signed by both parties prior to the final Order of Adoption date.**

After eligibility is determined, the adoption subsidy office will determine allowable expenses claimed by the adoptive parent(s) or a third party that incurred expenses on behalf of the adoptive parent(s). The details of allowable expenses and the claim for reimbursement are in CFS 310, Nonrecurring Adoption Expenses Claim/Reimbursement.

Who is Eligible?

A child may be determined eligible for the Nonrecurring Adoption Expenses Program if **all** of the following are met:

Child with Special Needs

- The child must be identified as a "child with special needs" at the time of eligibility determination. This requires:

- a. The child is **under age 18 years**, and
- b. The court has determined that the child cannot or should not be returned to the home of the child's parents by one of the following specific judicial determinations:
 1. Termination under MCL 712A.19b for a child under court jurisdiction pursuant to MCL 712A.2(b).
 2. Release and termination under MCL 710.29 for a child under court jurisdiction pursuant to MCL 712A.2(b).
 3. Release and termination under MCL 710.29 and the child is eligible for and receiving SSI.
- c. The child has **one** of the following **specific factors or conditions**:
 - c-1. the child is SSI eligible as determined by the Social Security Administration.
 - c-2. The child has a special need for medical, mental health, or rehabilitative care that equals or exceeds the DHS foster care Level 2 Determination of Care (DOC), **and**:
 - . Is documented by the DHS-approved DHS-470, 470A, or 1945 (RFF 470, 470A, 1945), and
 - . Is supported by the current DHS updated service plan (USP), and
 - . Is being paid through the DHS foster care payment system.
 - c-3. The child is age three (3) years or greater.
 - c-4. The child has been in foster care for at least two (2) years since the termination of

parental rights and efforts to locate a family willing to adopt without subsidy have failed.

- c-5. The parental rights for the child were terminated prior to 8/1/02 and the child has lived with the prospective adoptive parent for 12 months or more.
 - c-6. The child is being adopted by a relative (CFF 721, Foster Care).
 - c-7. The child is being adopted by the parents of his/her previously adopted sibling.
 - c-8. The child is a member of a sibling group being adopted together and at least one sibling group member qualifies for adoption support subsidy through this program.
- . There has been a request for nonrecurring adoption expenses from the prospective adoptive parents. The request is located on:
 - .. DHS-4081, Adoptive Parents Subsidy Intent Statement (RFF 4081), Section 1.
 - .. DHS-4814, Nonrecurring Adoption Expenses Application/Agreement for a Child Without Support Subsidy (RFF 4814).

Title IV-E Special Factors

- . At least **one** of the following Title IV-E special factors/conditions exists for the child:
 - .. The child is age three (3) years or greater.
 - .. The child is a member of a minority or ethnic group.
 - .. The child is a member of a sibling group (two or more siblings) being adopted together at the same time.
 - .. The child has a documented special need for medical, mental health, or rehabilitative care.

The adoption subsidy program office will determine the presence of a special factor or condition based on the information provided by the adoption worker and/or the SWSS FAJ database.

A child certified eligible for a Title IV-E funded adoption support subsidy, and who also has a qualifying Title IV-E special factor or condition as listed above, will meet the NRE eligibility criteria and will be certified eligible for the NRE Program at the time of the adoption support subsidy certification.

A child certified eligible for a Non-Title IV-E funded adoption support subsidy, and who also has a qualifying Title IV-E special factor or condition as listed above, will meet the NRE eligibility criteria and will be certified eligible for the NRE Program at the time of the adoption support subsidy certification.

A child being adopted without an adoption support subsidy may meet the NRE eligibility criteria if all eligibility criteria is met and application is made. See Application. CFS 300, 2/01/2008.

Unrefuted evidence on the record at the evidentiary administrative hearing is that [REDACTED]. does meet the eligibility factors under CFS 200 and CFS 300 for both programs as required under 1 and 2 as identified in CFS 200 and the analogous Sections for CFS 300. However, unrefuted evidence on the record at the evidentiary hearing is that [REDACTED]. does not meet any one of the requirements in the remaining section, identified as CFS 200 in Section 3 and CFS 300 as criteria c1 through c8. As such, [REDACTED] does not meet any of the eligibility criteria for these programs.

After a careful review of the substantial and credible evidence on the whole record, this ALJ finds that the department correctly followed its policy and procedure and thus, the department's denial must be upheld.

For these reasons, and for the reasons stated above, the department's denial is UPHELD.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department's actions were correct.

Accordingly, the department's denial is hereby UPHELD.

/S/ _____
Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 28, 2010

Date Mailed: July 12, 2010

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.

JGS/tg

cc:

