

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: 201051257
Issue No: 6004
Case No: [REDACTED]
Hearing Date: December 15, 2010
Record Closed Date: February 1, 2011
Lansing AH

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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 December 15, 2010. The record closed on February 1, 2011. Petitioners were represented at the administrative hearing by [REDACTED].

ISSUE

Did the Department of Human Services (DHS) properly process Petitioners's Adoption Support Subsidy applications as required under Title IV-E?

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 adopted three severely handicapped children from a sibling group pursuant to a Final Order of Adoption entered by the [REDACTED]. Exhibit A.
2. Dates of birth for the three children are as follows: [REDACTED]; [REDACTED].
3. The department received Adoption Support Subsidy/Nonrecurring Adoption Expenses Applications (DHS-1341) [hereinafter adoption applications] for two children on [REDACTED] and for the third child on [REDACTED]. Exhibit B.

4. Unrefuted evidence on the record is that the three children meet the Adoption Subsidy criteria.
5. At the time of the Adoption Support Subsidy eligibility determinations, the children were receiving standard foster determination of care (DOC) rates at [REDACTED] each. Exhibit C.
6. An Adoption Support Subsidy Agreement for each child was signed by Petitioners on [REDACTED] [REDACTED] and by the department on [REDACTED]. The subsidy amount entered on the document was set at [REDACTED] per day, per child. Exhibit D.
7. The DHS did not issue a Notice of Case Action pursuant to BAM 600. Adoption Subsidy payments are issued monthly and are continuing. Jurisdiction is proper.
8. The DHS caseworkers failed to disclose some of the medical impairments and/or failed to disclose the severity regarding the numerous medical impairments, including fetal alcohol syndrome, substance abuse by the biological mother, RAD, mental illnesses found in the Diagnostic and Statistical Manual—IV. The DHS approved a medical subsidy for the child(ren) for the following disorders: oppositional defiant disorder, reactive attachment disorder, attention deficit disorder, post-traumatic stress disorder.
9. One of the caseworkers failed to disclose to Petitioners that the prior foster care parent only took in “special needs” children. The prior foster care parent was the mother of the caseworker. In 2006, the file reflects a referral to the “Early On” program for handicapped children.
10. The department failed to follow its procedure manual requiring that the children be assessed for certain medical problems.
11. In 2008, the Michigan DHS Adoption Subsidy Program was cited by the Department of Health and Human Services (DHHS) for numerous potential violations in its Title IVE adoption program policy.
12. The facts in this case show numerous violations of the DHS policy in effect at that time and numerous violations of federal law subsequently revised by the department.
13. Petitioners have spent an extraordinary amount of money for treatments for their children including residential programs totaling well over [REDACTED]. The children see neurologists and numerous professionals fully corroborating the many medical issues including rages for nine continuous hours at a time; alarms on bedroom doors.

CONCLUSIONS OF LAW

Policy in effect at the time of Petitioners's adoption and/or time at which Petitioners would have filed an application is found in what was then titled DHS POLICY-CFA. This policy states in part:

PROGRAM OVERVIEW

Purpose

The State of Michigan administers three adoption subsidy programs: Adoption Support Subsidy, Adoption Medical Subsidy, and the Nonrecurring Adoption Expenses Reimbursement program. The purpose of support and medical subsidies is to remove financial barriers to the adoption of Michigan foster children with special needs. 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). CFA, 740.

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. CFA, 740.

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 FIA, 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. CFA, 740.

The Adoption Subsidy Program office administers these programs, and is located in the Central Office of the Family Independence Agency (FIA). The Agency makes all decisions regarding eligibility for subsidy payment and nonrecurring expenses. CFA, 740.

Legal requirements in effect at that time are found primarily in CFA 741 which states:

LEGAL REQUIREMENTS

The Adoption Subsidy program is implemented under the authority of the following state and federal laws and regulations:

280 P.A. 1939, Section 115f-115m,r,& s (MCLA 400.115f), also known as the Social Welfare Act, as amended by:

292 P.A. 1980 effective 11/18/80 established the adoption subsidy program, set eligibility, and pay requirements

356 P.A. 1990 effective 12/26/90

40 P.A. 1992 effective 6/28/92

238 P.A. 1994 effective 6/5/94

207 P.A. 1994 effective 1/1/95

648 P.A. 2002 effective 12/23/02

Public Law 96-272, also known as the Adoption Assistance and Child Welfare Act of 1980 [42 U.S. C. 620 - 35, & 670-741 et. seq.] amends the Social Security Act and provides the federal legal base for placement services to children. The intent of this law is to strengthen permanency planning for children within each of the states. The law also established federal funding for a portion of the costs of adoption subsidy payments for eligible children in the child welfare system.

Public Law 105-89, known as the Adoption and Safe Families Act of 1997, amends Titles IV-B and IV-E of the Social Security Act [42 U. S. C. 620-635 and 670-679]. The law establishes that safety, permanency, and well being are the goals for children in the child welfare system. The Act includes:

Requirements that states provide health care coverage for children with medical or rehabilitative needs receiving an adoption support subsidy not funded by Title IV-E.

Authorization of continued eligibility for Title IVE adoption subsidy payments when the adoption disrupts or the parents die.

45 CFR 1355 and 1356.40.

Title IV-E State plan

Public Law 99-514, also known as the Tax Reform Act of 1986

Public Law 103.432, Section 474 of the Title IV-E Adoption Assistance Program of the Social Security Act

Public Law 103.66

CFA, 741.

See also Section 473 of the Social Security Act; 45 CFR 1356; Child Welfare Policy Manual.

Adoption Support Subsidies are funded through state and federal funds including Title IVE and TANF (Temporary Assistant for Needy Families). Funding policy and procedure is found primarily in what was then identified under DHS Policy and Procedure as CFA, 742.

With regards to administrative hearings, policy in effect at the time of Petitioners' adoption is found primarily in CFA, 744. This relevant policy states in part:

ADMINISTRATIVE HEARINGS

Issues Subject to Administrative Hearings

The FIA has an administrative hearing process to provide for the right to contest an Agency decision or case action when a client believes the decision is contrary to law or FIA policy. The issues of eligibility, computation of subsidy rates, case closure, and/or reduction of benefits are issues subject to administrative hearings. The adoptive parent or guardian has the burden of proof in an adoption subsidy hearing.

Support subsidy rates are agreed to by parents or legal guardians by the act of signing the Adoption Support Subsidy Agreement (FIA 4112 or FIA 4113). Rates are not negotiable and therefore do not qualify for administrative hearings. It is outside the authority of Administrative Hearings (AH) to renegotiate support subsidy rates. CFA 744.

If hearing requests are filed in the local FIA office they should be date stamped and immediately forwarded to the Adoption Subsidy Hearings Coordinator at:

Grand Tower Building
235 S. Grand Ave., Ste. 413
Lansing, MI 48909

CFA 744.

In the case herein, the funding for the three children are under the Title IVE.

Both the legal issues and the facts in this case were varied and factually intensive. Petitioners make a number of arguments, used in law and fact. See Petitioners's Hearing Summary I-XVIII. The bottom line is that Petitioners argue that the children are eligible for and should have been eligible for a higher DOC. The DHS argues that the policy in effect at the time of Petitioners's adoptions neither allows for a subsequent review of the DOC nor allows an Administrative Law Judge to review the same.

Unrefuted evidence on the record is that the DHS policy and procedure at the time the Petitioners's adoptions were not in conformance with federal law, statute, case law, and federal policy. Public Law 103.432, Sections 473-474 of the Social Security Act; 45 CFR 1356; Child Welfare Policy Manual. As noted, Michigan subsequently changed its Title IVE Adoption Subsidy policy to comply with federal regulations and allows for ongoing rate negotiation as well as review at administrative hearings.

Thus, the issue becomes whether this Administrative Law Judge has jurisdiction to rule on the DOC in a factual situation that occurred prior to the policy changes. Pursuant to the Michigan DHS Delegation of Hearing Authority Letter, the jurisdiction of an Administrative Law Judge portion states in part:

...Administrative hearing officers have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or overrule or make exceptions to Department Policy...signed by Ismeal Ahmed, Director, 6/25/08.

However, the Delegation of Hearing Authority also states that:

...A presiding Administrative Hearings officer shall make a Recommended Decision to the Policy Hearing Authority in those cases in which the policy appears to be silent on the issue before the Administrative Hearings officer and those cases in which the presiding Administrative Hearings officer believes Department policy to be out of conformity with case law, statute, or promulgated regulations...

It is under this cited authority that the undersigned Administrative Law Judge is issuing the Recommended Decision herein.

This Administrative Law Judge wishes to note that the situation herein is not simply one where the department subsequently changed its policy. It is unrefuted that the policy was not in conformance with federal law and regulations. Thus, the policy which was in effect was not valid; it is difficult to assess a policy the department stipulates was illegal.

Nor is it justifiable that many of the caseworkers involved in such cases were too overburdened with their caseloads to adequately assess DOC rates. This was partially litigated in Dwayne B v Granholm et al Consent Decree that triggered new DOC program policy effective October 1, 2009.

After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge recommends that the Policy Hearing Authority order the Adoption Subsidy Office to renegotiate rates with Petitioners as required under DHS policy and procedure in effect today and as in conformance with federal statute and regulations.

RECOMMENDED DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, recommends that the DHS Policy Hearing Authority order the department to renegotiate the Adoption Subsidy rates with the Petitioners under the current DHS Adoption Subsidy policy and procedure that is in compliance with federal law, statute and regulations. The department shall have 60 days to meet with Petitioners to renegotiate the DOC for each child and issue a new Adoption Support Subsidy Agreement for each child. Retroactivity shall be allowed as permitted under current DHS policy and procedure.

After renegotiation and updated Adoption Support Agreements, Petitioners shall retain a right to a hearing for 90 days from the date of the new agreements with regards to the dictates of this Recommended Decision and Order.

/s/

Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: February 28, 2011

Date Mailed: February 28, 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.

JGS/db

cc:



