

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-29368
Issue No.: 6004
Case No.: [REDACTED]
Hearing Date: June 6, 2011
DHS County: Wayne (82-69)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Petitioners' request for a hearing. After due notice, a hearing was held in Detroit, Michigan, on Monday, June 6, 2011. The Petitioners appeared and testified. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

ISSUE

1. Whether the Department made the proper Determination of Care ("DOC") for the Petitioners' two adopted children?
2. Whether the Department properly determined the effective date of payment for the Petitioners' adoption assistance?

FINDINGS OF FACT

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

1. As early as January 2010, the Department was in communication with the Petitioners' Adoption Agency ("Agency 2") regarding the adoption of two brothers, D.O.B. [REDACTED]. (Exhibit 2)
2. Prior to placement, the brothers resided in the home of their biological grandparents who were unable to adopt.

3. On February 22, 2010, the Department received an Adoption Assistance and Medical Subsidy Application (“Application”) from an Adoption Agency (“Agency 1”) for two brothers. (Exhibits 19, 20)
4. The Application did not contain the Petition/Removal Order, criminal background checks, or an updated service plan.
5. On April 27, 2010, the two brothers were placed in the Petitioners’ home. (Exhibit 3)
6. On May 13, 2010, the Department sent the Application back to Agency 1 because it was incomplete. (Exhibit 5)
7. On July 20, 2010, the Department received the February 22nd Application along with an Adoption Supervisory Report from Agency 2. (Exhibits, 4, 19, 20)
8. The July Application contained a projected DOC packet with supporting documentation. (Exhibit 6)
9. An Adoption Subsidy Program Change Request was not submitted by Agency 2. (Exhibit 18)
10. On September 10, 2010, the Department sent the Application back to Agency 1 (as opposed to Agency 2) stating it was incomplete noting the need for a current DOC Assessment, current professional documentation that supports the DOC, and documentation regarding the summer reading program. (Exhibit 7)
11. On November 22, 2010, both brothers scored a 65 on their Assessment for DOC warranting a level 2 DOC. (Exhibit 9)
12. On December 15, 2010, Agency 2 submitted another Application.
13. On January 25, 2011, the Department contacted Agency 2 questioning the DOC. (Exhibit 12)
14. On January 27, 2011, a phone conference between Agency 2 and the Department resulted in the reduction in the DOC.
15. On January 30, 2011, the Petitioners and Agency 2 signed a new DOC scoring both boys at a 50. (Exhibit 14)

16. On February 1, 2011, the Petitioners signed an Adoption Assistance Agreement and Adoption Medical Subsidy Agreement for each of the boys. (Exhibit 15)
17. On February 8, 2011, the Department signed the Adoption Assistance Agreement. (Exhibit 15)
18. On February 24, 2011, an Order of Adoption was entered for both children. (Exhibit 16)
19. On March 18, 2011, the Department notified the Petitioners that an Adoption Support Subsidy for both children at the rate of \$19.83 per day was opened with an effective date of February 8, 2011. (Exhibit 17)
20. On March 30, 2010, the Department received the Petitioners' written request for hearing seeking retroactive adoption assistance payments from the date of placement as well as a review of the DOC for each child. (Claimant Exhibits A and B)

CONCLUSIONS OF LAW

The Adoption Subsidy program is established by MCL 400.115 *et seq.* and is administered by the Department, formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq.* Department policies regarding adoption subsidy are found in the Adoption Subsidy Manual ("AAM"). The federal law upon which Michigan law is based is Title IV-E of the Social Security Act, Section 473(c).

Administrative hearings may address issues regarding eligibility denials, notice of the subsidy program to prospective adoptive families, failure of the Department to complete required paperwork prior to the finalization of the adoption, subsidy rates, case closure, and/or reduction of benefits. AAM 700. The adoptive parent or guardian has the burden of proof in an adoption subsidy hearing. AAM 700. After adoptive placement by family court order, the adoptive parent or legal guardian has the right to request a hearing to appeal decisions they believe are contrary to law of Department policy. AAM 700. For all other denials and other appeals based on Departmental action after placement for adoption, an applicant has the right to request a hearing, in writing, within 90 calendar days. AAM 700.

The State of Michigan administers three adoption subsidy programs; Adoption Support Subsidy, Adoption Medical Subsidy, and Nonrecurring Adoption Expenses Reimbursement. AAM 100. The purpose of support and medical subsidies is to remove financial barriers to the adoption of Michigan foster children with special needs. AAM 100; MCL 400.115f. Based on each individual child's situation and needs, one or

more of the subsidy benefits may be available to support the adoption. AAM 100. Subsidy is available without respect to the income of the adoptive parent(s). AAM 100; MCL 400.115g(2). The adoption support subsidy is intended to assist with the payment of expenses of caring for and raising the child and is not intended to meet all of the costs of raising the child. AAM 100. Eligibility must be determined and a negotiated adoption subsidy agreement must be signed prior to the final order of adoption. AAM 100. After adoptive placement, adoptive parents assume financial and decision-making responsibility and authority for their child. AAM 100.

At the time of eligibility determination, the child must be a "child with special needs" to be certified for an Adoption Support Subsidy. AAM 200; MCL 400.115g. Certification means a determination of eligibility by the Department that an adoptee is eligible for support subsidy, medical subsidy, or both. MCL 400.115f(f). After a child is determined eligible for Adoption Support Subsidy as a special needs child, an Adoption Support Subsidy payment rate is determined. AAM 100. The rate is either the foster care rate the child received in foster care at the time of the rate determination, or, where a child is eligible but not receiving a foster care payment, the foster care payment the child would have received if placed in a licensed foster family home at the time of the rate determination. AAM 100. Both determinations include any DOC rate that is approved for the child. AAM 100. The Department must approve the DOC rate. AAM 100. The agreed upon rate is documented on the Adoption Assistance Agreement, DHS-4113. AAM 100. This Agreement must be signed by the adoptive parent(s) and the Department's designee prior to the finalization of the adoption. AAM 100; AAM 200. DOC rates are set prior to finalization of the adoption and are not subject to increases after the adoption finalization. AAM 210.

State law requires that the Department enter into Adoption Assistance Agreements, Nonrecurring Adoption Expenses Agreements, and Adoption Medical Subsidy Agreements with adopting parent(s) as a condition of eligibility for Adoption Support Subsidy, Nonrecurring Adoption Expenses, adoption subsidy-related Medicaid, and Adoption Medical Subsidy. AAM 500. Support subsidy rates are negotiated, agreed to, and signed by the adoptive parent(s) or legal guardians by the act of signing the Adoption Assistance Agreement (DHS-4113 or DHS 4113G). AAM 700. Adoption subsidy agreements include the agreement provisions and are legally binding arrangements between the Department and the adoptive parent(s). AAM 500. If the Adoption Assistance Agreement is signed prior to the date of the adoptive placement, adoption support subsidy payment is effective on the date of adoptive placement, or the date of the Order Placing Child After Consent ("PCA 320"), whichever is later. AAM 200; AAM 500. If the Adoption Assistance Agreement is signed after the date of the PCA 320 but before the final order of adoption, adoption support subsidy payment is effective on the date the agreement is signed by the Department director/designee. AAM 200; AAM 500.

In this case, the Petitioners seek retroactive adoption assistance payments from April 26, 2010, and an increase in the DOC from a Level 1 to a Level 2 for their two sons. As detailed in the Findings of Fact, three adoption subsidy applications were received by the Department. The first application, which was filed prior to child placement, was returned as incomplete because the removal petition and order were not submitted nor was there a criminal background check or an updated service plan. During this time (and prior to), the Department was in communication with the Petitioners' Adoption Agency, Agency 2. There was, however, some confusion with the second application, received in July 2010, because it contained the name of another Adoption Agency, Agency 1. In situations where one Adoption Agency takes over for another, such as the case here, an Adoption Subsidy Program Change Request should be submitted. This was not done. In September 2010, the second application was returned as incomplete to Agency 1.

In November 2010, assessments for the DOC for each child were completed and signed by the Petitioners and the Adoption Agency. Each child's DOC was a Level 2. In December 2010, a third application was submitted. In January 2011, the Department communicated with the Agency 2 that the Level 2 DOC, based on the records, was not warranted. Instead, the Department asserted that each child's DOC should be a Level 1. On February 1, 2011, the Petitioners and the Agency 2 signed the Adoption Assistance Agreements reflecting a Level 1 DOC for each child. The Petitioners testified that the reason they signed the Adoption Assistance Agreements was because the process had been taking so long and they wanted to finalize the adoption. On February 8, 2011, the Department's director/designee signed the Agreements. The Orders of Adoption were entered on February 24, 2011. Pursuant to AAM 200 and AAM 500, because the adoption assistance agreement was signed after the date of placement but before the final order of adoption, the effective date of adoption support subsidy payment contained in the Adoption Assistance Agreements is February 8, 2011.

The Petitioners seek the age-appropriate rate of \$14.24 per diem per child from the time of placement [REDACTED], (Exhibit 3) through February 7, 2011. The fact that the children are of special needs is not disputed. During the period at issue ([REDACTED] through February 7th), the children were not considered to be in foster care as defined by MCL 400.115f(l). As stated above, the adoptive parents assume financial and decision-making responsibility and authority for their child after adoptive placement. In order to receive support subsidy, the Department has to certify that a child is eligible pursuant to MCL 400.115f(f). In this case, the adoption support subsidy was not certified until February 8, 2011, when the Department's director/designee signed the Adoption Assistance Agreements. Until the Department certifies eligibility, payment is

not required. In light of the foregoing, the Department's determination that the effective date of payment for Adoption Support Subsidy was February 8, 2011, is AFFIRMED.

Lastly, the Petitioners disagree with the Level 2 DOC for each child. During the hearing, the Petitioners acknowledged that they signed the Adoption Assistance Agreement, which contained a Level 1 DOC, because they wanted to finalize the adoption. As stated above, DOC rates are not subject to increases after the adoption finalization. Recognizing that challenging the DOC rates would have inevitably delayed the adoption finalization, the Petitioners, by signing the Adoption Assistance Agreement, are bound by its terms. The Petitioners are no longer able to seek an increase. Ultimately, after review of the entire record, to include the medical records, it is found the Department's DOC rates for each child are AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department established it acted in accordance with Department policy when it determined the Adoption Support Subsidy effective date was February 8, 2011. In addition, the Department established it acted in accordance with Department policy when it made the DOC determinations for each child.



Colleen M. Mamelka

Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: June 23, 2011

Date Mailed: June 27, 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.

CMM/pf

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