

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

IN THE MATTER OF:

[REDACTED] Petitioner

Reg. No: 2011-3194
Issue No: 6004
Case No: [REDACTED]
Hearing Date:
September 1, 2011
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, a telephone hearing was held September 1, 2011. Petitioner appeared and testified.

ISSUE

Whether the Department of Human Services (the department) was acting in compliance with department policy when it proposed to cancel Child A's Adoption Support Subsidy and Medical Subsidy eligibility and recoup issued Adoption Support Subsidy benefits from January 1, 2010 - June 30, 2010?

FINDINGS OF FACT

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

- (1) Child A ([REDACTED]) was an Adoption Support Subsidy recipient.
- (2) Child A turned 18 and applied for an extension of his Adoption Support subsidy because he had not finished high school.
- (3) The department approved Child A for a state funded extension that included both and Adoption support subsidy and medical subsidy.
- (4) Child A was expected to graduate from high [REDACTED] (State's Exhibit it A)

- (5) On October 9, 2009, the petitioner, the adoptive father, signed the extension of Adoption Support Subsidy and Medical Subsidy agreements. (State's Exhibits B1-B5)
- (6) On April 7, 2010, the Adoption Subsidy caseworker notified petitioner that the Adoption Support subsidy and the Medical subsidy would be closed effective July 1, 2010 because the child was expected to have graduated. The notice requested that petitioner respond by June 30, 2010, because Adoption Support subsidy would not continue beyond age 18. (State's Exhibit C)
- (7) On July 9, 2010, petitioner notified the State Adoption worker that Child A stopped attending Dewitt High school in January 2010. (State's Exhibit D)
- (8) On July 15, 2010, the Adoption caseworker sent petitioner notice that child A was not entitled to the Adoption Support subsidy and Medical Subsidy and that a notice of overpayment and recoupment would be issued. (State's Exhibit E)
- (9) The notice indicated that the child was expected to return the Adoption Support subsidy for the months of January through June 2010 in the amount of \$ [REDACTED] (monthly rate) x 6 months = \$ [REDACTED] in over-issued benefits. (State's Exhibit E)
- (10) On October 15, 2010, petitioner filed a request for a hearing to contest the department's negative action.
- (11) On June 13, 2011, petitioner submitted documents which establish that Child A successfully completed his High School Equivalency General Education Development examination effective June 22, 2010. (Petitioner's Exhibits 1-6)

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). The following policies must be used when an administrative hearing regarding adoption support subsidy, medical subsidy or nonrecurring adoption expenses is requested. Bridges Administrative Manual (BAM) 600 policy does not apply to adoption subsidy cases. AAM, Item 700, page 1

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. AAM 100, page 1 Adoption Medical Subsidy - Eligibility details for this program are based on specific criteria as defined in Michigan law (MCL 400.115f - m, et seq.) and DHS policy AAM 400. Funding for this program is through state funds. AAM, Item 100, page 1 Adoption Support Subsidy and Adoption Medical Subsidy agreements end on the child's 18th birthday. The expiration of the agreement causes the closure of payments and subsidy-related Medicaid at the end of the month of the child's 18th birthday. The adoption subsidy office sends an informational letter to the adoptive parent(s) 60 days prior to the child's 18th birthday. The letter explains that the subsidy will end when the child turns eighteen and the eligibility requirements for extensions. Information regarding application for Supplemental Security Income (SSI) is also included.

TITLE IV-E FUNDED SUPPORT SUBSIDY EXTENSION ELIGIBILITY

A title IV-E funded adoption support subsidy extension may be authorized until age 19 for children who were receiving a title IV-E funded adoption support subsidy prior to their 18th birthday if the Department of Human Services (DHS) determines that the child has a mental or physical disability which warrants the continuation of subsidy under title IV-E.

The subsidy office will determine if the child has a disability which warrants the continuation of subsidy based on a specific physical, mental or emotional condition or disability of such severity or kind, that it would constitute a significant obstacle to the child's independence. Such conditions include, but are not limited to:

- Any medical condition which will require repeated or frequent hospitalization, treatment or follow-up care, e.g., cancer, diabetes, epilepsy,
- Any physical handicap, by reason of physical defect or deformity, whether congenital or acquired by accident, injury or disease, which makes a child totally or partially incapacitated as described in R340.1709 of the Michigan Special Education Rules; or makes a child eligible for Children's Special Health Care Services (CSHCS) administered by the Michigan Department of Community Health or the equivalent program in the child's state of residence. Examples are

cerebral palsy, paraplegia, quadriplegia, blindness, deafness, and hydrocephalus.

- Any substantial disfigurement, such as the loss or deformity of facial features, torso or extremities, e.g., burn scars, amputations.
- A diagnosed personality or behavioral problem, psychiatric disorder, serious intellectual incapacity or brain damage which seriously affects the child's ability to relate to his peers and/or authority figures, including mental impairment or developmental disability, e.g., schizophrenia, pervasive developmental disorder, traumatic brain injury, moderate-severe mental impairment, emotional impairment.

If a child who previously qualified for a title IV-E adoption support subsidy does not have documentation of a mental or physical disability as described above, the child must meet the school enrollment eligibility requirements for a state-funded adoption support subsidy extension in order to continue receiving benefits.

Title IV-E Medicaid Eligibility

Children who are eligible for a title IV-E funded adoption support subsidy extension are categorically eligible for Medicaid during the extension period.

STATE FUNDED ADOPTION SUPPORT SUBSIDY EXTENSION ELIGIBILITY

If an adoptee does not qualify for a title IV-E funded adoption support subsidy extension, a state funded extension may be authorized to the age of 19 or high school graduation, whichever is earliest, if the child meets the all of following eligibility criteria:

- The adoptee is age 18 and has not completed high school or a GED program.
- The adoptee is regularly attending high school, a GED program or a program for children with disabilities on a full-time basis and progressing toward achieving a high school diploma, certificate of completion or GED.
- The adoptee is not eligible for SSI (Supplemental Security Income).

Non Title IV-E Medicaid Eligibility

Medicaid is not continued for adoptees over age 18 who are eligible for a state funded adoption support subsidy extension. A Medicaid application may be made at the local DHS office.

ADOPTION MEDICAL SUBSIDY EXTENSIONS (STATE FUNDED)

A state funded adoption medical subsidy extension may be authorized when:

- The child is eligible for a title IV-E funded adoption support subsidy extension, OR

- The adoptee is age 18 and has not completed high school or a GED program, and
- The adoptee is regularly attending high school, a GED program or a program for children with disabilities on a full-time basis and progressing toward achieving a high school diploma, certificate of completion or GED, and
- The adoptee is not eligible for SSI (Supplemental Security Income).

EXTENSION DOCUMENTATION REQUIREMENTS

After receipt of the letter notifying the adoptive parent(s) of the termination of adoption subsidy at age 18, the adoptive parents may request an extension by providing required documentation to the adoption subsidy office. The appropriate application(s) and documentation forms will be provided to the adoptive parent(s) with the termination letter. The required documentation must be provided within 90 days after the date of the termination letter in order to qualify for an extension. In all cases, if the required documentation is not received by the adoption subsidy office within 90 days after the date of the termination letter an extension will not be granted.

Title IV-E Funded Adoption Support Subsidy Extension Application

In order for a determination of eligibility to be made for a title IV-E funded adoption support subsidy extension, the following documents are required:

- DHS-1338, Adoption Subsidy Extension Application - Title IV-E Funded.
- DHS-54, Medical Needs.

State Funded Adoption Support Subsidy and Adoption Medical Subsidy Extension Application

In order for a determination of eligibility to be made for a state-funded adoption support subsidy and/or adoption medical subsidy extension the following documents are required:

- DHS-1340, Adoption Subsidy Extension Application - State Funded.
- DHS-3380, Verification of Student Information.

Adoptive parents or legal guardians may be required to submit additional documentation if a child has not graduated by the date reported on the DHS-3380.

A copy of confirmation of registration.

AGREEMENTS

Adoptive parents are sent adoption support subsidy and/or adoption medical subsidy extension agreements which must be signed, witnessed, and returned to the adoption

subsidy office. Adoption support subsidy and adoption medical subsidy payments begin after the DHS designee signs the extension agreement(s).

TERMINATION OF EXTENSIONS

State Funded

For an adoptee over 18 years of age, a state funded adoption support subsidy and/or adoption medical subsidy extension agreement shall terminate and will not be reinstated when one of the following applies:

- The child is no longer attending high school, a GED program, or a program for children with disabilities on a regular, full-time basis.
- The child completes or withdraws from high school, a GED program or a program for children with disabilities.
- The child is still attending high school, a GED program or a program for children with disabilities on a full-time basis and reaches age 19.
- The child is determined eligible for Supplemental Security Income (SSI) by the Social Security Administration.
- The adoptive parent(s) or legal guardian (state funded following the death of an adoptive parent) is no longer providing any support to the child.

Adoptive parents or guardians must notify the adoption subsidy program office in writing within thirty (30) days after any of the above changes occur. Recoupment procedures will be followed for overpayments

Title IV-E Funded

For an adoptee over 18 years of age, a title IV-E funded adoption support subsidy and/or adoption medical subsidy extension agreement shall terminate and will not be reinstated when the child reaches age 19. AAM 630, pages 1-5.

AAM 630 clearly states that an adoptive parent must notify the department within 30 days after "The child completes or withdraws from high school, a GED program or a program for children with disabilities." In the instant case, petitioner did not notify the department of Child A's withdrawal from [REDACTED]. However, Child A almost immediately began a GED program and graduated/received his GED certificate [REDACTED] which was his expected date of graduation from high school. Evidence in the file indicates that books for Child A's GED courses were purchased in [REDACTED] and [REDACTED] and the GED testing fee was paid [REDACTED]. Thus, Child A remained in compliance with the department policy that he must attend high school, a GED program or a program for children with disabilities. Under the circumstances Child A remained eligible to receive the extended Adoption Support Subsidy and Medical Subsidy until [REDACTED]

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Adoption Subsidy department has not established by the necessary competent, material and substantial evidence on that record that it was acting in compliance with Department policy when it proposed to cancel Child A's extended Adoption Support Subsidy and Medical Subsidy benefits and recoup benefits from January 2010 through June 2010.

Accordingly, the department's decision is REVERSED. Under the circumstances Child A remained eligible to receive the extended Adoption Support Subsidy and Medical Subsidy until June 22, 2010. No recoupment action may be taken.

_____/s/

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

Date Signed September 7, 2011

Date Mailed: September 7, 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:

