

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. 2011-43846
Issue No. 6004
Case No. [REDACTED]
Hearing Date: September 1, 2011
Wayne County

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 Petitioner's request for a hearing. After due notice, a hearing was held in Detroit, Michigan on Thursday, September 1, 2011. The Petitioner appeared and testified. [REDACTED] appeared on behalf of the Department of Human Services ("Department"). [REDACTED], Administrative Law Judge Manager, observed the proceedings.

ISSUE

Whether the Department properly determined that the adoptive child did not meet all the eligibility requirements for the Adoption Support Subsidy Program?

FINDINGS OF FACT

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

1. On March 11, 2011, the Department received the Petitioner's Adoption Assistance and Medical Subsidy Application. (Exhibit 1)
2. The Medical Subsidy was approved.
3. In February 2011, an Assessment for Determination of Care ("DOC") was completed denying the adoptive child [REDACTED] a Level I DOC. (Exhibit 2, pp. 1- 5)

4. On February 22, 2011, the Department sent a Notice to the Petitioner informing her that the adoptive child did not meet the criteria for a Level 1 DOC. (Exhibit 2, p. 6)
5. A DOC rate was not included in the Petitioner's Foster Care Payment. (Exhibit 3)
6. On April 25, 2011, the Department sent the Petitioner the denial for adoption assistance based on the adoptive child not meeting the special needs criteria. (Exhibit 4)
7. On June 30, 2011, the Department received the Claimant's timely written request for hearing.

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 Adoption Administrative Manual ("AAM"). 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. 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. 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. AAM 100. 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. 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). 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. The money grant program provides assistance to adoptive parents in certain defined and limited ways. AAM 100. A support subsidy is a monthly payment to the parent or parents of an eligible adopted child. AAM 100.

A determination of special needs is a three-part requirement. AAM 200. The following provisions must be met to be considered a child with special needs:

1. The child cannot or should not be returned to the home of his or her parents.

2. A specific factor or condition exists which makes it reasonable to conclude that the child cannot be adopted without providing title IV-E adoption subsidy or title XIX medical subsidy.
3. The state must make a reasonable, but unsuccessful, effort to place the child for adoption with appropriate adoptive parent(s) without providing adoption support subsidy, except in cases where it would be against the best interests of the child due to the existence of significant emotional ties with the prospective adoptive parent(s).

Michigan has specific requirements to meet both the federal definition and the state's special needs eligibility. 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. This means that the child must meet each of the following factors:

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, and
3. The child has one of the following specific factors/conditions:
 - a. The child is SSI eligible as determined by the Social Security Administration
 - b. 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
 - c. The child is age 3 years or greater
 - d. 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
 - e. The parental rights for the child were terminated prior to August 1, 2002 and the child has lived with the prospective adoptive parent for 12 months or more
 - f. The child is being adopted by a relative
 - g. The child is being adopted by the parent(s) of his/her previously adopted sibling

- h. 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 the program

AAM 200; AAM 300; MCL 400.115f-.115g

In the present case, the Petitioner requested an Adoption Support Subsidy for her adoptive child. The main crux of the Petitioner's argument relates to potential future diagnoses and/or treatment, not those existing at the time of the determination. As stated during the hearing, the DOC is not based on future possibilities. The Petitioner received standard, as opposed to enhanced, foster care payments, meaning that a DOC level was not authorized. Further, there is no evidence to show that the Department abused its discretion in determining the child's level of care. The Department denied the application because the Petitioner's child could not be certified for a support subsidy specifically finding that the child did not meet the certification condition for a "child with special needs." As detailed above, a child must meet one of the eight criteria (a – h) at the time of the determination in order to be eligible for the subsidy. The Petitioner's child did not meet any of criteria thus could not be certified for an Adoption Support Subsidy. Ultimately, the Department established that it acted in accordance with Department policy when it denied the Petitioner's Adoption Support Subsidy application because the child did not meet Michigan's criteria for a special needs child. Accordingly, the Department's determination is AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Department acted in accordance with Department policy when it denied the Petitioner's Adoption Support Subsidy.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: September 20, 2011

Date Mailed: September 20, 2011

2011-43846/CMM

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/cl

cc:

