

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.: 2011-4497
Issue No.: 6004
Case No.: [REDACTED]
Hearing Date: February 3, 2011
Wayne County DHS (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 Petitioner's request for a hearing. After due notice, a hearing was held in Detroit, Michigan on Thursday, February 3, 2011. The Petitioner appeared, along with [REDACTED], and testified. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly denied the Petitioner's Request for Adoption Support Subsidy 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. In March 2000, the Order of Adoption (D.O.B. [REDACTED]) was entered by the Court. (Exhibit A, p. 2)
2. On August 17, 2009, the Petitioner submitted a letter to the Department requesting an investigation regarding eligibility for Adoption Support Subsidy assistance. (Exhibit A. p. 1)
3. On December 2, 2009, the Department received a letter from the Petitioner regarding the status of her case. (Exhibit B)
4. On December 2, 2009, the Department sent a letter to the Petitioner requesting documentation necessary to determine eligibility. (Exhibit C)

5. The Department received the Adoption Assistance Intent Statement and an Individualized Education Program Team Report dated November 7, 2008. (Exhibit D)
6. The Department did not receive all of the requested documentation.
7. On August 20, 2010, the Department sent the Petitioner a denial notice. (Exhibit E)
8. On September 7, 2010, the Department received the Petitioner's timely written request for hearing. (Exhibit F)

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" - formerly known as the Family Independence Agency) pursuant to MCL 400.10, *et seq.* Department policies (at the time) regarding adoption subsidy are found in the Child & Family Services Manual ("CFS") and 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).

The State of Michigan administers three adoption subsidy programs; Adoption Support Subsidy, Adoption Medical Subsidy, and Nonrecurring Adoption Expenses Reimbursement. The purpose support and medical subsidies is to remove financial barriers to the adoption of Michigan foster children with special needs, as defined by MCL 400.15f; CFA 737 Based on each individual child's situation and needs, one or more of the subsidy benefits may be available to support the adoption. Subsidy is available without respect to the income of the adoptive parent(s). CFA 737; 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. CFA 737

An ALJ may grant approval of the program through the administrative hearing process only in cases where there has been a determination that one of the specific errors was made and the child's pre-adoptive circumstances met the adoption support subsidy/non-recurring adoption expenses eligibility requirements. CFS 700 The specific errors are limited to the following:

1. An error in the written determination of a child's ineligibility by the DHS adoption subsidy office.

2. The documented denial of eligibility by the DHS adoption subsidy office based on a means test of the adoptive family.
3. For children under the care and custody of DHS and placed for adoption after January 1, 1995 only: failure by the DHS local office adoption program (or private agency under contract with DHS to provide adoption services) of the availability of adoption support subsidy and/or non-recurring adoption expenses.¹
4. An administrative error on the part of the adoption agency.
5. Relevant facts regarding the child were known by the State or child planning agency and not presented to the adoptive parent(s) prior to the finalization of the adoption. CFS 700

If the child's circumstances did not meet adoption support subsidy/non-recurring adoption expenses eligibility requirements prior to the date of the finalization of the adoption, the presence of an error is not relevant. CFS 700

Assuming arguendo, that a specific error was met, a child may be eligible for support subsidy if all of the following are met:

1. The child has been in foster care² for at least four months immediately prior to the certification request. Guardianship is not considered foster care for purposes of adoption subsidy eligibility.
2. A reasonable effort has failed to locate a qualified family willing to adopt without support subsidy; or the placement is the only placement in the best interest of the child and the family is requesting support subsidy.
3. Certification is approved by the adoption subsidy program office before the child's eighteenth birthday.

¹ Documented receipt of DHS Publication 538, Michigan's Adoption Subsidy Programs, is deemed evidence of notice

² Placement outside the parental home by and under the supervision of a licensed child placing agency, a probate court, the Department of Human Services (formally the Family Independence Agency), or the Department of Community Health. CFA 737

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4. Certification is approved before the petition for adoption is filed.
CFA 738

In this case, the child was not in foster for at least four months immediately prior to the certification request so even if a finding was made of a specific error, the child was not eligible for adoption support subsidy. In light of the foregoing, the Department's determination is upheld.

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 denied the Petitioner's post adoption request for support subsidy assistance.

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: 2/9/2011

Date Mailed: 2/9/2011

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.

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cc:

