

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.: 2011-5796
Issue No.: 6004
Case No.: [REDACTED]
Hearing Date: January 4, 2011
DHS County:

ADMINISTRATIVE LAW JUDGE: Rhonda P. Craig

HEARING DECISION

The hearing in this matter was conducted by Administrative Law Judge Marlene Magyar on January 4, 2011, pursuant to MCL 400.9; MSA 16.409 and MCL 400.37; MSA 16.437, and upon Petitioners' request for a hearing. Judge Magyar was unable to write the decision. The undersigned Administrative Law Judge has written this hearing decision after review of all evidence in the record including the tape recording of the actual hearing. Petitioners appeared and testified.

ISSUE

Was the Petitioners' request for a hearing contesting the denial of their application for an Adoption Support Subsidy timely?

FINDINGS OF FACT

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

1. Petitioners adopted twin girls [REDACTED] on [REDACTED].
2. On June 23, 2005, Petitioners applied for Adoption Support Subsidy and Nonrecurring Adoption Expenses for both children.
3. On November 2, 2005, the Court placed the children under the care of the Department of Human Services (Department).
4. On July 15, 2005, the Department denied the request for Adoption Support Subsidy indicating that the children did not meet eligibility requirements.

5. On June 16, 2010, Petitioners requested a hearing contesting the denial.

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 Services Manual (SM). The federal law upon which Michigan law is based is Title IV-E of the Social Security Act, Section 473(c).

The Department has an administrative hearing process to provide for the right to contest a Department decision or case action when a client believes the decision is contrary to law or Department 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.

By law (MCLA 400.115k), administrative hearings may be requested by the adoptee, the adoptee's guardian, or the adoptive parent(s). Prospective adoptive parents or foster parents do not have the right to a hearing regarding subsidy prior to the Family Court's signing of the Order Placing Child After Consent (PCA 320). After adoptive placement by the Family Court's order, the adoptive parent (or legal guardian appointed under MCLA 700.422 and 700.424), does have the right to appeal decisions they believe are contrary to law or Department policy. CFA 744 p. 1.

AH may grant or deny the hearing request. Only AH has the authority to deny a hearing request. AH will deny requests signed by unauthorized persons and requests without original signatures (faxes or photocopies of signatures are unacceptable) and requests received over 90 calendar days after the date of the decision of the Adoption Subsidy Program Office.


For pre-adoption support subsidy denials only, the hearing request must be submitted in writing within 90 calendar days of the date the Family Court signed the Order Placing Child After Consent (PCA 320).

For all other denials, hearing requests must be submitted in writing within 90 calendar days of the date of the written notice of the decision of the Adoption Subsidy Program Office. CFA 744 p. 1

In the present case, Petitioners' request for a hearing is untimely. The Department sent Petitioners notice of the denied application for an Adoption Support Subsidy on June 15, 2005. The Order Placing the child was signed November 2, 2005, and the Adoption was finalized on [REDACTED]. Petitioners did not file a request for a hearing on the issue of Adoption Support Subsidy until June 16, 2010, more than four (4) years after the adoption. Under the aforementioned policy, the request for a hearing after denial of an Adoption Support Subsidy application must be made within 90 days of the Order Placing the child or within 90 days of the notice of denial. This Administrative Law Judge finds that Petitioners' request for a hearing is untimely.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that Petitioners' request for a hearing is untimely. Therefore, the request for a hearing on the issue of an Adoption Support Subsidy is DISMISSED. 280 P.A. 1939, Section 115f-115m, r, and s, MCLA 400.115f, also known as the Social Welfare Act, 45 CFR 1355 and 1356.40.



Rhonda P. Craig
Administrative Law Judge Manager
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 17, 2011

Date Mailed: February 17, 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.

RPC/pf

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