

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.: 2011-944
Issue No.: 6004
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: November 22, 2010
DHS County: Wayne

ADMINISTRATIVE LAW JUDGE: Rhonda Craig

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MCL 400.37 and upon Petitioners' request for a hearing. After due notice, an in-person hearing was held on November 22, 2011. Petitioners appeared and testified.

ISSUE

Did the Department of Human Services (DHS) properly deny Petitioners' request for a Nonrecurring Adoption Expenses Reimbursement?

FINDINGS OF FACT

1. Petitioners adopted a child born in the [REDACTED] (date of birth [REDACTED]) on May 5, 2009. The child was certified as abandoned by the [REDACTED].
2. On May 6, 2009, Petitioners applied for a Nonrecurring Adoption Expenses Reimbursement payment.
3. The child has a tricuspid atresia type IB heart condition.
4. The child entered the United States in May 16, 2009. Petitioners incurred well over \$20,000 in expenses to adopt the child.
5. On July 2, 2009, DHS denied the application for Nonrecurring Adoption Expenses Reimbursement because Petitioners' child did not meet the criteria set forth in policy regarding a judicial determination and the criteria outlined in CFS 300 section (c).
6. On July 22, 2009, 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 DHS (formerly known as the Family Independence Agency) pursuant to MCL 400.10, *et seq.* DHS' 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 State of Michigan administers three adoption subsidy programs: Adoption Support Subsidy; Adoption Medical Subsidy and Nonrecurring Adoption Expenses Reimbursement. The purpose of support and 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 Nonrecurring Adoption Expense Reimbursement program is to assist in paying the 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 adoptive parent(s).

The child placing agency, DHS, or the Department of Community Health unit that has responsibility under Michigan's law for the care and supervision of the child is responsible for submitting the application for support subsidy. CFS Manual Item 130.

The following policy was in effect at the time Petitioners applied for the Nonrecurring Adoption Expenses Reimbursement:

Nonrecurring Adoption Expenses (NRE) program eligibility is based on specific criteria. Michigan law (MCL 400.115f, I) and the state's federally-approved Title IV-E plan provide the basis for this policy. The criteria includes:

- The child's identification as a child with special needs by the Adoption subsidy Program Office.
- The child having one of four Title IV-E funding special factors.
- A written agreement between the parent(s) and the Agency setting forth the nature of the payment and the claim process, signed by both parties prior to the final Order of Adoption date.

After eligibility is determined, the adoption subsidy program office will determine allowable expenses claimed by the adoptive parent(s) or a third party that incurred expenses on behalf of the adoptive parent(s). The details of allowable

expenses and the claim for reimbursement are in CFS 310, Nonrecurring Adoption Expenses Claim/Reimbursement.

A child may be determined eligible for the Nonrecurring Adoption Expenses Program if all of the following are met:

- The child must be identified as a “child with special needs” at the time of eligibility determination. This requires:
 - a. The child is under age 18 years, and
 - b. The court has determined that the child cannot or should not be returned to the home of the child’s parents by one of the following specific judicial determinations:
 1. Termination under MCL 712.A19b for a child under court jurisdiction pursuant to MCL 712A.2(b).
 2. Release and termination under MCL 710.29 for a child under court jurisdiction pursuant to MCL 712A.2(b).
 3. Release and termination under MCL 710.29 and the child is eligible for and receiving SSI.
 - c. The child has one of the following specific factors or conditions:
 - c-1. The child is SSI eligible as determined by the Social Security Administration.
 - c-2. 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 (DOC), and:
 - Is documented by the DHS-approved DHS-470, 470A, or 1945 (RFF 470, 470A, 1945), and
 - Is supported by the current DHS updated service plan (USP), and
 - Is being paid through the DHS foster care payment system.

- c-3. The child is age three (3) years or greater.
- c-4. The child has been in foster care for at least two (2) years since the termination of parental rights and efforts to locate a family willing to adopt without subsidy have failed.
- c-5. The parental rights for the child were terminated prior to 8/1/02 and the child has lived with the prospective adoptive parent for 12 months or more.
- c-6. The child is being adopted by a relative (CFF 721, Foster Care).
- c-7. The child is being adopted by the parents of his/her previously adopted sibling.
- c-8. 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 this program.

In the present case, Petitioners adopted a child born in the [REDACTED] na. Petitioners incurred more than \$20,000 in expenses as a result of this adoption. The child, however, does not meet the criteria cited above to qualify for the Nonrecurring Adoption Expenses Reimbursement program. There was no judicial determination terminating parental rights as defined by policy cited above. Petitioners have only a certification by a welfare institute in [REDACTED] indicating that the child was abandoned. Petitioners argue that the child meets the requirements under MCL 710.29 for a judicial determination. The pertinent portion is as follows:

Release; separate instrument; persons before whom release executed and acknowledged; execution in another state or country; investigation; explaining legal rights to parent or guardian; order terminating rights; order committing child; foster care funding; termination of jurisdiction; hearing to consider revocation of release.

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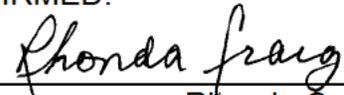
(4) If the release is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the release was executed in accordance with the laws of that state or country or the laws

of this state and shall not proceed unless it finds that the release was so executed.

Under this statute, there still must be a judicial determination with regard to whether the release of the parental rights was in accordance with the laws of the country. Here again, the child does not meet the requirements because there was no judicial determination from a court from the [REDACTED]. The child also does not meet the requirements in Section c for the expense program. Petitioners argue that the child has special needs for medical care and, therefore, meets one of the requirements under CFS 300 Section c. However, the requirement outlined in Section c for a special needs child includes a completed DHS-approved form, which has not been produced, and payment through DHS' foster care system, which has not been made. There is no evidence indicating that the child meets the necessary requirements for the Nonrecurring Adoption Expenses Reimbursement program. This Administrative Law Judge finds that DHS is correct in denying Petitioners' request for a Nonrecurring Adoption Expenses Reimbursement.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that DHS is correct in denying Petitioners' request for a Nonrecurring Adoption Expenses Reimbursement as the child does not meet the requirements. Therefore, DHS' decision in this regard be and is hereby AFFIRMED.



Rhonda Craig
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 1, 2010

Date Mailed: December 1, 2010

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.

RC/pf

cc:

[REDACTED]