

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.: 2011-930
Issue No.: 6004
Case No.: [REDACTED]
Hearing Date: January 13, 2011
Wayne County (SOAHR)

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 claimant's request for a hearing. After due notice, a hearing was held in Detroit, Michigan on Thursday, January 13, 2011. The Petitioner appeared and testified. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly terminated the Petitioner's adopted children's Medicaid benefits?

FINDINGS OF FACT

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

1. On February 2, 2009, the Department received the Petitioner's Adoption Support Subsidy/Nonrecurring Adoption Expenses Applications ("Applications") and Adoption Assistance and Non-recurring Adoption Expenses Intent Statements for three adoptive children. (Exhibit 2, pp. 3, 4; Exhibit 3, pp. 3, 4; Exhibit 4, pp. 3, 4)
2. On or about May 13, 2009, the Petitioner signed the Adoption Support Subsidy/Non-recurring Expenses Agreement for each child. (Exhibit 2, pp. 1, 2; Exhibit 3, pp. 1, 2; Exhibit 4, pp. 1, 2)
3. On November 6, 2009, the Order Placing Child (D.O.B. [REDACTED]) into Adoption and Order of Adoption were entered. (Exhibit 2, pp. 5, 6)
4. On this date, the Order Placing Child (D.O.B. [REDACTED]) into Adoption and Order of Adoption were entered. (Exhibit 3, pp. 5, 6)

5. On this date, the Order Placing Child (D.O.B. [REDACTED]) into Adoption and Order of Adoption were entered. (Exhibit 4, pp. 5, 6)
6. The adoptive children's Medicaid benefits continued after the adoption finalization.
7. The Petitioner did not appeal the Agreements within 90 days of the adoption.
8. On December 29, 2009, January 22, 2010, and March 10, 2010, the Department notified the Petitioner that the Medicaid benefits for each child would terminate.
9. On March 31, 2010, the Department received the Petitioners' written requests for hearing protesting the closure of Medicaid benefits.

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. CFS 100 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. *Id.* The purpose of the non-recurring adoption expense reimbursement program is to assist in paying the out-of-pocket expenses of adoption of special needs children. *Id.* Based on each individual child's situation and needs, one or more of the subsidy benefits may be available to support the adoption. *Id.* Some children do not qualify for any subsidy program based on their individual circumstances. *Id.* Subsidy is available without respect to the income of the adoptive parent(s). *Id.*; 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. CFS 100

Michigan's adoption support subsidy eligibility criteria include:

1. The child's identification as a child with special needs.

2. Certification of the child's adoption support subsidy eligibility by the adoption subsidy program office before the petition for adoption is filed with the court.
3. A written adoption assistance agreement between the parent(s) and the department specifying the amount of the adoption support subsidy to be paid, signed by the parent(s) and DHS before the finalization of the adoption. CFS 200

Children eligible for a support subsidy, but who are not eligible for a Title IV-E adoption support subsidy, may be eligible for Medicaid coverage if it is determined *prior* to the adoption that they have a physical, mental, or emotion handicap or condition that requires medical or rehabilitative care. CFS 120 Medicaid coverage is available for children eligible for a non-Title IV-E funded adoption support subsidy who meet all of the following:

- Have a documented special need for medical, mental health, or rehabilitative care.
- Cannot be placed for adoption without medical assistance.
- Are covered by a non-Title IV-E adoption support subsidy and their adoption is finalized on or after December 1, 1997. CFS 230 (see also-BEM 117)

The adoption subsidy office will determine the presence of a special need for medical, mental health, or rehabilitative care based on documentation provided by the adoption worker. *Id.* The "special need" must be documented prior to the final order of adoption. *Id.*; 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

CFS 200; MCL 400.115f-.115g After eligibility determination, but before finalization of the adoption, the adoption support subsidy/non-recurring adoption expenses agreement must be signed by the Parent(s) and DHS authorized representative. CFS 200

Issues of eligibility denials, notice of the subsidy program to the prospective adoptive families, failure of the DHS to complete required paperwork prior to the finalization of the adoption, subsidy rates, case closure, and/or reduction of benefits are subject to administrative hearings. AAM 700 The adoptive parent or guardian has the burden of proof in an adoption subsidy hearing. *Id.* Support subsidy rates are negotiated, agreed to, and signed by adoptive parent(s) or legal guardians, by the act of signing the Adoption Assistance Agreement, DHS-4113. *Id.* For all denials and other appeals based upon departmental action after the placement for adoption, an applicant has the right to request a hearing within 90 calendar days of the written notice of the denial decision by the adoption subsidy office. *Id.* 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. *Id.* 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. AAM 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. AAM 700 The determination of an error will not change the child's ineligibility. AAM 700

In this case, the Adoption Support Subsidy/Non-recurring Adoption Expenses application was received by the Department on February 2, 2009. The application was denied on April 6, 2009. On or about May 13, 2009, the Petitioner and the DHS representative signed the Adoption Support Subsidy/Non-recurring Adoption Expenses Agreements for three adoptive children which were prior to the adoption finalization. The Agreements provided in part, that the adoption support subsidy was granted in the amount of \$14.83/day for each child; the subsidy was a non-Title IV-E; and that each child was not entitled to Medicaid. As detailed above, a child may be eligible for Medicaid coverage if a determination is made prior to the adoption that the child has a physical, mental, or emotion handicap or condition that requires medical or rehabilitative care which is supported by documentation. There was not a special needs adoption assistance agreement. In review of the limited documentation that existed at the time of the determination, the children did not meet each of the factors detailed in CFS 200, MCL 400.115f, and MCL 400.115g. Accordingly, the children could not be certified as a child with special needs thus did not meet the eligibility requirements for adoption support subsidy prior to the date of the adoption finalization. The presence of a specific error is not relevant. Ultimately, the Department established it acted in accordance with

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

62011-930/CMM

department policy when it terminated the Medicaid benefits for the Petitioner's children at issue due to program ineligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Department established it acted in accordance with department policy when it terminated the MA benefits after the adoption finalization because the children were not (and could not) be certified as a child with special needs thus were ineligible for adoption support subsidy.

Accordingly, it is ORDERED:

The Department's determinations are AFFIRMED.

Colleen M. Mamelka

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

Date Signed: 1/20/2011

Date Mailed: 1/20/2011

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.

CMM/jlg

cc:

A large black rectangular redaction box covering several lines of text in the distribution list.