

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-03/17-144
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Appeal of)
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INTRODUCTION

Petitioner appeals the amount of adoption assistance made available by the Department for Children and Families ("Department") for an "over-18" adoption assistance agreement. The following facts are adduced from representations of the parties during several status conferences and the filings of the parties, with the record closing as of December 4, 2017. The primary issue is whether petitioner's adoption assistance may be reduced when her adopted son turned 18.

FINDINGS OF FACT

1. This appeal concerns petitioner's adopted son who has turned 18. Petitioner and her spouse adopted their son in November of 2003, when he was four years old. They entered into an adoption assistance agreement ("Agreement") with the Department dated May 1, 2003 which called for daily payments of \$50.69, for a monthly amount of \$1,520.83.

2. The agreement provided the following regarding termination (in pertinent part):

Termination will occur in any of the following circumstances:

- A. upon the conclusion of the terms of this agreement;
- B. upon the adoptive parent(s) request;
- C. upon the adopted child's death, marriage or entry into military service;
- D. when the child reaches the age of 18. If the child has a documented mental or physical handicap which warrants continuation, adoption assistance payments may be provided until the child reaches his or her 21st birthday. Payments past the 18th birthday of the adopted child shall only continue upon waiver from the commissioner of the Department or designate;

3. The Agreement provided further that "this Agreement will expire on the adopted child's 18th birthday or on 5/1/2017 subject to annual review, unless termination occurs as a result of one or more of the conditions set forth in Section IV, Termination." (emphasis in original)

4. Prior to her son's 18th birthday, the Department (via the Adoption Assistance program), notified petitioner and her spouse that "[t]he terms of the Adoption Assistance Agreement you have with DCF will be met on 5/1/2017. We are planning to close the Adoption Assistance . . . on that day." This notice provided that:

Your child may be eligible for an Over Age 18 Adoption Assistance Agreement if one of the following conditions exist:

1. Your child has not completed high school and will continue to be enrolled past their 18th birthday or,
2. Your child has been diagnosed with a lifelong physical or mental disability.

5. By letter dated March 24, 2017, the Department (based on what petitioner construes or characterizes as a request for an "extension" of the existing Agreement), offered petitioner what it characterizes as a "separate" and "over-age-18" adoption assistance agreement, at a daily/monthly rate of \$27.59/\$839.29.

6. The new rate is the maximum available standard rate for children in foster care. Of note, petitioner's under-18 Agreement provides that "[a]ny changes in the cash assistance payment may not exceed the foster care reimbursement rates had the child remained in foster care."

7. Generally, the Department's practice and policy is to allow for under-18 subsidies which may exceed the *standardized* foster care rate - depending on the child's needs - and that this determination is made at the time of adoption (which led to the higher rate of petitioner's initial agreement). However, over-18 agreements are generally limited to the standardized foster care rate. In

that respect, the Department credibly represents that it does not generally provide enhanced *financial* support to over-18 children aged out of the foster care system.¹

8. Despite petitioner's characterization of the over-18 subsidy Agreement as an "extension," it is specifically found that a reasonable understanding of the terms of the Agreement support the Department's position - specifically that the Agreement may be terminated, and a separate or new agreement may be offered to the adoptive parents. This is primarily due to the discretion of the Department to both terminate the Agreement altogether at age 18 of the child, and to offer post-18 adoption assistance.

9. Although petitioner suggests otherwise, the evidence does not establish that she was informed by the non-profit organization facilitating her son's adoption at the time that the under-18 rate would continue, or - even if so - that the organization's adoption worker served as an agent of the Department. Specifically (and while simply a possible

¹ It is noted that the Department will offer an over-18 subsidy to children adopted when they are 17 or older, that may exceed the standardized foster care rate. While that specific policy is not at issue here, the Department proffers that it does so because the close proximity of the child to age 18 allows for a specific assessment of their post-18 needs. Coupled with the manifest rationality of encouraging the adoption of older children and maintaining a stable transition into a closely proximate adulthood, the Department presents a facially valid reason for this policy distinction.

misunderstanding on petitioner's part), the evidence from the adoption worker indicates she did not know how subsidies are determined, that continuation of assistance is at the discretion of the Department, and that the understanding of the parties is embodied by the language of the Agreement.

ORDER

The Department's decision is affirmed.

REASONS

Adoption assistance is a joint federal-state program, falling under both federal and state law and policy (with attendant funding). Federal law provides that the amount of adoption assistance "shall be determined by agreement between the adoptive parents and the State or local agency administering the program" and that the amount may not "exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home." 42 U.S.C. §673(a)(3). Federal law further provides that:

Notwithstanding any other provision of this section, a payment may not be made pursuant to this section to parents or relative guardians with respect to a child

(i) who has attained-

(I) 18 years of age, or such greater age as the State may elect under section 675(8)(B)(iii) of this title; or

(II) 21 years of age, if the State determines that the child has a mental or physical handicap which warrants the continuation of assistance;

42 U.S.C. § 673(a)(4)(A).

The Board has previously considered post-18 adoption assistance in a previous case (with the same application of the standard foster care rate), and clearly determined that:

Nothing in the factual history of this matter or the express provisions of the Department's policy manual supports the petitioner's claim that they are legally entitled to continue receiving an adoption subsidy for H in the same amount that they received prior to his eighteenth birthday. They have made no showing that the Department has offered them a new agreement that is in any way unfair or inconsistent with the overall application of its long-standing policies and practices.

Fair Hearing No. R-01/11-61.

This provides clear and persuasive Board precedent in support of the Department's position here. Moreover, petitioner's main argument - that the Department must either terminate the Agreement altogether or "extend" the Agreement at the same (under-18) payment rate - is not a reasonable interpretation of federal law or the specific terms of the Agreement. The Agreement itself, and Department policy, is

silent on whether over-18 assistance will continue at the same rate. But it clearly leaves the question of whether assistance may continue in the discretion of the Department, and clearly indicates the initial under-18 Agreement will terminate upon the child reaching age 18. Here, the Department did, in fact, terminate the Agreement.

Even more persuasively, the Agreement refers to potential continuation of "payment" or "assistance," but not continuation of the Agreement; meaning the Agreement - as the core representation of the parties' agreed-upon terms (including payment) - terminates. As such, the Department's notification of termination and offer of a new, separate agreement is wholly consistent with the Agreement, as well as Department policy. See DCF Family Services Policy 193 (specifying that over-18 adoption assistance requires a separate agreement and is limited to the foster care rate).²

² Policy 193 provides that: "For all over-age-18 adoption assistance agreements the rate will be the current rate for Level 3 foster care, or the rate being paid before age 18, whichever is lower. Special services are not available as part of these agreements." Petitioner correctly points out that this policy was developed in February of 2014, and a predecessor policy was in place (effective in September of 1999) when she adopted her son. The preceding policy was at best ambiguous on the interpretation urged by petitioner; in light of the specific terms of the Agreement, there can be no question about how the Department interpreted the previous policy, and the new policy is (as argued by the Department) a confirmation of that interpretation. See also Fair Hearing No. R-01/11-61, *supra* at 5 (the Department's approach towards over-18 agreements is from "long-standing policies and practices.").

The Department's decision is therefore consistent with the applicable rules and must be affirmed by the Board. See 3 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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