

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. R-11/19-734  
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Appeal of )  
 )

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 two status conferences, as well as documents in the record (contained in a request for Summary Judgment filed by the Department), with the record closing as of February 10, 2020. The primary issue is whether petitioner's adoption assistance may be reduced when her adopted child turned 18. The material facts are undisputed.

FINDINGS OF FACT

1. This appeal concerns petitioner's adopted daughter who turned 18 on March 28, 2019. Petitioner and her spouse adopted their daughter in 2004. They entered into an adoption assistance agreement with the Department dated March 10, 2004. In 2014, the parties entered into an amended

adoption agreement which increased the daily rate paid to petitioners to \$63.80 (or \$1,940.80 per month).

2. Both the 2004 and 2014 agreements contained a provision that the agreement would terminate when their daughter turned 18. The 2014 agreement contained a provision that it was possible for adoption payments to continue past the child's 18<sup>th</sup> birthday and through her 21<sup>st</sup> birthday, "if the DCF Commissioner or Commissioner's designee determines that the child has a medical, physical, mental or emotional disability that warrants continued assistance..." The 2014 agreement also provided that "monthly payments may not exceed the maximum allowable maintenance payments that would have been made had the child remained in the home of a Vermont foster family."

3. On December 27, 2018 a representative of the Department's Adoption Program wrote to petitioner and her spouse and notified them that "[t]he terms of the Adoption Assistance Agreement you have with DCF will be met on 3/28/2019. We are planning to close the Adoption Assistance...on that day." The December 27, 2018 letter also notified petitioner and her spouse that they might be eligible for an "Over Age 18" adoption assistance agreement

and outlined the criteria and process for receiving a new agreement.

4. On March 27, 2019 petitioner and the Department entered into a new adoption assistance agreement. This agreement provided a daily payment rate of \$27.59 (or \$839.29 monthly). This is the "level 3" foster care rate and a rate that the Department indicates is the maximum rate that may be offered for an "over-18" agreement, as it is the maximum standard foster care payment for children over 18.

5. Petitioner, in effect, appeals the termination of the higher (pre-age-18) rate of assistance and the payment limitations imposed upon the new adoption agreement. Petitioner argues that her daughter's needs are severe and require her (petitioner's) full-time assistance as well as the incurring of other costs to maintain her daughter's health and safety. Petitioner's representation of her family's circumstances are genuine and accepted as facially credible.

6. The Department argues that that the new adoption assistance agreement provides the maximum daily payment allowed under law and policy but is - in any event - otherwise subject to the Department's sole discretion and agreement in the first instance.

7. It should be noted that the record contains references to petitioner's informational inquiries in April 2019 to the Department's Adoption Unit about appealing the adoption assistance amount. At that time, petitioner was referred by the Adoption Unit to the Human Services Board about filing an appeal, although was given no specific timeframe for submitting an appeal. The various adoption assistance agreements also make reference to an appeal process, referring adoptive parents to contact the Adoption Unit about the fair hearing and appeal process, without further detail. The Department's Policy 193, which governs adoption assistance, refers to an appeal and fair hearing process to the Human Services Board but does not provide a time limit for filing an appeal.

ORDER

The Department's decision is affirmed.

REASONS

Review of the Department's determination is de novo. The Department has the burden of proof if terminating or reducing existing benefits; otherwise - when an appeal

concerns an initial denial of eligibility - the petitioner bears the burden. See Fair Hearing Rule 1000.3.0.4.<sup>1</sup>

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

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<sup>1</sup> The Board's fair hearing rules do not have a specific reference to adoption assistance appeals, but provide that, where not specified in the rules: "All other appeals. All other appeals must be made **within 30 days** from the date the grievance with the action of the affected office or department arose, unless otherwise provided by statute or regulation." Fair Hearing Rule 1000.2.F (underlined and bold type in original). Under the circumstances and facts of this case, the question of Board jurisdiction is deferred and otherwise presumed, so petitioner's appeal will be considered on the merits.

(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 considered post-18 adoption assistance in previous cases (with the same application of the standard foster care rate), and 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. See also Fair Hearing No. B-03/17-144, *affirmed by In re McSweeney*, 2019 Vt. 25.

In addition, the Vermont Supreme Court recently affirmed a Board decision in circumstances virtually identical to those here, in particular concluding that federal law "does not preclude DCF from adopting a policy, and entering into adoption-assistance agreements, pursuant to which DCF offers reduced adoption assistance to adoptive parents of qualifying children over eighteen." *In re McSweeney, supra* at ¶10; see also DCF Policy 193. In this case, the adoption assistance offered by the Department complies with applicable law and

policy and is in accord with the undisputed facts - principally, the termination of petitioner's prior agreement and new "over-18" agreement between the parties. The payment rate offered by the Department in the new adoption assistance agreement, while reduced, is the maximum allowed rate.

The Department's determination 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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