



Ohio Department of Job and Family Services

Administrative Appeal Decision

APPELLANT:**CASE NO.** □**APPEAL NO(S).** 1151249**DOCKET NO.** 2004-AA-0293

By request received March 22, 2004, Appellant, through Representative, has requested an Administrative Appeal of a state hearing decision rendered March 9, 2004. The issue raised on this Administrative Appeal is whether the Holmes County Public Children Services Agency (Agency) was correct in denying a request to increase Adoption Assistance (AA) benefits for three of four adopted children. The state hearing decision found that Agency acted in good faith in modifying the AA benefits for the eldest child and that the evidence submitted does not support an increase in AA benefits for the other three children and overruled the appeal. This Administrative Appeal Decision Vacates and Remands the state hearing decision.

SUMMARY OF CASE

The hearing record indicates Appellant receives AA benefits through Agency on behalf of four adopted children adopted as a sibling group in September, 1997. Each of the four children has been identified as a special needs child and each is receiving Medicaid benefits. An AA Agreement was negotiated between Adoptive Parents (AP) and Agency in July, 1997. The amounts of AA payment agreed upon are: for the eldest child, \$600 per month for thirty-six months and \$500 per month thereafter; for the second child, \$350 per month for thirty-six months and \$250 per month thereafter; for the third child, \$350 per month for thirty-six months and \$250 per month thereafter; and for the fourth child, \$600 per month for thirty-six months and \$500 per month thereafter; each child's benefit ceasing upon reaching the age of eighteen years. The AA payments were modified in October, 2000, to be, from eldest to youngest, \$825 per month, \$575 per month, \$575 per month, and \$825 per month. Agency renegotiated the agreement in August, 2001, setting the amount of assistance for each child at \$750 per month. AP requested, by letter received by Agency October 27, 2003, a meeting to discuss an increase in AA benefits for the four children. In a letter dated November 1, 2003, AP requested increases in AA benefits based upon exceptional needs and intensive needs, to \$41 per day for the eldest child, \$65 per day for the second child, \$55 per day for the third child and \$75 per day for the youngest child. The eldest child is residing in a residential treatment facility, and the next eldest child is in a day treatment facility. AP are required to pay support of \$240 per month for the eldest child in the treatment facility. Agency approved the \$41, or \$1,247 per month effective January 5, 2004, for the eldest child, however, no additional agreement was entered into for the other three children. Agency approved post adoption special state subsidy (PASSS) respite care of \$2,160 for July, 1999, \$5,760 for July, 2000, \$5,760 for September, 2001, and \$5760 for

September, 2002. Agency approved \$4,443.47 to make a payment on a defaulting mortgage loan. By notice mailed December 8, 2003, Agency denied the request for increased payments under the AA Agreement.

AP testified that they are seeking additional payments based upon the difficulty of care level to raise the four children. They request payment on the basis of exceptional needs for one child, intense needs for one child and special needs for one child. AP cited increased costs for visitation to the child in the residential treatment facility and that mileage changes based upon the medical needs of the children. Added costs include lost wage while attending court proceedings and the lost wages of adoptive mother who stopped working to remain at home with the children.

Agency asserted the County Commissioners passed a resolution effective January 5, 2004, setting a maximum total daily compensation at \$25 per day per child. Agency asserted that limit has been exceeded, with each of the three children receiving \$25 per day and one child has been approved to receive \$41 per day. Agency asserted some of the mileage reimbursement sought by AP has been covered through Medicaid.

HEARING DECISION

The state hearing decision found that the evidence submitted does not support an increase of assistance beyond that which has already been approved for the adopted children and that the current governing policy limits the maximum amount of assistance to the amount being received by the three children.

REQUEST FOR ADMINISTRATIVE APPEAL

Appellant's Representative submitted the pre-printed Administrative Appeal Request which asserts the hearing decision relies upon a misapplication of law or rule. Additionally, Representative asserts the state hearing decision is contrary to the weight of evidence. Representative asserts the evidence supports a finding that the three children should be classified as one with exceptional needs, one with intense needs, and one with special needs. Representative further asserts that the evidence does not support a finding that Agency negotiated in good faith.

ANALYSIS

Ohio Administrative Code (OAC) 5101:6-8-01 allows for an Administrative Appeal from a state hearing decision. The Administrative Hearing Examiner is required to examine the decision, the information supplied on appeal and the record and/or tape of the hearing if appropriate. If the initial decision contains no error that affects the outcome of the appeal the decision is to be affirmed. If the decision contains an error that resulted in an outcome adverse to the individual the decision is to be reversed. OAC 5101:2-47-29 establishes the criteria for eligibility for AA benefits. There is no dispute that the children subject to this appeal are eligible and have been receiving AA benefits through the establishment of an AA Agreement. OAC 5101:2-47-38 permits the modification and/or amendment of an AA Agreement at any time so long as the modification/amendment is "made by mutual agreement between the adoptive parent(s) and the PCSA based on the needs of the child and the circumstances of the adoptive family."

At issue is whether there was a good faith negotiation by Agency regarding the request for upward modification of the monthly allotment to be paid for three of the four adopted children. As correctly cited in the

state hearing decision, OAC 5101:2-47-43 provides guidance for the payment rate regarding AA benefits. It states: "The payment rate for adoption assistance (AA) is determined on an individual basis for each eligible child. The actual amount of AA payment for each child must be determined by mutual agreement between the PCSA and the adoptive parent(s). The amount of the AA payment is determined through the discussion and negotiation process between the adoptive parent(s) and the PCSA based upon the circumstances of the adoptive parent(s) together with the needs of the child." Clearly, Agency has shown a history of a willingness to increase the payments when increased need was shown as the payment amounts were increased from the original AA Agreement in October, 2000, again in August, 2001, and Agency met with AP to discuss a requested change in October, 2003. Agency did provide an increase for one child effective January 5, 2004, while that child was in a mental institution.

The state hearing decision found, in the Analysis section, that the request from AP related to an increase being sought "based on difficulty of care level." Although the state hearing decision found that Agency determined the children to be special needs children, there is no analysis regarding whether or not the three adopted children meet the criteria of difficulty of care. The state hearing decision found that Agency was subject to the resolution of the County Commissioners that limits AA benefits to twenty-five dollars per day, in accordance with OAC 5101:2-47-01(D). That, however, is not a completely correct reading of the evidence submitted at the state hearing. Exhibit CC found at page 112 of the hearing record does provide the "Basic Schedule" for the foster care per diem to be twenty-two dollars and a direct care and independent living expense allotment of an additional three dollars per day for a total of twenty-five dollars per day. OAC 5101:2-47-43(B) states: "The maximum amount of AA payment which is eligible for FFP shall not exceed the cost of the foster care maintenance (FCM) payment which would have been paid if the child for whom the AA payment is made had been in a foster home, **including a foster home receiving difficulty of care payments** for a child with special, exceptional or intensive needs as described in rule 5101:2-47-18 of the Administrative Code." (Emphasis added.) The document signed by the County Commissioners makes an additional allowance for "difficulty of care need" when determining the FCM determination up to five dollars per day. (See page 113 of the hearing record.) Yet there is no analysis in the hearing decision whether the three children may meet the definitions of difficulty of care. The only mention is that the Hearing Officer did not find sufficient evidence to justify the increases that were asked for by AP, in the amounts of fifty-five, sixty-five, or seventy-five dollars per day. Rather, the hearing decision found that the children are receiving the maximum allowed by the County Commissioners.

That determination, however, is erroneous as has been demonstrated in the evidence produced by Agency. The hearing record contains a large volume of documentation submitted, much of which relates to the assertion that the children meet the definition of difficulty of care as found in OAC 5101:2-47-18. That rule states: "Difficulty of care payments shall be updated annually by the issuance of a 'Family, Children and Adult Services Procedure Letter' and may be offered at one of the following three levels of intensity depending upon the needs of the child and qualifications of the substitute caregiver: (1) Special needs; (2) Exceptional needs; or (3) Intensive needs." Although the rule is limited to those children receiving FCM payments, OAC 5101:2-47-43 clearly includes the provision in the determination of AA benefits. It is not possible to determine whether it would be appropriate to include any additional payment for "difficulty of care" for the three adopted children upon

review of the state hearing decision. Therefore, in accordance with OAC 5101:6-8-01, the hearing decision must be vacated and remanded to the state hearing officer for further findings of fact relating to the availability of additional funds, and whether they were considered in the negotiations between AP and Agency in the determination of an appropriate AA payment amount for the three children. While it is clear that the payments should not be determined based upon what has been provided for the fourth child whose payment amount was influenced by the costs associated with residence in the mental facility, they must be within the guidelines provided which include a provision for "difficulty of care" determination.

DECISION

The state hearing decision regarding a denial of request for additional AA payment amounts for three adopted children and related to Appeal Number 1151249 is VACATED and REMANDED to the state hearing officer for further findings of fact and conclusions of policy in accordance with this Administrative Appeal Decision. If necessary, the state hearing officer may conduct a supplemental hearing for the purpose of accepting additional evidence. The state hearing officer is advised that the finding should be related to whether Agency denied a request for modification as provided for in OAC 5101:2-47-38, acknowledging that any modification "must be made by mutual agreement between the adoptive parent(s) and the PCSA based on the needs of the child and the circumstances of the adoptive family." Appellant retains all rights of appeal from the resulting decision to be issued.

The decision is Vacated and Remanded.

James R. Skidmore, Attorney-at-Law
Administrative Hearing Examiner

Marcia K. Slotnick, Attorney-at-Law
Chief Administrative Hearing Examiner
Office of Legal Services on behalf of
Thomas J. Hayes, Director

DATE OF ISSUANCE April 7, 2004

This Administrative Appeal Decision is the final administrative decision on your case from the Ohio Department of Job and Family Services. If you disagree with this decision, you may have the right to appeal to common pleas court pursuant to Section 5101.35 of the Ohio Revised Code. Your appeal must be filed within thirty days of the date this decision was issued to you. If you have questions about appealing to a court, contact your attorney, local legal aid society, or bar association. If you want information about free legal services, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888.

cc: Director, Holmes County Department of Job and Family Services
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Hearings Supervisor
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Mike Ring
Appellant
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