

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>MONTGOMERY</b>	District Hearings Section <b>COLUMBUS</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>MONTGOMERY</b>	Initial Hearing Date <b>03/11/2004</b>	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Donna Robertson, Benefits Worker Alice Maddox, Director of Operations

Date Notice Mailed <b>02/02/2004</b>	Date Received by Local Agency	Date Received by ODHS <b>02/17/2004</b>	Date Appeal Summary Received	Date Scheduling Notice Mailed <b>02/27/2004</b>
Appeal Number(s)/Program(s) <b>1160920/IVE</b>				

### Notice to Appellant

This is the state hearing decision in your case. All papers and materials introduced at the hearing or otherwise filed make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services.

**If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414 or FAX (614) 728-9574.** Your request should state why you think the hearing decision is wrong. You can complete the appeal request form included with this decision. Your written request or appeal form must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. *(If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.)* During the 15-day administrative appeal period you, or your representative, may request a free copy of the hearing record and recording of the hearing by calling the Bureau of State Hearings at 1-866-635-3748 (select option 1 from main menu).

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

### ISSUE SECTION

During July, 2003 the Appellants met with Adoption Link and decided to adopt a child born 11 weeks premature. On 10/2/03 the Greene County Children Services Agency received an application for adoption assistance and nonrecurring adoption expenses. On 10/2/03 a letter along with forms were received from Adoption Link. On 11/21/03 a letter was returned to Adoption Link inquiring when additional information would be sent. Additional information was received via fax on 11/21/03.

On 11/24/03 a letter was received from Adoption Link advising that the Appellants were withdrawing all subsidy applications.

On 12/17/03 a letter was sent to the Appellants requesting verification of their withdrawal. On 12/29/03 notice was received that the Appellants chose not to withdraw their applications.

On 2/2/04 a letter and denial notice were mailed to the Appellants; the Appellants disagree with the denial and requested a state hearing.

BJD

Appeal(s) <b>OVERRULED 1160920</b>	Date Issued <b>04/20/2004</b>	Compliance
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**Distribution:** Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. *(Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)*

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Based on the testimony and evidence presented, the Hearing Officer finds that the denial is correct and recommends that the appeal should be overruled.

### **PROCEDURAL MATTERS**

The Appellants' written request for a state hearing was received on 2/17/04 by the Ohio Department of Job and Family Services, Bureau of State Hearings. The hearing was scheduled for and held on 3/11/04 as a video conference. The Appellants and Agency Representatives participated from the Offices of Greene County Children Services Agency and presented testimony after being sworn in by the Hearing Officer. An appeal summary was received prior to the time of the hearing. The record was held open until 3/16/04 at the request of the Appellant for submission of documents. On 3/25/04 a letter was sent to the Appellant's representative at Adoption Link requesting documentation of their unsuccessful efforts to place this child without providing adoption assistance and/or medical assistance. Response has been received from Adoption Link on 4/12/04.

### **FINDINGS OF FACT**

#### **Undisputed Facts**

1. On 9/29/03 an application for adoption assistance was completed on behalf of a male child born 11 weeks premature.
2. The Appellant's also made an application for nonrecurring adoption expenses on 9/29/03.
3. The applications were received by Greene County Children Services Board on 10/2/03.
4. On 10/2/03 a letter was received from Adoption Link with the following documentation: OJFS 1693 - Homestudy; OJFS 1616 - Social and Medical History; the court's judgment entry filed on 8/4/03; OJFS 1654 - Adoptive Placement Agreement; OJFS 1685 - Child Study Inventory Facesheet; Individual Child Care Agreement; OJFS 1693 - Ohio Law and Adoption Material.
5. On 11/21/03 the letter from Adoption Link was returned to them inquiring when medical information, birth certificate and petition to adopt would be sent.
6. On 11/21/03 birth certificate and petition to adopt were received by fax.
7. On 11/24/03 a letter was received from Adoption Link indicating that the Appellants were willing to adopt the child without a subsidy. The 11/24/03 letter indicated that the Appellants were withdrawing all application for all subsidy.

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8. On 12/17/03 the Greene County Children Services Board mailed a letter to the Appellants to confirm the withdrawal of the application.
9. On 12/29/03 the Appellant's returned the withdrawal election form indicating that they did not wish to withdraw the applications.
11. On 1/14/04 documentation was received from a physician regarding the child's medical condition.
12. On 1/16/04 a letter was received from Adoption Link explaining the selection process, child's special needs and other information.

**Disputed Facts**

None presented

**CONCLUSIONS OF POLICY**

**Policy**

1. To be considered a special needs child for the purposes of adoption assistance all the following criteria must be met."A public or private child services placing agency has determined that the child cannot/should not be returned to the home of the parents. It has been determined, by a public or private children services placing agency, that to complete or sustain an adoption or ensure the child's special needs are met it is not in the child's best interest to be placed without the provision of adoption assistance. And the public or private children services placing agency must document that a reasonable but unsuccessful effort was made to place the child with an appropriate adoptive parent(s) with providing adoption assistance or medical assistance." There are factors which can be cited when it is determined that placing the child without adoption assistance is not in the child's best interest (significant emotional ties to prospective adoptive parents developed during foster care or the child's current or anticipated special need for care/services) Ohio Admin.Code § 5101:2-47-30(B) (5/1998)
2. In order for a public children services agency to enter into an agreement for the reimbursement of non-recurring adoption expenses the child must be determined a child with special needs. "A child is considered special needs if all three of the following criteria is met. It has been determined that the child cannot or should not be returned to the home of his parents. It has been determined that the child meets the special needs criteria defined in Ohio Admin. Code § 5101:2-47-30(B), which prevent the child from being placed without providing Title IV-E adoption assistance and Title XIX medical assistance and the

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public children services agency has determined that in each case a reasonable but unsuccessful effort was made to place the child with appropriate parents without providing adoption assistance. The determination shall be made by reviewing specific documentation of the efforts to place the child with the prospective adoptive parents without proving adoption assistance." Ohio Admin. Code § 5101:2-47-44(B) (2/2002)

### **Analysis**

In the present case applications were made for both adoption assistance and reimbursement of non recurring adoption expenses.

The appropriate rules for each of these programs list criteria which must be met in order for eligibility to be established. For adoption assistance it has been established that the child cannot/should not be returned to his parents. The private children

services agency determined that it is against the best interest of the child to place him with adoptive parents without adoption

assistance or medical assistance citing factors pertaining to his current and/or anticipated special need for care or services. The private children services agency has not documented their reasonable but unsuccessful efforts to place the child with an appropriate adoptive parent(s) without providing adoption assistance or medical assistance. At the time of the hearing, Adoption Link indicated they contacted five families who were not willing to commit to adopting a child with special needs, the Appellants were the sixth family contacted. Appellant is willing to adopt this child without the benefits of adoption assistance.

For non-recurring adoption expenses the Ohio Administrative Code states that there are three criteria which must be met. Again it was established that the child cannot/should not be returned to his parents and it was determined that the child meets the special needs criteria. The third criteria is that a determination be made that reasonable but unsuccessful efforts were made to place the child with appropriate parents without providing adoption or medical assistance. The rules goes on to state that the determination shall be made by reviewing specific documentation of efforts to place the child with prospective parents without proving assistance. The Hearing Officer found that the testimony of Adoption Link was credible regarding their efforts to locate potential adoptive parents based on the child's past, current and future potential medical needs; however, the rules specifically states determination shall be made by reviewing specific documentation of the efforts to place the child with the prospective adoptive parents without proving adoption assistance. Adoption Link provided no such documentation.

The Hearing Officer finds that based on the established regulations, the denial of adoption assistance and reimbursement of non recurring adoption expenses is correct. Appellant is willing to adopt this child without the benefits of adoption assistance.

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**HEARING OFFICER'S RECOMMENDATIONS**

Based on the record before me, I find the appeal should be overruled.

**FINAL ADMINISTRATIVE DECISION AND ORDER**

Finding the hearing officer's decision to be supported by the evidence, the recommendations above are adopted, and Appeal 1160920 is overruled.

**APPENDIX**

- A. Appeal Summary
- B. Application for Adoption Assistance
- C. Application for Reimbursement of Nonrecurring Adoption Expenses
- D. Letter with Application and Documentation
- E. Letter regarding Withdrawal
- F. Withdrawal Election Letter
- G. Physician's Letter regarding child
- H. Denial Notice
- I. Denial Letter
- J. Appellant Documentation (20 pages)

Date Issued: 04/20/2004