

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES  
BUREAU OF STATE HEARINGS**

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
	ERIE	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1447164	IVE	OVERRULED
No Compliance Required		
Decision Date:	04/13/2009	
Request Date:	11/03/2008	
Hearing Officer:	CYNTHIA ASHTON	

State Hearing Decision

**ISSUE SECTION:**

Appeal #1447164

The adoptive parents filed an application for Title IV-E Adoption Assistance (AA) on the Appellant's behalf on 03/05/08. The Cuyahoga County Department of Children and Family Services (Agency) denied the application on 05/27/08 due to lack of ADC-relatedness eligibility resulting from the biological mother's income at the time of the Appellant was removed from her home. A hearing decision was issued on 10/07/08 (Appeal #1418397) regarding this denial that found that extenuating circumstances existed which entitled the adoptive parents to file an application for Adoption Assistance after the adoption which was finalized on 06/29/93. The decision ordered the Agency to redetermine eligibility for Adoption Assistance based on the 03/05/08 application date. In complying with that decision, the Agency again denied the application on 10/27/08 due to lack of ADC-relatedness eligibility. Is the 10/27/09 denial correct?

After careful consideration of the evidence and testimony presented, I find that the conditions necessary in order for the adoptive parents to be entitled to file an untimely/post adoption application for Adoption Assistance are not present in this case. Further, the Appellant lacked ADC-related eligibility which was established in a Hearing Decision issued on 12/20/93. Therefore, the denial is in accordance with established regulations. The appeal should be overruled.

**PROCEDURAL MATTERS:**

A denial letter was issued to the adoptive parents on 10/27/08. The adoptive father disagreed with the denial and requested a state hearing on 11/03/08 (See Exhibit 1). A scheduling notice was issued to all parties on 12/05/08 and a state hearing was scheduled for 01/29/09. On 12/26/08, the attorney for the adoptive parents requested that the state hearing be rescheduled and combined with the state hearing scheduled with the Appellant's biological half-sister as a face-to-face hearing with the Hearing Officer. The Hearing Authority rescheduled the face-to-face hearing with all parties and the hearing was rescheduled and held at the Cleveland District Office on 02/11/09. The documents related to the rescheduling requests are listed as Appellant's Exhibit 2. The Appellant's adoptive parents were present at the face-to-face hearing and were

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represented by Thomas Zraik Attorney; also present was Kathleen Zraik, Paralegal. Steven Ritz, Cuyahoga County Assistant Prosecuting Attorney, represented Cuyahoga County PCSA and had submitted a request previously at the time of the 11/18/08 scheduled hearing for the Appellant's sibling to participate by telephone. Also representing Cuyahoga County PCSA and participating by telephone were Patrick Saulters, IV-E Supervisor; Andrea Ginter, Post Adoption Subsidy Supervisor, and Charlotte Clancy-Edwards, Post Adoption Subsidy Caseworker; also participating by telephone were Beth Mayer, Foster Care and Adoption Benefit Specialist and Bob Anderson, Fiscal Supervisor, representing Erie County PCSA, the adoptive parents' county of residence. All documents submitted on behalf of the Appellant and referred to during the state hearing were faxed to Mr. Ritz following the hearing. All parties agreed that it was not necessary to reconvene the hearing for the purpose of re-reviewing those documents. Cuyahoga PCSA submitted an Appeal Summary on 01/30/09 (See Exhibit A). It is also noted that Appellant's attorney submitted a request to the Hearing Authority, Cleveland District Office Hearings Unit, for issuance of a subpoena to Patrick Saulters, in his official capacity as employee of Cuyahoga County Department of Children and Family Services for production of all IV-E records and related documents pertaining to both the Appellant and her sibling. The Cuyahoga PCSA representative testified that they did not receive the subpoena.

**FINDINGS OF FACT:**

1. Appellant was born on 09/09/91 and was adopted on 06/29/93 (See Exhibit 3).
2. Because the Appellant was a special needs child, her adoptive parents filed an application for Title IV-E Adoption Assistance on 05/24/93. The application was denied on 06/23/93 due to lack of ADC-relatedness because the biological mother's unearned income from Social Security benefits exceeded the 100% standard for two persons at the time the child was removed from the biological mother's custody in the month of 09/91.
3. Appellant's adoptive parents filed an appeal on 08/13/93 (Appeal #318198) regarding the 06/23/93 denial of Title IV-E Adoption Assistance.
4. The state hearing decision issued on 12/20/93 regarding Appeal #318198 found that the denial due to lack of ADC-relatedness was correct at the time because the Appellant's biological mother was receiving Social Security benefits of \$647 per month at the time Appellant was removed from her custody in September 1991 which exceeded the ADC payment standard for two of \$274; however, the Hearing Officer sustained Appeal #31898 because no testimony or evidence was submitted to show if the Appellant was ineligible for Supplemental Security Income (SSI) at the time the adoption proceedings began (See Exhibit 4).
5. The Hearing Officer found in the 12/20/93 decision that the Agency had verified with the Social Security Administration that the Appellant was not eligible for any Social Security benefits through the birth mother.
6. The state hearing decision issued on 12/20/93 ordered that the Agency submit an application for SSI on the Appellant's behalf and to redetermine Adoption Assistance eligibility based on the results of the SSI decision.
7. Appellant's attorney argues that the Agency did not comply with the decision issued on 12/20/93 and did not file an application for Supplemental Security Income (SSI) on behalf of the Appellant.
8. The parents did not file an Administrative Appeal the hearing decision issued on 12/20/93.
9. The Appellant did not meet the ADC-relatedness requirement at the time she was removed from her biological mother and taken into custody.
10. On 08/11/93 Appellant's father talked with a Social Security Administration claims representative who advised him in an informal written decision that neither the Appellant nor her

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biological half-sister would be eligible for SSI based on the parents' alleged monthly income of \$4,400 at that time (See Exhibit 5).

11. The adoptive parents did not file an official SSI application on behalf of the Appellant following this informal written decision from the Social Security Administration.

12. Appellant has not been determined to be eligible for SSI benefits.

13. The Agency did not apply for SSI benefits on Appellant's behalf when she came into custody in 09/91.

14. The Agency argues that they are unable to apply for SSI benefits now retroactively for the Appellant post-adoption because the Appellant is not in their custody and the records are sealed.

15. The adoptive mother testified that they were not given any hospital birth or medical records until sometime in 1994 and that as she recalled, they were told that the Appellant and her half-sister were "typically developing" prior to the adoption.

16. The adoptive parents presented into evidence a letter from a pediatrician dated 09/02/08 that states that the Appellant had developmental delays, especially in speech and in time it was determined that she had significant behavioral issues. The pediatrician further states that several diagnoses have been considered such as ADHD, Bipolar Disorder and Pervasive Developmental Disorder and that cognitive problems have been evident in school. In his opinion, the Appellant was born with medical abnormalities that will continue to cause serious behavioral, academic and social problems (See Exhibit 6).

17. The adoptive parents presented into evidence a letter from a doctor dated 01/16/09 indicating that the Appellant has required "longstanding mental health treatment for Pervasive Developmental Disorder, Psychotic Disorder Not Otherwise Specified and ADHD." (See Exhibit 7)

18. A letter from then Guardian ad Litem for the Appellant dated 02/05/92 references the history of mental and emotional illness of the biological mother and the alleged father (See Exhibit 8).

19. The adoptive also parents received a summary of the birth mother's medical and mental issues sometime in 1994 including a report dated 07/07/68 from a diagnostic staff conference regarding psychological and psychiatric summaries and a casework summary for referral dated 07/29/68 regarding the biological mother who was then 5 years old (See Exhibit 9).

20. A hearing decision was issued on 10/07/08 (Appeal #1418397) regarding the 05/27/08 denial of the 03/05/08 application for Adoption Assistance in which the Hearing Officer found that extenuating circumstances existed which entitled the adoptive parents to file an application for Adoption Assistance after the adoption which was finalized on 06/29/93. The decision ordered the Agency to redetermine eligibility for Adoption Assistance based on the 03/05/08 application date.

21. On 10/21/08, the adoptive parents filed an Administrative Appeal (AA-3236) regarding Appeal #1418397.

22. The Director of Erie PCSA also requested a County Review Decision (CR-3289) regarding the state hearing decision issued for Appeal #1418397 which was dismissed because the hearing decision was already reviewed in the context of the Administrative Appeal requested by the Appellant (AA-3236).

**CONCLUSIONS OF POLICY:**

**Policy**

The AA application must be completed prior to the final decree of adoption and the JFS 01453 must be completed prior to the time of the final decree of adoption unless the agreement is a result of a post finalization application pursuant to rule 5101:2-49-09 of the Administrative Code. Ohio Administrative Code § 5101:2-49-01 (A), (B), (F) (2007)

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Ohio Administrative Code § 5101:2-49-09 (A)(2007) states, in part, that the adoptive family who has finalized the adoption of a special needs child may apply for Title IV-E adoption assistance (AA) after the adoption is legalized *if* the following conditions apply:

(1) The JFS 01451 “Title IV-E Adoption Assistance Application” (rev. 10/2006) was not completed prior to the finalization of adoption, or the JFS 01453 “Adoption Assistance Agreement” (rev. 10/2006) was not executed prior to the final decree of adoption due to either of the following circumstances:

(a) Relevant facts regarding the child were known to the public children services agency (PCSA) or private child placing agency (PCPA) and not presented to the adoptive parent(s) prior to the final decree of adoption; or

(b) The PCSA or PCPA failed to advise the adoptive parent(s) of the availability of AA.

(B) The child must meet all of the remaining eligibility requirements for AA that are in effect on the date the PCSA receives the JFS 01451 except for the timeliness standard which requires that a JFS 01451 be completed and a JFS 01453 be signed prior to a final decree of adoption.

(C) The PCSA or PCPA may meet the requirement to inform the adoptive parent(s) of AA by alerting potential adoptive parents of the availability of AA during a recruitment campaign (website, newspaper, flyer, etc). Advising an adoptive parent(s) is not required when the adoptive parent(s) is not known to the PCSA or PCPA for a special needs child who is not in the custody of the PCSA or PCPA.

Ohio Administrative Code § 5101:2-49-02 (A) (8) (2007) states, in part that the following criteria must be met for a child to be determined eligible for Title IV-E adoption assistance (AA) prior to the final decree of adoption: The child meets one of the following conditions (*list not inclusive*):

(a) At both the time of removal from the home of a specified relative and in the month the adoption petition is filed, the child meets the ADC-relatedness requirements and there is a judicial determination documenting that the removal from the home is in the best interest of the child or that continuation in the home would be contrary to the welfare of the child;

(b) The child meets the eligibility requirements for Title XVI supplemental security income (SSI) benefits at the time the adoption petition is filed. SSI eligibility shall be determined only by a designated social security administrative claims representative.

An individual who disagrees with a state hearing decision, or with a decision by the hearing authority to deny or dismiss a hearing request, has the right to request an administrative appeal.

The request for an administrative appeal must be received by the Bureau of State Hearings, ODJFS, within fifteen calendar days from the date the decision being appealed was issued. Ohio Administrative Code § 5101:6-8-01 (A) & (C) (4) (2008)

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**Analysis:**

In the present case, Appellant was born on 09/09/91 and was adopted on 06/29/93. Because the Appellant was a special needs child, her adoptive parents filed an application for Title IV-E Adoption Assistance on 05/24/93. The application was denied on 06/23/93 due to lack of ADC-relatedness because the biological mother's unearned income from Social Security benefits exceeded the 100% standard for two persons at the time the child was removed from the biological mother's home and placed in the custody of the Agency in 09/91. The Appellant's adoptive parents filed an appeal on 08/13/93 (Appeal #318198) regarding the 06/23/93 denial of Title IV-E Adoption Assistance.

A previous state hearing decision issued on 12/20/93 regarding Appeal #318198 found that the denial due to lack of ADC-relatedness was correct at the time because the Appellant's biological mother was receiving Social Security benefits of \$647 per month at the time Appellant was removed from her custody in 09/91 which exceeded the ADC payment standard for two of \$274. However, the Hearing Officer sustained Appeal #31898 because no testimony or evidence was submitted to show if the Appellant was ineligible for Supplemental Security Income (SSI) at the time the adoption proceedings began

Presently, the issue is whether the circumstances are met that would entitle the adoptive to file an application for Adoption Assistance post adoption. The rule states that the adoptive family who has finalized the adoption of a special needs child may apply for Title IV-E adoption assistance after the adoption is legalized *if* the following conditions apply: (1) The JFS 01451 "Title IV-E Adoption Assistance Application" (rev. 10/2006) was not completed prior to the finalization of adoption, or the JFS 01453 "Adoption Assistance Agreement" (rev. 10/2006) was not executed prior to the final decree of adoption due to either of the following circumstances:

- (a) Relevant facts regarding the child were known to the public children services agency (PCSA) or private child placing agency (PCPA) and not presented to the adoptive parent(s) prior to the final decree of adoption; or
- (b) The PCSA or PCPA failed to advise the adoptive parent(s) of the availability of AA.

The Appellant's representative argues that not all relevant facts known to the Agency were presented to the adoptive parents prior to the final decree of adoption. However, the adoptive parents acknowledge that they were aware of the Appellant being a special needs child and went forward with the adoption. The PCSA (Agency) did not fail to advise the adoptive parents of the availability of Adoption Assistance which is evidenced by the fact that they applied for Adoption Assistance on 05/24/93, prior to the adoption being finalized on 06/29/93.

The Appellant's representative then argues that there were enough "red flags" regarding the mental condition of the biological mother that the Agency should have applied for SSI for the Appellant while in their custody. The Agency argues that when the Appellant came into their custody as a newborn, there were not any obvious disabling conditions that would have caused the Agency to feel that applying for SSI on behalf of the Appellant at that time was appropriate. The Appellant was considered to be an "at risk" child when she came into the custody of the Agency.

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The regulations provide that SSI eligibility can be determined only by a designated Social Security administrative claims representative. The adoptive parents spoke with a Social Security claims representative shortly following the adoption and were advised that their income would render the Appellant ineligible for SSI. The adoptive parents did not then file a formal SSI application on behalf of the Appellant. I am persuaded that the fact that the adoptive parents talked to the Social Security claims representative about SSI eligibility for the Appellant shortly after her adoption and because they were aware of her being a special needs child that the Agency did not fail in informing the adoptive parents of relevant information regarding her. The adoptive father agreed at the hearing that some information was provided to them prior to the adoption.

I also would point out that the adoptive parents did not file an administrative appeal following the state hearing decision issued on 12/20/93 which sustained the appeal and agreed that the 06/23/93 denial of their 05/24/93 application for Adoption Assistance due to lack of ADC-relatedness was correct, but ordered the Agency to submit an application for SSI on the Appellant's behalf and to redetermine Adoption Assistance eligibility based on the results of the SSI decision. It seems that the Agency did not apply for SSI on behalf of the Appellant at that time and therefore did not fully comply with the 12/10/93 hearing decision. However, the adoptive parents did not file an administrative appeal regarding the lack of compliance on the part of the Agency at that time. The request for an administrative appeal must be received by the Bureau of State Hearings, ODJFS, within fifteen calendar days from the date the decision being appealed was issued, and it is now clearly beyond the time frame to do so at this time.

Therefore, after considering the testimony and evidence presented, I find that the preponderance of evidence supports that the Agency's denial of the 03/05/08 application for Adoption Assistance is in accordance with established regulations.

**HEARING OFFICER'S RECOMMENDATIONS:**

Appeal #1447164 should be **OVERRULED**. The 10/27/08 denial of the 03/05/08 Application for Title IV-E Adoption Assistance on the Appellant's behalf is correct.

**FINAL ADMINISTRATIVE DECISION AND ORDER:**

Finding the hearing officer's decision to be supported by policy and the evidence, the recommendation above is adopted, and the appeal is overruled.

Hearing Authority

April 13, 2009

**Notice to Appellant**

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the hearing

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supervisor at the CLEVELAND District hearing section at 1-866-635-3748.

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, Bureau of State Hearings, P.O. BOX 182825, Columbus, OH 43218-2825 or fax: (614) 728-9574. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Bureau of State Hearings 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 may request a free copy of the tape recording of the hearing by contacting the district hearings section.

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.

### **Aviso a la Apelante**

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

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**Appendix**

**APPELLANT EXHIBITS:**

- 1 – Hearing Request (1 page)
- 2 – Rescheduling Requests and attachments (6 pages)
- 3 – Final Order of Adoption Judgment Entry dated (1 page)
- 4 – State Hearing Decision issued 12/20/93 (5 pages)
- 5 – Supplemental Security Income Notice and Report of Confidential Social Security Benefit Information dated 08/11/93 (3 pages)
- 6 – Letter from pediatrician dated 09/02/08 (1 page)
- 7 – Letter from physician dated 01/16/09 (1 page)
- 8 – Letter from Guardian ad Litem dated 02/05/92 (4 pages)
- 9 – Diagnostic Staff Conference regarding the biological mother dated 07/07/68 and Casework Summary for Referral regarding the biological mother dated 07/29/08 (5 pages)

**AGENCY EXHIBITS:**

- A – Appeal Summary and attached documentation (2 pages)