



FILED
OSAH

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

Kevin Westray

Kevin Westray, Legal Assistant

	:	
Petitioner,	:	Docket No.:
	:	OSAH-DFCS-SAA-
	:	Walker-Russell
v.	:	Agency Reference No.:
	:	
DEPARTMENT OF HUMAN	:	
SERVICES, FAMILY AND CHILDREN	:	
SERVICES,	:	
Respondent.	:	

INITIAL DECISION

Appearances: For Petitioner: J. Steve Astin, Esquire
For Respondent: Lorie A. Moss, Special Assistant Attorney General

I. Introduction

This matter comes before the Office of State Administrative Hearings pursuant to an appeal by "Petitioner") from Respondent decision to deny State funded Title IV-B Adoption Assistance benefits for two (2) minor children placed in their custody by Respondent. For the reasons indicated below, Respondent's decision to deny Petitioner's application for Title IV-B Adoption Assistance is **HEREBY REVERSED**.

II. FINDINGS OF FACT

1.

In November 2008, Respondent placed two (2) minor siblings, R.H., age 7, and S.H., age 8, with foster parents (). Also residing in the home were K.F. (dob. 03/03/03) and K.F. (dob. 7/15/01), two children whom the had previously adopted. In September 2010, Paulding County Juvenile Court issued an order terminating the parental rights of the parents of R.H. and S.H. and awarded legal and physical custody of the two children to the Paulding County Department of Family and Children Services (Respondent). The permanency plan in place at the time of parental termination sought adoption of the children by the with whom the children have lived since 2008. (Testimony of Paulding County Juvenile Court Order to Modify Custody, September 7, 2012, page 2).

2.

After the parental rights of the parents of R.H. and S.H. were terminated, Respondent continued foster care placement of R.H. and S.H. with the or purposes of adoption. In December 2011, Respondent approved the for adoption of R.H. and S.H. and Paulding County Juvenile Court held periodic adoption review hearings to assess efforts toward adoption. (Testimony of Petitioner's Exhibits P-8

and P-9; Paulding County Juvenile Court Order to Modify Custody, September 7, 2012, page 2).

3.

On or around December 19, 2011, Respondent notified the _____ that they were ready to release R.H. and S.H. to them for the purpose of adoption and the parties entered into an Adoption Assistance Agreement. R.H. and S.H. were in the permanent custody of Respondent at the time of placement on adoption status. The Adoption Assistance Agreement between Respondent and the _____ determined that R.H. and S.H. are both eligible for Title IV-B Adoption Assistance. (*Testimony of _____, Petitioner's Exhibit P-3 and P-4*).

While in Respondent's legal custody and physically placed with the _____ received \$882.00 in monthly subsidy payments for the care of R.H. and S.H. from December 2011 through March 2012. The _____ took R.H. and S.H. to doctor appointments and extracurricular activities, and provided financial support. (*Testimony of _____*).

4.

The Adoption Assistance Agreement between Respondent and the _____ provides that termination of the Adoption Assistance Agreement will occur in any of the following circumstances upon thirty (30) days written notice to the adoptive parent(s), by certified mail. Termination must be based on verified information:

- a. This agreement expires the last day of the child's 18th birth month (no exceptions);
- b. The adoptive parent(s) request that the payments permanently stop;
- c. The adoptive parent(s) is no longer legally (parental rights legally terminated) or financially responsible for the child;
- d. The child marries or is emancipated by other means;
- e. The child enlists in the military;
- f. The Adoptive parent(s) die;
- g. The child dies; and
- h. The child turns age 18 but does not meet the Basic Criterion and Requirements to receive Adoption Assistance benefits past age 18.

5.

The credible and undisputed evidence is that Respondent failed to provide Petitioner with thirty (30) days written notice of the termination of the Adoption Assistance Agreement in this matter. (*Testimonies of _____ and _____, Petitioner's Exhibit P-3 and P-4*).

6.

The Adoption Assistance Agreement between Respondent and the _____ provides that the agreement may be amended or cancelled at any time by mutual agreement of the Department and the adoptive parent(s). Such amendment or cancellation shall be in writing as provided in Department rules and no oral modifications made by any

employee or agent of the Department or any party to this agreement shall have any effect. (Petitioner's Exhibit P-3 and P-4).

7.

The credible and undisputed evidence is that the the Adoption Assistance Agreement was neither amended nor cancelled at any time by mutual agreement of Respondent and the in this matter. (Testimonies of Petitioner's Exhibit P-3 and P-4).

8.

On or around March 6, 2012, Respondent removed R.H. and S.H. from the home. The basis of the removal was an allegation of mental and physical abuse involving the s adopted daughter, K.F., who was not removed from the home. The filed an Order to Modify Custody, which contested the removal of R.H. and S.H. from their home. After a hearing on September 7, 2012, the allegation of abuse was determined to be unsubstantiated and physical and legal custody of R.H. and S.H. were transferred to the for the purpose of immediate adoption, by the Paulding County Juvenile Court. (Testimony of Paulding County Juvenile Court Order to Modify Custody, September 7, 2012, pages 4-5).

9.

On September 24, 2012, the filed a Petitioner for Adoption of R.H. and S.H., pursuant to O.C.G.A. Section 19-8-4, which was granted after a hearing on November 7, 2012. The Final Order and Decree of Adoption decreed that Petitioners are financially, physically, and mentally able to have permanent custody of R.H. and S.H., and are capable of assuming responsibility for the care, supervision, training and education of the children. After the final Order of Adoption, the children's names were changed to B.F. and S.F.¹ The continued to receive Medicaid benefits on behalf of both children through January 2013. (Testimony of Final Order and Decree of Adoption, Superior Court of Paulding County, November 7, 2012, Petitioner's Exhibit P-7).

10.

B.F. and S.F. require extensive therapy, family intervention, and the services of a Psychiatrist twice a month for each child. The private cost of these services is over \$1,000 monthly for each child. However, the service providers will only accept Medicaid and do not accept private insurance. The cannot afford to pay for these services out of pocket. (Testimonies of

11.

testified at the hearing that she and relied on the Adoption Assistance Agreement when pursuing the custody and subsequent adoptions of B.F. and S.F. After Respondent removed B.F. and S.F. from the home, Respondent did not discuss the situation with them, develop a plan of action, decide whether they would consider reunification, or provide them with written notice of the termination of the Adoption Assistance Agreement. Petitioner believed that monthly Adoption Assistance

¹ The children will be referenced by their adoptive names: B.F. and S.F. for the remainder of this Order.

would resume when the adoption was finalized. Moreover, if Petitioner had known that the Adoption Assistance Agreement was terminated, she would have pursued a new Adoption Agreement. Petitioner does not dispute that she told Superior Court that the [redacted] are able to financially support the children. However, Petitioner was under the impression that the Adoption Assistance Agreement was still valid when she made that statement and she and her husband cannot provide B.F. and S.F. with the extensive therapy, family intervention, and Psychiatrist services required without Adoption Assistance. (*Testimony of [redacted]*) Upon careful review, I find Petitioner's testimony to be credible and persuasive.

12.

In the December 19, 2011, Adoption Assistance Agreement, Respondent determined that B.F. and S.F. are eligible for State Funded IV-B Adoption Assistance, but not eligible for Federal Funded IV-E Adoption Assistance. However, after finalization of the adoptions by the [redacted] Respondent denied Petitioner's application for State Funded IV-B adoption assistance because the children were taken out of Respondent's permanent custody and placed in the legal custody of the [redacted] in March 2012. Respondent argues that this transfer of custody terminated the December 2011 Adoption Assistance Agreement by operation of Law. Respondent further argues that Petitioner did not apply for Adoption Assistance until after the adoption was finalized. Therefore, the adoptions of B.F. and S.F. are private adoptions and the children do not meet Federal Funded IV-E eligibility, which is required for them to qualify for Adoption Assistance. (*Testimony of Frank Twitty; OSAH Form 1*).

13.

As the basis of her appeal, Petitioner argues that since Respondent failed to abide by its own regulations and provide written notice to the [redacted] of the termination of the December 19, 2011, Adoption Assistance Agreement, the Adoption Assistance Agreement remains valid and binding on the parties and requires Respondent to provide Title IV-B Adoption Assistance pursuant to the agreement.

III. CONCLUSIONS OF LAW

1.

As the applicant, Petitioner bears the burdens of persuasion and going forward with the evidence in all matters. OSAH Rule 616-1-2-.07(1)(C). The standard of proof on all issues is the preponderance of evidence standard.

2.

The primary goal of the Federal Title IV-E and State adoption assistance program is to provide financial support to families who adopt difficult-to-place children from the public child welfare system. These are children who would otherwise grow up in the State foster care system. Children placed on adoptive status while in the permanent custody of the Georgia Department of Human Services (DHS) may be eligible for Adoption Assistance if determined by the State/Tribe to meet Federal and State special needs criteria and either Federal Title IV-E or State Title IV-B Adoption Assistance eligibility requirements. Adoption Assistance Manual, Section 109, Page 3.

Children placed on adoptive status while not in the permanent custody of DHS may only be eligible for Adoption assistance if determined by the State/Tribe to meet special needs criteria AND Federal Title IV-E adoption assistance eligibility criteria.

3.

Eligibility requirements for Adoption Assistance do not specify that DHS must have care, custody and oversight of a child. However, to be eligible for Monthly Adoption Assistance, a child who is not in the permanent custody of DHS at the time of placement on adoptive status must be determined by the Department of meet Title IV-E and Special Needs eligibility criteria, and there must be an Adoption Assistance Agreement signed by all required parties prior to the finalization of the adoption. Adoption Assistance Manual, Section 109, Page 15.

4.

In this matter, B.F. and S.F. were placed on adoptive status while in the permanent custody of Respondent. The September 2010, Paulding County Juvenile Court Order Terminating Parental Rights awarded custody of B.F. and S.F. to Respondent for the purposes of placing the children for adoption by the Respondent approved the or adoption in December 2011, and an Adoption assistance Agreement was executed by all parties on December 19, 2011. These facts indicate that B.F. and S.F. were placed on adoptive status while in the permanent custody of Respondent and may be eligible for State Title IV-B Adoption Assistance.

5.

Adoption assistance eligibility requires: A) that a child be AFDC eligible at the time the removal proceedings were filed and at the time removal was ordered, (B) the child must have been removed from the home of his or her parents "as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child" and (C) meets the definition of "special needs" as modified by state law. 42 USC §673.

6.

A child meets the requirements of the adoption assistance program if the child has been determined by the State to be a child with special needs. 42 U.S.C. § 673(2)(C). The special needs criteria are met if a child is a member of a sibling group of two or more placed in the same home. Adoption Assistance Manual, Section 109, Page 3. In this matter, B.F. and S.F. are "special needs" siblings placed in the same home within the meaning of 42 USC § 673.

7.

In order to be eligible for Title IV-B State-Funded Adoption Assistance, the child must be in the permanent custody of DHS when being placed on adoptive status, and determined not eligible for Title IV-E funding; the child must meet the Federal and State Special Needs Criteria and Requirements; and the adoptive placement must be approved in accordance with State policy/guidelines. Adoption Assistance Manual, Section 109,

Page 19. The term "adoptive status" denotes the status achieved when a child who is legally free to be adopted is placed into a home which intends to adopt the child. Adoption Assistance Manual, Section 109, Page 74.

In this matter, B.F. and S.F. were in the permanent custody of Respondent when placed on adoptive status. In December 19, 2011, Respondent released B.F. and S.F. to the [redacted] for the purpose of adoption and the parties entered into an Adoption Assistance Agreement. In addition, the children are not eligible for Title IV-E Adoption Assistance pursuant to the Adoption Assistance Agreement, meet the "special needs" criteria and the adoptive placement was approved in accordance with State policy/guidelines. Therefore, B.F. and S.F. are eligible for Title IV-B State-Funded Adoption Assistance.

8.

An Adoption Assistance Agreement must be signed and in effect at the time of or prior to the finalization of the adoption. If any adoptive family feels that they were wrongly denied benefits, they may request an administrative (fair) hearing. An allegation that constitutes grounds for a fair hearing includes the adoptive family disagreement with the State that the child is ineligible for Adoption Assistance. Adoption Assistance Manual, Section 109, Page 70. In this matter, Respondent failed to provide Petitioner with written notice of termination pursuant to the agreement. Therefore, the December 11, 2011, Adoption Assistance Agreement was signed and still in effect prior to the finalization of the adoption of B.F. and S.F.

9.

Respondent argues that the adoptions of B.F. and S.F. are private adoptions, which requires that the children must meet Federal Funded IV-E eligibility to qualify for Adoption Assistance. Specifically, Respondent contends that any and all agreements and contracts between Respondent and the [redacted] ended when Respondent removed placement of B.F. and S.F. from the [redacted] physical custody, based upon an unsubstantiated allegation of abuse. Upon careful consideration, I find Respondent's argument to be unpersuasive.

Prior to the removal of B.F. and S.F. from the [redacted] home, Petitioner and Respondent entered into an Adoption Assistance Agreement, which clearly outlines how termination can occur. The Adoption Assistance Agreement provides that termination must be based on verified information and requires thirty (30) days written notice to the adoptive parent(s), by certified mail. In addition, oral modifications to the agreement made by any employee or agent of the Department or any party will not have any effect. Therefore, the Adoption Assistance Agreement could only be terminated, cancelled, or amended by mutual consent of the parties or by written notice by certified mail to the adoptive parents. The credible and undisputed evidence in this matter is that Respondent failed to provide Petitioner with written notice of the termination of the Adoption Assistance Agreement until after finalization of the adoption of B.F. and S.F.

10.

Disruption of an Adoption placement: When a child reenters Foster Care prior to the Finalization of an adoption, County DFAC must discuss the situation, develop a plan of action, and decide whether the Agency will consider reunification, given the

circumstances. If the Agency determines that reunification is not in the best interest of the child, Adoption Assistance must be terminated immediately. Mutual agreement from the adoptive parent(s) is not required since the Agency holds legal custody. The Case Manager **must notify the adoptive parent of non-reunification and the end of adoption assistance.** In this matter, Petitioner gave credible testimony that Respondent failed to discuss the situation with the _____ develop a plan of action, decide whether they would consider reunification, or provide them with written notice of the termination of the Adoption Assistance Agreement until after the adoption of B.F. and S.F.

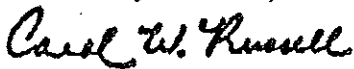
11.

Extenuating circumstances exist in this matter to warrant approval of Petitioner's application for Title IV-B Adoption Assistance. Respondent placed B.F. and S.F. with foster parents _____ after these siblings were removed from the custody of their parents. After caring for B.F. and S.F. for three (3) years, the _____ decided to adopt them and Respondent approved them as adoptive parents in December 2011. Respondent and the _____ signed an Adoption assistance Agreement which determined that B.F. and S.F. meet Title IV-B eligibility. In March 2012, Respondent removed the children from the _____ home based upon an allegation of abuse that was ultimately determined to be unsubstantiated. After a court hearing, custody of the children was immediately returned to the _____ for adoption, which was finalized on November 7, 2012. Since 2008, the _____ have provided long-term shelter, financial and emotional support, and parental guidance for these "special needs" children, who would otherwise still be in the State foster care system. Therefore, approval of Petitioner's application and providing financial support meet the primary goal of the State's Adoption Assistance Program in this matter.

IV. DECISION

Based upon the foregoing, Respondent's decision to deny Petitioner's application for State-Funded Title IV-B Adoption Assistance is **HEREBY REVERSED**. Respondent is directed to approve Petitioner's application for Title IV-B State-Funded Adoption Assistance benefits from this point forward and retroactive to the date of the December 19, 2011, Adoption Assistance application.

SO ORDERED, this 29th day of March, 2013.



CAROL WALKER-RUSSELL,
Administrative Law Judge