

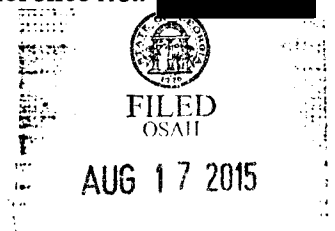
**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

J [REDACTED] AND P [REDACTED] C [REDACTED],
Petitioners,

v.

DEPARTMENT OF HUMAN SERVICES, FAMILY
AND CHILDREN SERVICES,
Respondent.

:
: Docket No.: [REDACTED]
: OSAH-DFCS-SAA-[REDACTED]
: Walker-Russell
: Agency Reference No.: [REDACTED]



INITIAL DECISION

Appearances: For Petitioner: Sherry Neal, Esquire
For Respondent: Frank Twitty, Adoption Assistance Program Consultant
and Andrea Perkins, Casemanager

I. Introduction

Petitioners appeal Respondent's decision to terminate IV-E (Federally Funded) Adoption Assistance benefits past the age of 18 for their adopted daughter because she was placed on adoptive status at the age of 12, and not age 13, pursuant to the Adoption Assistance Policy. The hearing was held on August 4, 2015.¹ The parties were provided an opportunity to present sworn testimony and documentary evidence at the hearing. For the reasons indicated below, Respondent's decision is **HEREBY REVERSED**.

II. FINDINGS OF FACT

1.

On December 16, 2010, Petitioners obtained a Final Order of Adoption in Georgia for K.T., an 18 year old female born on June 25, 1997. Prior to the adoption, K.T. lived with Petitioners as a foster child and was placed on adoptive status on March 31, 2010, when Petitioners signed an Adoption Assistance Agreement [Form 402], along with other placement documents. (*Testimony of P [REDACTED] C [REDACTED]*). Petitioners acquired physical custody of K.T. from Respondent which had legal guardianship of K.T. and consented to the adoption. (*Testimonies of Frank Twitty, Rebecca Jones, and P [REDACTED] C [REDACTED]; OSAH Form 1*).

2.

Rebecca Jones was the caseworker assigned to Petitioners' adoption case. Petitioners met with Rebecca Jones on March 31, 2010, and signed the Adoption Assistance Agreement and other

¹ The record was held open until August 11, 2015, for the parties to submit Findings of Fact and Conclusions of Law. Petitioner's submitted their proposed Order on August 11, 2015. Respondent failed to submit a proposed Order in this matter.

placement documents at a meeting that lasted 15-20 minutes. (*Testimonies of Rebecca Jones and Pamela Coltrane*). P [REDACTED] C [REDACTED] gave credible and undisputed testimony that Petitioners were given a large number of documents to sign, but were not provided an opportunity to review the Adoption Assistance Agreement and other placement documents prior to the March 31, 2010, meeting. Instead, Rebecca Jones summarized the contents of the Adoption Assistance Agreement with Petitioners, but did not review the document line-by-line or explain individual terms, including the term "adoptive status," which was not defined in the document. (*Testimony of P [REDACTED] C [REDACTED]*).

3.

During the March 31, 2010, meeting with Rebecca Jones, J [REDACTED] C [REDACTED] mentioned to P [REDACTED] C [REDACTED] that they may want to have the documents reviewed by an attorney prior to signing them. Rebecca Jones advised Petitioners that the Adoption Assistance Agreement was a standard document and Petitioners did not need an attorney until the time came for finalization of the documents. Petitioners trusted Rebecca Jones and concede that they signed the documents without closely reading them or having them reviewed by an attorney prior to the December 16, 2010, finalization of adoption. (*Testimonies of J [REDACTED] and P [REDACTED] C [REDACTED]*). Although Petitioners signed the Adoption Assistance Agreement, they did not check the box above their signature which states, "By checking the box, the adoptive parent(s) confirm that he/she have read and agreed to the terms and conditions of this agreement". (*See, Adoption Assistance Agreement, Page 6 of 7*).

4.

Respondent did not advise Petitioners that K.T. would receive Adoption Assistance benefits until the March 31, 2010, meeting. In fact, P [REDACTED] C [REDACTED] was surprised when informed by Rebecca Jones that K.T. would receive Adoption Assistance benefits. The parties did not negotiate the adoption assistance benefit rate at the meeting. The Adoption Assistance benefit amount was predetermined by Respondent and included on the form presented to Petitioners. In deciding the benefit amount, Rebecca Jones did not discuss K.T.'s needs or the resources available. (*Testimony of P [REDACTED] C [REDACTED]*).

5.

Rebecca Jones neither advised Petitioners that signing the Adoption Assistance Agreement prior to K.T.'s thirteenth (13) birthday would place her on adoptive status and eliminate her access to continued benefits while attending college, nor advised of the possibility of waiting to sign documents until after K.T. turned 13. (*Testimony of Rebecca Jones*). Instead, Petitioners left the March 31, 2010, meeting believing that K.T. would continue to receive Adoption Assistance benefits through college up to the age of 21, as long as she remained enrolled in school.

Petitioners did not become aware that K.T.'s Adoptions Assistance benefits would terminate upon reaching age 18 and graduating high school until Respondent informed them in June 2015. (*Testimony of P [REDACTED] C [REDACTED] OSAH Form 1*).

6.

K.T. was twelve (12) years old at the time that Petitioners signed the Adoption Assistance Agreement on March 31, 2010. (*Testimony of Rebecca Jones, Frank Twitty, and P [REDACTED] C [REDACTED]*).

7.

K.T. turned 13 on June 25, 2010, less than three (3) months after Petitioners signed the Adoption Assistance Agreement on March 31, 2010. (*Adoption Assistance Agreement; Testimonies of P [REDACTED] C [REDACTED], Frank Twitty, and Rebecca Jones*).

8.

Rebecca Jones' expectation was for K.T. to attend college. However, Rebecca Jones failed to advise Petitioners that termination of K.T.'s Adoption Assistance would occur at the end of her 18th birth month of June 25, 2015, unless K.T. met the State of Georgia's criteria to continue benefits past age 18. Specifically, Rebecca Jones failed to inform Petitioner's that for K.T. to continue receiving Adoption Assistance past age 18 and in College of Technical School, K.T must meet the Basic Requirement and must have either been placed on Adoptive Status prior to July 1, 1998, or at age 13 or older. (*Testimonies of J [REDACTED] and P [REDACTED] C [REDACTED] and Rebecca Jones*). In this matter, K.T. meets the basic requirement. However, K.T. was placed on adoptive status on March 31, 2010, at age twelve (12). (*Testimony of Frank Twitty*).

9.

Pamela Coltrane gave credible testimony that Petitioners would have waited until K.T. turned thirteen (13) on June 25, 2010, to sign the Adoption Assistance Agreement if Respondent had advised them before signing on March 31, 2010, of the loss of K.T's Adoption Assistance benefits after the age of 18. (*Testimony of P [REDACTED] C [REDACTED]*).

10.

K.T. received Title IV-E Adoption Assistance benefits until she turned 18 on June 25, 2015. Following K.T's 18th birthday, Respondent terminated her Title IV-E Adoption Assistance benefits because she had graduated high school and did not meet the requirements for Adoption Assistance because K.T was not placed on Adoptive status *prior to July 1, 1998, or at age 13 or older* pursuant to the Adoption Assistance Manual. (*Testimony of Frank Twitty and Andrea Perkins*).

11.

The parties stipulate that K.T. meets Title IV-E Adoption Assistance eligibility. (*Stipulation by the Parties*).

III. CONCLUSIONS OF LAW

1.

Respondent bears the burdens of persuasion and going forward with the evidence in all matters, as this case involves an agency action terminating Adoption Assistance benefits. OSAH Rule 616-1-2-.07(1) (e). 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. 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*. In this matter, K.T. meets federally funded Title IV-E Adoption Assistance eligibility and is eligible for Adoption Assistance because she was in the permanent custody of Respondent when placed into the custody of Petitioners for the purpose of adoption.

3.

DURATION OF ADOPTION ASSISTANCE BENEFITS:

Monthly and Special Services Adoption Assistance benefits are available through the month of the child's 18th birthday. For children over age 18 and in College or Technical School to continue receiving Adoption Assistance, one of the following two (2) criteria must be met:

- The child's adoption MUST meet the Basic Requirement AND the child must have been placed on Adoption Status prior to July 1, 1998, or
- The child's adoption MUST meet the basic Requirement above AND the child must have been placed on Adoptive Status at age 13 or older. *Adoption Assistance Manual, Section 109.13*.

4.

NEGOTIATING THE ADOPTION ASSISTANCE AGREEMENT:

Adoption Assistance benefits are designed to assist in meeting the cost of providing for the special needs of the child that otherwise would have prevented the child from being adopted. The Adoption Assistance agreement **shall be negotiated** with the adopting parents. **Prior to the signing of the Adoption Assistance agreement, the agency representative and the adopting family shall discuss the needs of the child and the resources that are available to meet these needs.** Eligibility for assistance is based on the needs of the child, not the family's income. However, once eligibility has been established, the circumstances of the family may be

considered when trying to establish an amount of monthly Adoption Assistance for the child. *Adoption Assistance Manual, Section 109.*

5.

In this matter, Respondent failed to follow the policy and procedures of the Department of Human Services regarding negotiating the Adoption Assistance Agreement. Respondent terminated K.T.'s Title IV-E Adoption Assistance benefits because she had graduated high school and did not meet the requirements for Adoption Assistance because K.T. was not placed on Adoptive status *prior to July 1, 1998, or at age 13 or older* pursuant to the Adoption Assistance Manual. However, the credible and undisputed evidence in this matter is that the agency representative, Rebecca Jones, failed to negotiate the Adoption Assistance Agreement with Petitioners or discuss the needs and available resources of K.T. prior to the signing of the Adoption Assistance Agreement on March 31, 2010. Instead, Rebecca Jones presented the completed Adoption Assistance Agreement to Petitioners with the benefit amount already predetermined by Respondent.

6.

If any adoptive family feels that they were wrongly denied benefits, they may request an administrative hearing (fair) hearing. If the fair hearing determines that extenuating circumstances exist, the earlier decision to deny benefits under Title IV-E may be reversed. Where the fair hearing decision is favorable to the adoptive parents, the State agency can reverse the earlier decision to deny benefits under Title IV-E. *Adoption Assistance Manual, Section 109.24.*

7.

In this matter, Respondent had an affirmative duty to provide Petitioners with a full explanation of all relevant information and available benefits regarding K.T.'s eligibility for Adoption Assistance benefits *prior to* signing the Adoption Assistance Agreement so that Petitioners could make an informed decision. Otherwise, Petitioners could possibly waive Adoption Assistance benefits for K.T. without access to full information. *See, e.g., Ferdinand v. Department for Children and Their Families*, 768 F.Supp. (D.R.I. 1991); and *Laird v. Department of Public Welfare*, 972 A.2d 596 (Pa. Cmwlth. 2009). Prior to signing the Adoption Assistance agreement, Respondent failed to inform Petitioners that for K.T. to continue receiving Adoption Assistance benefits past age 18 and in College of Technical School, K.T. must meet the Basic Requirement and must have either been placed on Adoptive Status prior to July 1, 1998, or at age 13 or older. Although Petitioners signed the Adoption Assistance Agreement, they did so without full information and under the mistaken belief that K.T. would continue to receive Adoption Assistance benefits through college up to the age of 21, as long as she remained enrolled in

school. Moreover, Petitioners would have waited until K.T. turned thirteen (13) on June 25, 2010, to sign the Adoption Assistance Agreement if Respondent had advised them before signing on March 31, 2010, that K.T. would lose Adoption Assistance benefits after the age of 18.

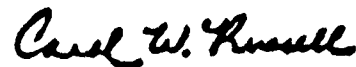
8.

Respondent has failed to follow the policies and procedures of the Department of Human Services regarding negotiating the Adoption Assistance Agreement or providing Petitioners with a full explanation of all relevant information and available benefits regarding K.T.'s eligibility for Adoption Assistance benefits *prior to* signing the Adoption Assistance Agreement. Accordingly, extenuating circumstances exist to allow K.T. to continue receiving Adoption Assistance benefits for children over 18 and in College of Technical School as long as K.T. remains in need of assistance and dependent upon the financial support of her parents, attends College or Technical School on a full-time basis (not including summer session), and provide the required verification.

IV. DECISION

Based upon the foregoing, it is concluded that Respondent's decision to terminate IV-E Adoption Assistance benefits for K.T. is **HEREBY REVERSED**. Accordingly, Respondent is directed to provide Petitioners with Title IV-E Federal-Funded Adoption Assistance benefits for Children over age 18 and in College or Technical School so long as K.T. remains enrolled full-time in college.

SO ORDERED, August 17, 2015.



**CAROL WALKER-RUSSELL,
Administrative Law Judge**

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

[REDACTED] AND P [REDACTED] C [REDACTED] Petitioner,	:	
	:	Docket No.: OSAH-DFCS-SAA-[REDACTED] Walker-
	:	Russell
v.	:	
	:	Agency Reference No.: [REDACTED]
DHS, FAMILY & CHILDREN SERVICES,	:	
Respondent.	:	

NOTICE OF INITIAL DECISION

This is the Initial Decision of the Judge in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration or a motion for rehearing (or, if applicable, a motion to vacate or modify a default order) with the Judge. A party may also seek agency review of this decision.

FILING A MOTION WITH THE JUDGE

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such motion may or may not toll the time for filing an application for agency review.** See O. C.G.A. §§ 50-13-19 and 50-13-20.1. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the Clerk at:

Office of State Administrative Hearings
Attn.: Jenna Judy, jjudy@osah.ga.gov
225 Peachtree Street, NE, South Tower, Suite 400
Atlanta, Georgia 30303-1534

APPLICATION FOR AGENCY REVIEW

An application for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. §§ 50-13-17 and 50-13-41. A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Legal Services Unit, Attn: Appeals Reviewer
Department of Human Resources
2 Peachtree Street, 29th Floor
Atlanta, Georgia 30303

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review. O.C.G.A. §§ 50-13-17 and 50-13-41. In certain cases, an Initial Decision may become Final and therefore not subject to review either by agency provision or the provisions of O.C.G.A. § 50-13-17(c). When a decision becomes Final, an application for judicial review must be filed within thirty (30) days in the Superior Court of Fulton County or the county of residence of the appealing party. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or the superior court of the county where the party maintains its principal place of doing business in this state. O.C.G. A. § 50-13-19(b).