

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

**DENISE WHALEY,
Petitioner,**

v.

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


:
: **Docket No.:**
: **OSAH-DFCS-SAA-1613786-8-**
: **Walker-Russell**
: **Agency Reference No.: 161378**
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NOV 20 2015

INITIAL DECISION

Appearances: For Petitioner: Denise Whaley, *Pro Se*
For Respondent: Kristen McMurray, Esq., Special Assistant Attorney General


Victoria Hightower, Executive Assistant

I. Introduction:

This matter comes before the Office of State Administrative Hearings based on Petitioner's appeal of Respondent's denial of Title IV-E Adoption Assistance benefits because an Adoption Assistance Agreement was not signed prior to the finalization of the adoption of two (2) minor children placed in Petitioner's custody by Respondent for purposes of adoption. The hearing was held on November 12, 2015.¹ For the reasons indicated below, Respondent's decision to deny Title IV-E Adoption Assistance benefits is **HEREBY REVERSED**.

II. FINDINGS OF FACT:

The parties have stipulated to the following Findings of Facts:

1.

S.M. (dob: 5/23/1999) and N. M. (DOB: 9/7/2000) were in the custody of Bartow County DFCS prior to their adoption by their grandmother, Denise Whaley (Petitioner). (*Stipulation of parties #1, R-1*).

2.

Bartow County DFCS petitioned Bartow County Juvenile Court to terminate parental rights. Bartow County Juvenile Court held a hearing and issued a decision on March 4, 2015,

¹Present in Court were Petitioner, Denise Whaley; Frank Twitty, Adoption Assistance Program Consultant with the Georgia Department of Family and Children Services; Brooke Ford, Administrator of the Bartow County Department of Family and Children Services; Heather Murray, Social Services Supervisor for the Bartow County Department of Family and Children Services; Elizabeth Singleton, Social Services Case Manager for the Bartow County Department of Family and Children Services; and Kristen McMurray, Esq., acting for Special Assistant Attorney General Hope Pereira, Esq. The record was held open until November 16, 2015, for Respondent to submit Proposed Findings of Fact and Conclusions of Law.

terminating parental rights, but continued custody of S.M. and N.M. with Bartow County DFCS. *(Stipulation of parties #2, R-1).*

3.

Bartow County DFCS intended for the disposition at the Juvenile Court hearing to be Terminating Parental Rights (TPR) and the transfer of custody of S.M. and N.M. to the adoptive grandparent, Denise Whaley, for the purpose of adoption. However, the March 4, 2015, Juvenile Court Order did not include this language, but maintained custody with Bartow County DFCS. *(Stipulation of parties #3, R-1).*

4.

When Bartow County DFCS staff became aware that custody of S.M. and N.M. had not been transferred to the grandparent, Denise Whaley, DFCS staff took steps to correct the March 4, 2015, Juvenile Court decision. The Special Assistant Attorney General (SAAG) indicated that instead of transferring custody, the Director would be able to sign a "Consent to Adopt", allowing the adoptive grandparent to go forward with the adoptions. *(Stipulation of parties #4, R-1).*

5.

The adoption proceeded on July 1, 2015, without DFCS staff discussing adoption assistance benefits with the adoptive grandparent, Denise Whaley. *(Stipulation of parties #5, R-1).*

6.

Bartow County DFCS failed to follow State Adoption Assistance policy (12.2 Requirements). Specifically, Adoption Assistance was not applied for prior to the planned TPR/Transfer of Custody hearing; nor was Adoption assistance applied for prior to the adoption finalization date with an agreement signed (12.6 Requirements), although there was opportunity for the Bartow County DFCS worker to do so. *(Stipulation of parties #6, R-1).*

7.

Federal law requires that the Adoption Assistance Agreement be signed prior to the finalization of the adoption (45 CFR 1356.40). S.M. and N.M. meet special needs criteria, Title IV-E criteria, and were eligible to receive ongoing Adoption Assistance if an Adoption Assistance Agreement had been signed prior to finalization of their adoption. *(Stipulation of parties #7, R-1).*

8.

Bartow County DFCS admits to confusion regarding the application process in this case and concedes that the Adoption Assistance Application was not submitted for approval prior to the finalization of the adoption of S.M. and N.M. due to agency error. *(Stipulation of parties #8, R-1).*

9.

Petitioner received a relative care subsidy for S.M. and N.M. Federal and State policy preclude Adoption Assistance to be provided in the same month as the relative care subsidy. *(Stipulation of parties #9, R-1).*

10.

Since Respondent failed to provide Petitioner with an Adoption Assistance Agreement for signing prior to the finalization of the adoptions of S.M. and N.M., Petitioner requested this

hearing to determine whether extenuating circumstances exist to allow Respondent to enter into an Adoption Assistance Agreement with Petitioner after finalization of the July 1, 2015, adoptions. (*Testimony of Frank Twitty*).

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. 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. In this matter, the parties stipulate that S.M. and N.M. meet federally funded Title IV-E Adoption Assistance eligibility and were eligible to apply for Adoption Assistance because they were in the permanent custody of Respondent and placed into the custody of Petitioner for the purpose of adoption.

3.

An Adoption Assistance Agreement must be signed and in effect at the time of or prior to the finalization of the adoption. 45 C.F.R. Section 1356.40; Adoption Assistance Manual, Sections 12.6.

4.

The Division of Family and Children Services (DFCS) **shall submit and consider** an adoption assistance application for a child in the permanent custody of DFCS up until the Placement Agreement is signed with the prospective adoptive parent. When a child is to be transferred out of the custody of DFCS for the purpose of adoption, the adoption assistance application shall be submitted and a determination rendered by the Social Services Administration Unit (SSAU) **prior to the transfer of out of custody**. Adoption Assistance Manual, Sections 12.2.

5.

In this matter, Respondent failed to follow Federal law and the relevant policy and procedures of the Department of Human Services regarding Adoption Assistance. Specially, Respondent failed to provide Petitioner with an Adoption Assistance Agreement prior to the planned Termination of Parental Rights/Transfer of Custody Hearing, or finalization of the adoptions of S.M. and N.M. Both children meet special needs criteria and Title IV-E criteria and were eligible to receive ongoing adoption assistance if the agreement had been signed prior to the adoption finalization. Accordingly, extenuating circumstances exist to allow Respondent to enter into an Adoption Assistance Agreement with Petitioner after finalization of the July 1, 2015, adoptions.

6.

Adoption Assistance would normally begin in the month after relative care subsidy ends, as Adoption Assistance and relative care subsidies cannot be received in the same month. Since Petitioner received relative care subsidy through April of 2015, Adoption Assistance benefits

may begin effective May 2015.

IV. DECISION

Based upon the foregoing, it is concluded that Respondent's denial of Title IV-E Adoption Assistance benefits is **HEREBY REVERSED**. Accordingly, Respondent is directed to process an Adoption Assistance application, sign an Adoption Assistance Agreement, and provide Petitioner with Title IV-E Adoption Assistance benefits beginning May 2015.

SO ORDERED, November 23, 2015, *nunc pro tunc* for November 12, 2015.


CAROL WALKER-RUSSELL,
Administrative Law Judge