

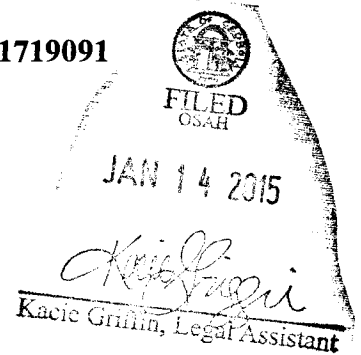
**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

**APRIL COTTLE,**  
                  **Petitioner,**

v.

**DHS, FAMILY AND CHILDREN  
SERVICES,**  
                  **Respondent.**

:  
:     **Docket No.:**  
:     **OSAH-DFCS-FOST PLACE-1518237-**  
:     **148-Miller**  
:  
:     **Agency Reference No.: 1719091**  
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A circular stamp from the Office of State Administrative Hearings (OSAH) is located in the upper right corner. The stamp contains the text "FILED OSAH" and the date "JAN 14 2015". Below the stamp is a handwritten signature in cursive, which appears to be "Kacie Griffin". Underneath the signature, the text "Kacie Griffin, Legal Assistant" is printed.

**INITIAL DECISION**

**I. Introduction**

The Petitioner requested a hearing in response to the Respondent's denial of her application for recurring and non-recurring adoption assistance benefits following her adoption of two minor children. The hearing took place on December 16, 2014. The Petitioner appeared *pro se*. Frank Twitty of the Respondent's adoption assistance unit appeared as the Respondent's representative. For the reasons set forth below, the Respondent's action is hereby **REVERSED**.

**II. Findings of Fact**

1.

The Petitioner, April Cottle, and her husband, Daniel Cottle, are the adoptive parents of two children: H.S.C., age nine; and M.S.C., age three. Mrs. Cottle is the maternal aunt of both children. A Final Judgment and Decree of Adoption was entered in the Superior Court of Ware County, Georgia, on September 18, 2013. (Testimony of Frank Twitty, Manette Williams, and Mrs. Cottle; Exhibit R-F.)

2.

In February 2005, H.S.C. was removed from her biological mother's custody and placed in foster care with her maternal grandmother, Melanie Shaw, who resides in a home together with the Cottles. In November 2005, the Juvenile Court of Charlton County awarded long-term custody of H.S.C. to Ms. Shaw. In August 2013, Ms. Shaw surrendered her rights to H.S.C. to enable the Cottles to adopt her. (Testimony of Mr. Twitty and Ms. Williams; Exhibit R-F.)

3.

In February 2011, shortly after her birth, M.S.C. was removed from her biological mother's custody and placed in foster care with the Cottles. On February 7, 2013, permanent custody of M.S.C. was transferred to the Cottles for the purpose of adoption. (Testimony of Ms. Williams; Exhibits R-E, R-F.)

4.

Prior to the adoption, the children's adoption caseworker discussed the availability of adoption assistance with the Cottles. The Cottles anticipated that they would receive recurring adoption assistance for M.S.C. and non-recurring adoption assistance for both children. However, the caseworker did not submit a timely adoption assistance application on their behalf. As a result, no adoption assistance agreement was in place before the adoption was finalized on September 18, 2013. The caseworker's failure to submit a timely application violated both the Respondent's written procedures, as set forth in its policy manual, and a specific directive of her supervisor. (Testimony of Mr. Twitty, Ms. Williams, and Mrs. Cottle; Exhibits R-A, R-B, R-C, R-D, R-I.)

5.

Federal regulations prohibit the Respondent from authorizing retroactive adoption assistance benefits unless extenuating circumstances exist, as determined following a fair hearing. It is undisputed that if an adoption assistance agreement had been signed by the parties before the adoption became final, the Cottles would have been eligible for recurring adoption assistance for M.S.C. and non-recurring adoption assistance for both M.S.C. and H.S.C. (Testimony of Mr. Twitty and Ms. Williams; Exhibits R-A, R-C, R-G, R-H.)

### III. Conclusions of Law

1.

Because this matter involves an application for a public assistance benefit, the burden of proof is on the Petitioner. Ga. Comp. R. & Regs. 616-1-2-.07(1)(e). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4). The Petitioner met her burden.

2.

Georgia's adoption assistance program is intended "to provide financial support to families who adopt difficult-to-place children from the public child welfare system . . . who otherwise would grow up in the State foster care system." Economic Support Services Manual of the Georgia Department of Human Services at 3120-3149 ("Adoption Assistance Manual") § 109. Federal regulations mandate that the Respondent "must actively seek ways to promote the adoption assistance program." 45 C.F.R. § 1356.40(f).

3.

Two categories of adoption assistance benefits are available to qualified families: non-recurring assistance and recurring assistance. Non-recurring assistance provides reimbursement of "reasonable and necessary adoption fees, court costs, attorney fees and other expenses directly related to the legal adoption of a child with special needs . . ." 42 U.S.C. § 673(a)(6)(A); Adoption Assistance Manual § 109.1(3)(A). Recurring adoption assistance offers monthly

payments “to assist the adoptive family in covering the ordinary and special needs of the child over an extended period of time.” Adoption Assistance Manual § 109.1(1)(B). A child who is covered by a recurring adoption assistance agreement is automatically eligible for Medicaid. 42 U.S.C. § 673(b)(1); Adoption Assistance Manual § 109.1(2); Economic Support Services Manual of the Georgia Department of Human Services at 3480-3539 (“Medicaid Manual”) § 2895.

4.

Pursuant to 45 C.F.R. § 1356.40, an adoption assistance agreement must be “signed and in effect at the time of or prior to the final decree of adoption.” See also O.C.G.A. § 49-5-8(a)(7); Adoption Assistance Manual § 109.24. However, “[i]f any adoptive family feels they were wrongly denied benefits, they may request an administrative (fair) hearing.” Adoption Assistance Manual § 109.24.

5.

The Adoption Assistance Manual enumerates the following permissible grounds for requesting a fair hearing:

- A. Failure by the State agency to advise potential adoptive parents about the availability of adoption assistance for children in the State Foster Care system.
- B. The agency erroneously determined that the child was ineligible for Title IV-E benefits.
- C. Relevant facts regarding the child were known by the State agency or child-placing agency and not presented to the adoptive parents prior to the finalization of the adoption.
- D. Denial of Adoption Assistance based on a means test of the adoptive family.
- E. Decrease in the amount of Adoption Assistance without the concurrence of adoptive parents.
- F. The adoptive family disagrees with the determination by the State that the child is ineligible for Adoption Assistance.

Adoption Assistance Manual § 109.24(1); see Laird v. Dep’t of Pub. Welfare, 23 A.3d 1015, 1029 (Pa. 2011). Then, if “extenuating circumstances” are proven at the fair hearing, a state adoption agency’s decision to deny adoption assistance benefits may be reversed. Adoption Assistance Manual § 109.24(3); Laird, 23 A.3d at 1029-30. As the Pennsylvania Supreme Court has explained, the extenuating circumstances doctrine serves to mitigate the consequences where

an agency has “shirked its statutory duty to provide adoption assistance to eligible children . . .” Laird, 23 A.3d at 1030.

6.

The Adoption Assistance Manual details the procedures that the Respondent’s caseworkers must follow to fulfill the agency’s mandate to provide adoption assistance benefits to eligible children. Regarding the signing of an adoption assistance agreement, the Manual specifically advises caseworkers as follows:

**The Adoption Assistance Agreement is a written, legal document, which must be entered into by the prospective adoptive parents and the State/Tribal agency prior to finalization of the adoption. . . . The Adoption Assistance Agreement must be fully executed prior to any Adoption Assistance payments being made.**

Adoption Assistance Manual § 109.10 (emphasis in original).

7.

In this case, although the Cottles’ caseworker advised them of the availability of adoption assistance,<sup>1</sup> she failed to take the necessary steps to ensure that they received the benefits to which they were entitled. Therefore, after weighing the Respondent’s duty to promote its adoption assistance program and the caseworker’s failure to abide by the provisions of the Adoption Assistance Manual, the Court finds that extenuating circumstances are present that require the Respondent to execute a post-finalization adoption assistance agreement.

#### IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Respondent’s decision to deny the Petitioner’s application for recurring adoption assistance on behalf of M.S.C. and her application for non-recurring adoption assistance on behalf of both M.S.C. and H.S.C. is hereby **REVERSED**. The Respondent is directed to execute post-finalization adoption assistance agreements with the Petitioner regarding M.S.C. and H.S.C., on terms consistent with this Initial Decision.

SO ORDERED, this 14<sup>th</sup> day of January, 2015.



**KRISTIN L. MILLER**  
**Administrative Law Judge**

<sup>1</sup> It must be noted that the facts of this case do not fit precisely within the specifically enumerated grounds for a fair hearing set forth in the Adoption Assistance Manual. The enumerated grounds, however, are not an exhaustive list of extenuating circumstances. Moreover, the Respondent would shirk its responsibility to provide adoption assistance to eligible children if it were authorized to deny an application that was untimely due to its caseworker’s own error. See Laird, 23 A.3d at 1030.