

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

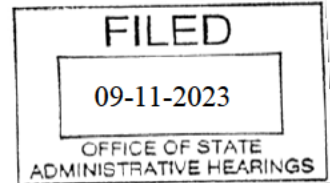
Y [REDACTED] J [REDACTED],
Petitioner,

v.

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

Docket No.: [REDACTED]
[REDACTED]-OSAH-DFCS-SAA-44-Fry

Agency Reference No.: [REDACTED]



INITIAL DECISION

I. SUMMARY OF PROCEEDINGS

The hearing in this matter was held on July 13, 2023, and continued on August 24, 2023, before the undersigned administrative law judge of the Office of State Administrative Hearings ("OSAH"). The hearing's purpose was to determine whether Respondent Department of Human Services, Family and Children Services ("DFCS" or Respondent) properly terminated Petitioner Y [REDACTED] J [REDACTED]'s Adoption Assistance benefits at the end of the month her adopted son turned eighteen (18). Petitioner represented herself. Chelsea Howard and Monique Agbago appeared on behalf of Respondent.

After careful consideration of the evidence and the arguments of the parties, Respondent's decision to terminate Petitioner's Adoption Assistance benefits is hereby **AFFIRMED**.

II. FINDINGS OF FACT

1.

Y [REDACTED] J [REDACTED] was receiving ongoing Adoption Assistance for K [REDACTED] B [REDACTED] based on an Adoption Assistance Agreement dated June 3, 2013. (Exhibit R-5). K [REDACTED] was born on April 12, 2005. At one point prior to the adoption, he went into DFCS's care. The Petitioner, Ms. J [REDACTED], K [REDACTED]'s maternal aunt, applied for and received custodial guardianship of K [REDACTED] on April 2, 2010 and took him out of DFCS's care. (Respondent's Exhibit R-1). Petitioner expressed an interest in adopting K [REDACTED], and on May 9, 2012, Ms. June Gilbert with DFCS Social Services Administration, sent Petitioner an advance information letter concerning applying for adoption assistance. Ms. Gilbert enclosed a copy of Policies 109.2 and 109.3 from the DFCS Youth Welfare Policy Manual. (Exhibit R-3). Policy 109.3(2)(C) states in part: "For NON DHS-Involved Private/Independent Adoptions, [as is the case here] any approved

Monthly Adoption Assistance benefits will terminate on the last day of the child's 18th birth month. (See Section 109.13, Duration of Benefits – After Age 18)." (*Id.*) Petitioner applied for Adoption Assistance benefits on January 11, 2013. (Exhibit R-2). He was approved for federal IV-E adoption assistance as part of a private/non-DFCS adoption and Petitioner entered into an Adoption Assistance Agreement on June 6, 2013. (Exhibit R-5). The Agreement was fully signed and executed before the adoption was finalized as required by law. Petitioner then adopted K [REDACTED] on June 7, 2013 in a private, non-DFCS adoption. The Adoption Assistance Agreement signed by Ms. J [REDACTED] provides: "**This Adoption Assistance Agreement will terminate at the end of the above-named child's 18th birth month, unless termination occur earlier as a result of one or more of the conditions set forth in Section V. "Termination".**" (emphasis in original). That section of the Agreement further provides:

If the Department / Social Services Administration Unit determines the child is eligible for state funded IV-B Adoption Assistance benefits beyond age 18, a new Adoption Assistance Agreement for children over the age of 18 must be fully signed and executed prior to the child's 18th birthday. Please Note: Non DHS Private/Independent Adoptions do not qualify for Adoption Assistance beyond the child's 18th birth month. (bold and underline in original; enlarged font added).

Both Ms. Howard and Ms. Agbago testified that Ms. J [REDACTED] was not eligible for any form of adoption assistance once K [REDACTED] passed his 18th birth month. There is no federal adoption assistance after age 18 and in a private adoption, such as the one here, there is no state assistance after age 18. They further testified that since K [REDACTED] was a private adoption, he would not be eligible for any of the state's post-18 adoption assistance programs. Simply stated, there are no exceptions that apply here that would make Petitioner eligible for benefits after the end of K [REDACTED]'s 18th birth month. (Testimony of Ms. J [REDACTED], Ms. Howard and Ms. Agbago; Respondent's Exhibits)

2.

Prior to K [REDACTED]'s 18th birth month, on March 7, 2023, Ms. Agbago sent a letter to Ms. J [REDACTED] advising her that K [REDACTED] would not be eligible for Adoption Assistance Benefits after April 30, 2023, the last day of his 18th birth month. (Exhibit R-8). Petitioner submitted a verbal request for a hearing on March 15, 2023 and followed it with a written request on May 4, 2023. (Exhibit R-9).

3.

Ms. J [REDACTED] testified that she was told by Ms. Perkins, a case worker formerly employed by Respondent, who had worked with Ms. J [REDACTED] for several years, that she would continue to be eligible for benefits after K [REDACTED] turned 18 and that everything Ms. J [REDACTED] submitted was in order. It was unclear when this was supposed to have

occurred. Ms. J. [REDACTED]'s testimony was not clear when she was confronted with inconsistencies, and she appeared to be confused when questioned. Ms. J. [REDACTED] initially testified that she submitted the paperwork to Ms. Perkins in August 2022. Ms. Howard, who would have reviewed the request for benefits after the age of 18 for K. [REDACTED] testified that she never received it for approval. She also stated that Ms. Perkins did not have authority to approve the benefits. During the initial hearing on July 13, 2023, Ms. Howard testified that Ms. Andrea Perkins was no longer employed by Respondent but did not know the date she left. The Court adjourned the hearing to reconvene on August 24, 2023, to provide the parties an opportunity to discuss with Ms. Perkins the possibility of her appearance to testify by telephone and to allow Ms. J. [REDACTED] an opportunity to review the complete record. The parties were able to make arrangements with Ms. Perkins and appeared by telephone on August 24, 2023. (Testimony of Petitioner and Respondent's representatives).

4.

During the hearing on August 24, 2023, Ms. Perkins testified that she did not recall receiving a request for continued benefits or documentation that K. [REDACTED] was still in school in August of 2022. She also stated that had she received such a request at that time, she would have advised Ms. J. [REDACTED] that documentation from August of 2022 was too early to document K. [REDACTED]'s enrollment status for his April 2023 birth month. She testified that she typically received those applications within thirty days of the birth month and no more than sixty days prior to the birth month. Ms. Perkins also testified that she would not have told Ms. J. [REDACTED] that K. [REDACTED] was eligible because the request for benefits would still have to be reviewed and approved by her superiors. She invited Ms. J. [REDACTED] to provide some documentation, such as an email. Ms. J. [REDACTED] stated she was not good at email and did not provide anything to corroborate her testimony that Ms. Perkins confirmed Petitioner's benefits after the end of K. [REDACTED]'s 18th birth month. At this point in the exchange, Ms. J. [REDACTED] testified that she submitted the information a month or two prior to April 2023. Petitioner testified that it was after she submitted the application in 2023 that Ms. Perkins assured her that her benefits were approved and that everything was in order. Ms. Perkins then testified that she left SAA in December 2022 and would not have been there to receive anything that Ms. J. [REDACTED] submitted after the first of the year. She also testified that she did not talk with Ms. J. [REDACTED] after she left in December. (Testimony of Petitioner and of Ms. Perkins). After the hearing, Ms. J. [REDACTED] submitted two documents for consideration. The first is a letter dated June 1, 2022, signed by Ms. Perkins, ten months prior to his 18th birth month when he was seventeen, stating that the purpose of the letter was to verify that, at that time, Ms. J. [REDACTED] was receiving monthly Adoption Assistance for K. [REDACTED]. The

second document is dated August 30, 2022. It is on the principal of ██████ High School letterhead and states that the letter serves as verification K█████ is enrolled as a full-time student for the 2022-23 school year and his anticipated graduation is in May 2024. This appears to correspond to what Ms. J█████ testified she sent to Ms. Perkins. While the first document shows that Petitioner was in communication with Ms. Perkins in June of 2022, the second document simply shows that K█████ was enrolled as a full-time student in August of 2022. While Ms. J█████ might have sent the enrollment document to Ms. Perkins, standing alone, it is not evidence that it was sent to Ms. Perkins, or that Petitioner was in communication with Ms. Perkins about ongoing benefits after K█████'s 18th birth month. (Petitioner's Exhibits).

III. CONCLUSIONS OF LAW

1.

Since this case involves termination of benefits, the burden of proof rests with Respondent. Ga. Comp. R. & Regs. r. 616-1-2-.07(1)(d). The evidentiary standard is preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4). The trier of fact determines the credibility of witnesses and the weight to be given their testimony, and is not obligated to accept a witness's testimony, even if it is not contradicted, and may accept or reject all or part of the testimony. O.C.G.A. § 24-6-630; *Tate v. State*, 264 Ga. 53(1) (1994); *Parham v. Swift Transp. Co.*, 292 Ga. App. 53, 56 (2008) ("As the trier of fact, the ALJ was free to determine what portions of the evidence he would consider, what weight such evidence would be given, and the credibility of any witnesses or testimony."); *State v. Betsill*, 144 Ga. App. 267, 240 S. E. 2d 781 (1977).

2.

The Adoption Assistance and Child Welfare Act of 1980, also known as Title IV-E of the Social Security Act, creates a joint federal--state program that provides federal funds to participating states to pay for certain foster care and adoption expenses. In enacting Title IV-E, Congress stated that its purpose was to enable each state "to provide . . . adoption assistance for children with special needs[.]" 42 U.S.C. § 670. The program requires that states with plans approved under the Act "shall enter into adoption assistance agreements . . . with the adoptive parents of children with special needs." 42 U.S.C. § 673(a)(1)(A).

3.

Under federal law the state agency, in this case Respondent, "must actively seek ways to promote the adoption assistance program." 45 C.F.R. § 1356.40(f). According to Georgia's Adoption Assistance Manual, "[t]he availability

of [a]doption [a]ssistance shall be discussed with anyone expressing interest in adopting child(ren) with special needs. An Application shall be submitted for any person who requests [a]doption [a]ssistance for child(ren) being adopted....” *Adoption Assistance Manual, Section 109.2.*¹ Further, “[i]t is important that any family adopting a child outside of DFCS custody be made aware of the eligibility criteria and the eligibility determination prior to finalization.” *Adoption Assistance Manual, Section 109.3.*² Based on the evidence presented, Respondent fulfilled these obligations to Petitioner.

4.

Section 109.2(2) [new Section 12.1 of the Child Welfare Manual] states that for a child to receive Title IV-B, state funded adoption assistance, the child “Must be a child in the permanent custody of DHS when being placed in an adoptive status, and determined not eligible for Title IV-E funding.” K [REDACTED] did not qualify for state funded adoption assistance because he was not in the permanent custody of DFCS when he went into an adoptive status, and he had not been determined not eligible for Title IV-E funding. Instead, he was determined eligible for Title IV-E funding and that status is reflected on the Adoption Assistance Agreement signed by Petitioner. (Exhibit R-5, p.1). The Agreement also reflects that K [REDACTED] was not IV-B eligible, i.e., he was not eligible for state adoption assistance.

5.

Section 109.13 of the policy in effect at the time Ms. J [REDACTED] signed the Adoption Assistance Agreement, [Section 12.10 of the current Manual], states: “**Termination of Adoption Assistance benefits will occur at the end of the child’s 18th birth month unless the child meets the State of Georgia’s criteria to continue benefits past age 18.**” (emphasis in original). That section further provides: **BASIC REQUIREMENT: Only children in DHS-Involved Adoptions are “potentially” eligible to receive Adoption Assistance benefits beyond age 18. The criteria below must be met at the time of being placed on adoptive status:** Since K [REDACTED]’s adoption was a private adoption, none of the possible criteria were met. Section 12.10 of the current policy contains substantially similar language. Petitioner was advised of the policy at the time of K [REDACTED]’s adoption and the policy has not substantively changed. Respondent’s decision to notify Petitioner that Adoption Assistance benefits would end on April 30, 2023,

1 The Child Welfare Manual has undergone a significant renumbering since 2012-13, when Petitioner was in the process of adopting K [REDACTED]. Sections 109.2 and 109.3 are now in Chapter 12 (Adoption Assistance) Section 12.1.

2 The federal policy is substantially similar stating “[i]t is incumbent upon the State agency to notify prospective adoptive parents about the availability of adoption assistance for the adoption of a child with special needs.... [as the] primary goal of the title IV-E adoption assistance program is to provide financial support to families who adopt difficult-to-place-children from the public child welfare system.” The Federal Child Welfare Policy Manual section 8.2.) (www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy-dsp.jsp?citID=176).

as reflected in Ms. Agbago's March 7, 2023 letter (Exhibit R-8), was required by, and in accordance with, law and policy. Nothing in the Adoption Assistance Agreement that she signed, or any of the other materials sent to Ms. J. [REDACTED] provided any basis to believe the benefits would continue.

6.

Respondent showed by a preponderance of the evidence and as a matter of law and policy that Petitioner was not eligible for Adoption Assistance benefits after the end of K. [REDACTED]'s 18th birth month. Petitioner identified no policy or law that supported her argument that she was eligible. Petitioner's argument consisted only of that Ms. Perkins told her she would be eligible after K. [REDACTED] turned 18. This argument and her testimony on this issue are not persuasive. Ms. Perkins testified credibly that if Ms. J. [REDACTED] had sent her the August attendance verification that she would have told Ms. J. [REDACTED] it was too early to be acceptable. She also testified credibly that since she could not approve benefits for a child who turns 18, she would not have told Ms. J. [REDACTED] or any of the other many parents she worked with, that they would be approved. Once the Adoption Assistance Agreement was reviewed with Ms. Perkins and she recalled that it was a private adoption, she testified that Petitioner would not have been eligible for benefits after K. [REDACTED]'s 18th birth month. Even if an enrollment verification had been submitted within the two months prior to K. [REDACTED]'s 18th birth month, it would not have changed the outcome, because the fact that K. [REDACTED] is still enrolled as a full-time student in high school does not change the fact that Petitioner is not entitled to Adoption Assistance benefits after April 30, 2023, the last day of K. [REDACTED]'s 18th birth month. Simply stated, there are no grounds in law or policy that would entitle Petitioner to Adoption Assistance benefits after the last day of K. [REDACTED]'s 18th birth month.


7.

Even if someone had told Ms. J. [REDACTED] she was eligible for benefits, which the Court concludes was not established by credible or persuasive evidence, that statement would have been wrong and not in accordance with law and policy. The Court cannot award benefits when it would be a violation of law and policy to do so even if the Petitioner was incorrectly told she was eligible. It is unfortunate that Petitioner had that understanding as there is no credible or persuasive evidence to support it.

IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Department's decision to terminate Petitioner's IV-E adoption assistance benefits at the end of April 2023 is **AFFIRMED**.

SO ORDERED, this 11th day of September 2023.



John Fry
Administrative Law Judge

