

**EFFECTIVE**

September 1, 2010.

**SUBJECT****Adoption Subsidy Manual (AAM) 700 - Adoption Subsidy Administrative Hearings**

All adoption subsidy administrative hearings policy is added to this manual item. Current policy in AAM 700 is obsolete.

**Note: Due to the extensive revisions to this policy, the entire item is included in this bulletin.**

1. Policy no longer references the Bridges manual (BAM 600) administrative hearings policy.
2. Explanation of the role of the State Office of Administrative Hearings and Rules (SOAHR) has been revised.
3. Explanation of the types of issues subject to administrative hearings has been revised.
4. Specific information about notice of the right to a hearing has been revised. Policy regarding adequate and timely notice has been added.
5. Policy has been revised to allow a prospective adoptive parent who has been denied adoption subsidy a right to an administrative hearing **prior to** the adoptive placement order.
6. Policy regarding suspension of benefits pending a hearing has been added.
7. Policy giving direction to the subsidy office on case actions has been added.
8. Standards of promptness have been added.
9. Policy regarding pre-hearing conferences has been added.
10. Policy regarding support subsidy rate disputes has been clarified.

*Reason:* Clarification of policy and procedures.

**AAM 700 - ADOPTION SUBSIDY ADMINISTRATIVE HEARINGS**

**GENERAL  
INFORMATION**

The following policies must be used when an administrative hearing regarding adoption support subsidy, medical subsidy or nonrecurring adoption expenses is requested. Bridges Administrative Manual (BAM) 600 policy does not apply to adoption subsidy cases.

**SOAHR**

The State Office of Administrative Hearings and Rules (SOAHR) is the state's central agency that provides impartial administrative law judges to conduct administrative hearings for the Department of Human Services (DHS). This office is located within the Department of Energy, Labor and Economic Growth.

**Issues Subject to  
Administrative  
Hearings**

DHS has an administrative hearing process to provide for the right to dispute a department decision or case action when an individual believes the decision is contrary to law or DHS policy or when a claim is not acted upon in a reasonable time period. Examples of issues subject to administrative hearings include, but are not limited to:

- Denial of eligibility for any of the adoption subsidy programs.
- Failure of DHS, or a private agency under contract with DHS, to notify potential adoptive parents about the availability of adoption assistance for children in the state foster care system.
- Failure of the adoption worker to complete required paperwork prior to the finalization of the adoption.
- Disagreement with the subsidy rate set by DHS.
- Closing of a subsidy case.
- Reduction or denial of benefits.

The applicant, adoptive parent or guardian must prove that there was an error or mistake in their case at an administrative hearing.

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**Notice  
Requirements**

Application forms and each written notice of action taken in a case provides applicants of their right to a hearing. This includes an explanation of how and where to file a hearing request and the right to be assisted by and represented by anyone the applicant chooses.

The applicant must receive a written notice of all case actions affecting eligibility or the amount of benefits. When a case action is proposed or taken, the notice must specify:

- The action the department is taking.
- The reason(s) for the action.
- The specific manual item(s) that cites the legal base for an action, or the regulation or law itself.
- The circumstances when assistance will be continued until the hearing decision is received. If the DHS action is upheld, the payments made during the time must be repaid to the department.

**Exception:** There will not be a notice of case action when a hearing decision is issued. The decision serves as notice of the action.

The subsidy office must give timely and adequate notice of actions that will result in discontinuance, termination, suspension or reduction of assistance. **Adequate notice** means a notice containing the information above. **Timely notice** of these actions means that notice must be mailed at least 10 calendar days before the effective date of action by the department.

In the following circumstances, the subsidy office must send **adequate notice** to the applicant, adoptive parent or guardian no later than the date of the action taken (immediate negative action):

- Where the subsidy office has factual information confirming the death of the subsidy payee or the subsidy-eligible child.
- When the subsidy office receives a written statement signed by the payee that he/she no longer wishes to receive subsidy assistance or the statement provides information which requires termination or reduction of assistance and the payee

has indicated in writing that he/she understands that the discontinuance of subsidy assistance is the result of the information.

- The payee's whereabouts are unknown and DHS mail directed to the payee has been returned by the post office indicating no known forwarding address. The payee's check must be made available to him/her if the whereabouts become known during the payment period covered by a returned check.
- A special allowance granted for a specific time period is terminated and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period.

### **Who May Request an Administrative Hearing**

Prior to adoptive placement by the court, an administrative hearing may be requested by a subsidy applicant. After adoptive placement by family court order, the adoptee, the adoptive parent or legal guardian (appointed after the death of the adoptive parent(s) under MCL 700.5202 and 700.5204) has the right to request a hearing. For purposes of this policy, the person requesting the administrative hearing is referred to as the claimant.

An opportunity for an administrative hearing shall be granted to any claimant who requests a hearing because his or her request for adoption subsidy is denied or is not acted upon with reasonable promptness and to any claimant who is subject to an action resulting in suspension, reduction, discontinuance or termination of assistance.

### **Authorized Hearing Representative**

A hearing request signed by a claimant may name an authorized hearing representative (AHR) who may stand in for or represent the claimant in the hearing process. The applicant may choose an attorney or other person to act as the AHR. An AHR exercises the applicant's right to a hearing and may do whatever the claimant would do if the claimant were not represented. If the applicant names an AHR, the AHR must sign a hearing request withdrawal, if one is filed.

## Department Requests

The department may request a hearing to establish title IV-E funding eligibility for a support subsidy or nonrecurring adoption expenses case that was denied title IV-E funding due to an administrative error. Title IV-E Federal Financial Participation (FFP) is available only in those situations in which a fair hearing determines that the child was wrongly denied benefits and the child meets all title IV-E funding requirements.

## Hearing Request Deadline

Hearing requests must be submitted in writing. For all denials and other appeals, an individual has the right to request a hearing within 90 calendar days of the written notice of the case action by the adoption subsidy office.

To avoid suspension, reduction, discontinuance or termination of adoption support subsidy, medical subsidy or nonrecurring adoption expenses pending the administrative hearing, the claimant must submit a hearing request to a local DHS office or the central DHS office within the following deadlines:

- Before the effective date of the action.
- Within 11 business days of the effective date of an immediate negative action.

If a claimant requests a hearing within the above time frames, the department shall not suspend, reduce, discontinue or terminate adoption support subsidy, medical subsidy or nonrecurring adoption expenses pending a decision following the hearing.

***Exception:*** Benefits will not continue when the claimant or AHR specifically states in writing that continued assistance pending the hearing decision is **not** requested.

If a hearing request is not received within the above-stated time frames, suspension, reduction, and/or termination of assistance will not be reversed pending the hearing decision.

### ***Denial at Application***

The claimant is not entitled to benefits pending the hearing when the reason for the hearing request is a denial of eligibility at application.

**Recouping  
Program Benefits**

If a hearing request is filed timely and program benefits are continued, repayment of funds will be required if any of the following occur:

- The hearing request is later withdrawn.
- SOAHR denies the hearing request.
- The claimant or AHR fails to appear for the hearing and SOAHR gives written instruction to proceed.
- The hearing decision upholds the department's action.

The repayment will be calculated from the date the payments would have stopped to the date the negative action is subsequently effective.

**Local Office  
Receipt of Hearing  
Request**

If an adoption subsidy hearing request is filed in the local DHS office, it should be date stamped and immediately forwarded to the adoption subsidy office at:

Adoption Subsidy Office, Hearings Coordinator  
Michigan Department of Human Services  
Grand Tower, Suite 413  
P.O. Box 30037  
Lansing, MI 48909

**Subsidy Office  
Action on Untimely  
Requests**

For all inappropriate requests and/or requests received by DHS more than 90 calendar days from the date of the notice of case action, the subsidy office must do the following:

- Complete the DHS-3050, Hearing Summary, stating the following:
  - The reason why the request should not be heard.

- The request was received more than 90 calendar days from the date of the notice of case action (attach a copy of the notice).

- Forward the hearing request and the summary to SOAHR.

SOAHR will inform the claimant in writing when a request is granted or denied. If the request is granted, SOAHR will provide advance notice of the time, date and place of the hearing.

### Standards of Promptness

The **subsidy office** has 15 calendar days from receipt of the hearing request to complete all of the following:

- Log the hearing request.
- Contact the claimant or AHR.
- Obtain and submit to SOAHR verification of the AHR's prior authorization, if needed.
- Arrange a pre-hearing conference including all appropriate persons. (The conference need not be held within the 15 day standard, but there must be documentation of the contact with the claimant or AHR within the 15 calendar days.)
- Determine the nature of the complaint.
- Forward the request with either a DHS-18A, Hearing Request Withdrawal, or a DHS-3050, Hearing Summary, to SOAHR by the 15th day.

**SOAHR** has 65 calendar days from receipt of the Hearing Summary to schedule and conduct a hearing, render a decision and mail it to the subsidy office, the claimant and the AHR.

Following the administrative hearing, the **subsidy office** has 10 calendar days from the date a decision and order is received from SOAHR to implement the decision.

### Expedited Hearings

An expedited hearing may be requested when unusual circumstances exist. Circumstances that may qualify for an expedited

hearing include, but are not limited to, medical subsidy denials for out-of-home placement funding or denial of eligibility/services for a child with a serious medical condition. A subsidy manager may request an expedited hearing by calling the SOAHR director or designee.

All of the following must be completed by the subsidy office within two business days of receiving the hearing request:

- Complete the DHS-3050. Include an explanation of the reason an expedited hearing is required.
- Write “expedited hearing” at the top of the hearing request.
- Forward the hearing request and the summary to SOAHR.

### **DHS-3050, Review and Hearing Summary**

Upon receiving a hearing request, the adoption subsidy office will review the request and complete the DHS-3050, Hearing Summary, and forward it and the original hearing request to SOAHR. The hearing summary must briefly describe the agency’s decision and the claimant’s arguments against the department decision.

The narrative of the hearing summary must include all of the following:

- A clear statement of the case action, including all programs involved in the case action.
- Facts which led to the action.
- Policy which supported the action.
- Correct address of the claimant or AHR.
- Description of the documents the subsidy office intends to offer as exhibits at the hearing.

The department must decide what exhibits to offer at the hearing and attach copies to the hearing summary. A copy of the policies used in determination of the case action must also be included. A copy of the hearing summary and copies of exhibits and policies must be sent to the claimant at the same time they are sent to SOAHR. A copy of all documents must be kept in the adoption sub-

sidy case file. Additional documents may be sent to SOAHR and to the claimant after the hearing summary has been submitted.

The adoption subsidy office must determine whether a local office or private contract agency staff person is needed for testimony at the hearing. If staff is determined necessary, they should be informed by telephone and confirmed by mail. Current DHS and contract agency staff are required to participate in administrative hearings without a subpoena when their testimony is deemed necessary.

A request for a subpoena may be sent to SOAHR if a witness is no longer employed or under contract with DHS. The request must be sent prior to the hearing date and allow time for sufficient notice.

### **SOAHR Response to Hearing Requests**

The State Office of Administrative Hearings and Rules (SOAHR) may grant or deny a hearing request. SOAHR will deny requests:

- Signed by unauthorized persons.
- Without signatures. Faxes or photocopies of signatures are acceptable.
- Received by DHS more than 90 calendar days after the date of the written notice of case action.

### **Pre-Hearing Conference**

Issues stated in the hearing request should be resolved whenever possible through a conference with the claimant or AHR, rather than through a hearing. A pre-hearing conference (either in person or by phone) must take place within 30 calendar days after the subsidy office receives the hearing request unless:

- The claimant or AHR chooses not to participate in the pre-hearing conference. (The efforts made to offer a conference must be documented in the case record.)
- A conference was held prior to the receipt of the hearing request and the issue in dispute is clear, and DHS staff fully understand the positions of both the department and the

claimant or AHR. Documentation of the conference must be filed in the case record.

All appropriate staff should be consulted before the pre-hearing conference and should attend, as necessary.

### **Corrected Case Action**

If the subsidy office determines that the case action needs correction, the department may take one or more of the following actions:

- Cancel the case action.
- Make corrective payments retroactive to the date the incorrect action was effective.
- Send a new case action notice to the claimant and/or AHR.
- Notify SOAHR that the disputed action has been corrected and that the claimant's concerns have been resolved. SOAHR must have all the following documentation to deny hearing requests without a signed claimant withdrawal:
  - The hearing request with the signature of the claimant or the AHR.
  - A short summary of the actions the subsidy office took to correct all the claimant's concerns.

SOAHR will send the claimant and AHR a letter stating that the hearing request is dismissed because there is no longer any basis for a hearing. However, the hearing will not be dismissed if the claimant or AHR claims that the local office failed to correct all disputed actions.

### **Withdrawal**

A claimant or AHR may withdraw the request for a hearing at any time prior to the administrative law judge's (ALJ) issuance of a hearing decision and order. When a claimant wishes to withdraw a request, a written and signed withdrawal must be submitted. If the claimant has named an AHR, the AHR must sign the hearing request withdrawal. The DHS 18-A, Hearing Request Withdrawal, may be used for this purpose.

The withdrawal must state clearly that the claimant has decided to withdraw the request and the reason for the withdrawal. The adoption subsidy office must forward the original withdrawal to SOAHR and file a copy in the case record. If the case has already been assigned to an ALJ, the withdrawal will be submitted to the assigned ALJ.

### **Requests for Postponement (Adjournment)**

The claimant, an AHR or the subsidy office may request a postponement (also called adjournment) of a scheduled hearing. The claimant or AHR may call SOAHR to request a postponement. Only SOAHR can grant or deny a postponement. When the hearing is rescheduled, a new DHS-26A, Notice of Hearing, is mailed to everyone who received the original notice.

### **The Hearing**

The usual sequence for a hearing is:

- Introduction by the ALJ.
- Opening statements by the department and claimant.
- Testimony of witnesses.
- Closing statements.

In general, the ALJ will follow the same rules used in circuit court to the extent these rules are practicable. The ALJ must ensure the record is complete and may:

- Take an active role in questioning the witnesses and parties.
- Assist either side to ensure that all necessary information is present on the record.
- Be more flexible than a circuit court judge in deciding what evidence may be presented.
- Determine what evidence is acceptable, material and relevant to the hearing.

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**HEARINGS FOR  
POST-FINALIZATION  
APPLICATIONS**

For hearings concerning adoption support subsidy and/or nonrecurring adoption expenses (NRE) eligibility requests after the finalization of the adoption, there are certain limited circumstances in which an ALJ may grant approval of support subsidy or NRE through the administrative hearing process. An approval may be granted only in cases in which there has been a determination of both of the following:

- A specific error (examples below) was made.
- The child's pre-adoptive circumstances met the adoption support subsidy/NRE eligibility requirements at the time of the adoption finalization.

If the child's circumstances did not meet adoption support subsidy/nonrecurring adoption expenses eligibility requirements prior to the date of the finalization of the adoption, the presence of an error is not relevant. Determination of an error listed below will not change the child's ineligibility.

**Specific Errors**

Some examples of errors that may be considered in the administrative hearing for adoption support subsidy and/or nonrecurring adoption expenses eligibility requests after adoption finalization are:

- An error in the written determination of a child's ineligibility by the DHS adoption subsidy office.
- The documented denial of eligibility by the DHS adoption subsidy office was based on a means test of the adoptive family income/assets.
- For children who were under the care and custody of DHS and placed for adoption after January 1, 1995 only: failure by the DHS local office adoption program (or private agency under contract with DHS to provide adoption services) to notify or advise the adoptive parent(s) of the availability of adoption support subsidy and/or nonrecurring adoption expenses. Documented receipt of DHS Publication 538, Michigan's Adoption Subsidy Programs, is deemed evidence of notice of the above.
- An administrative error on the part of the adoption agency.

- Relevant facts regarding the child were known by DHS or DHS contracted child placing agency and the information was not presented to the adoptive parent(s) prior to the finalization of the adoption.

### **Specific Error Determination**

If it is determined that a specific error such as listed above did occur in a case, the ALJ will review the child's circumstances to determine whether the child would have been eligible for an adoption support subsidy and/or nonrecurring adoption expenses at the time of, or prior to, the adoption finalization. The eligibility policy in the adoption subsidy manual (AAM) that was in effect at the time of the child's adoption finalization will be used to determine eligibility.

If a child's circumstances did not meet eligibility criteria for adoption support subsidy and/or nonrecurring adoption expenses prior to the date of the court order finalizing the adoption but there is evidence of an error as listed above, eligibility can not be granted.

### **Adoption Support Subsidy Rates for Children Found Eligible**

If an ALJ determines that a specific error was made and the child met the eligibility requirements for adoption support subsidy, the adoption subsidy office will determine the maximum adoption support subsidy rate. The maximum rate will be determined consistent with the foster care maintenance rate that the child received, or would have received, in a foster family home at the time immediately prior to the final order of adoption. In addition, any legislative increase or decrease to the standard base rate that were authorized since the child's adoption placement will be considered in the rate setting.

For a child who was adopted from a residential treatment facility, the maximum adoption support subsidy rate will be determined consistent with policy in AAM 210, Adoption Support Subsidy Rate Determination.

After a maximum adoption support subsidy rate is determined by the adoption subsidy office, the ongoing adoption support subsidy payment will be negotiated with the adoptive parent(s). A

negotiated DHS-4113, Adoption Assistance Agreement, must be signed by the adoptive parent(s) and the DHS designee before the adoption support subsidy ongoing payment and any retroactive payments may be paid.

**Effective Date of  
Post-Adoption  
Support Subsidy**

If an ALJ determines that a specific error was made and the child met the adoption support subsidy eligibility requirements, the adoption support subsidy will be paid back to the date the first payment would have been made if an error had not occurred. The adoption support subsidy payment is processed when the adoption assistance agreement is signed by the adoptive parent(s) and the DHS designee and the DHS-1344, Case Opening Request, is submitted by the parent(s) to the adoption subsidy office.

**Medicaid for  
Children Found  
Eligible After  
Finalization**

If an ALJ determines that a child is eligible for adoption support subsidy, the adoption subsidy office determines the child's eligibility for Medicaid through the adoption support subsidy program. If it is determined that the child is eligible, Medicaid will be activated after the adoption assistance agreement is signed by the adoptive parent(s) and the DHS designee, and the DHS-1344, Case Opening Request, is submitted by the parent(s) to the adoption subsidy office.

**Nonrecurring  
Adoption  
Expenses  
Reimbursement for  
Children Found  
Eligible After  
Finalization**

If an ALJ determines that a specific error was made and the child met the eligibility requirements for nonrecurring adoption expenses, the DHS-4113, Adoption Assistance Agreement, or DHS-4814 Non-recurring Adoption Expenses Application/Agreement for a Child Without Support Subsidy, must be signed by the adoptive parent(s) and the DHS designee. After the DHS-1344, Case Opening

Request and DHS-4815, Parent Claim for Reimbursement of Nonrecurring Adoption Expenses, are submitted to the adoption subsidy office by the adoptive parent(s), the allowable expenses will be determined and reimbursed up to the maximum allowed. (See AAM 310.)

## **SUPPORT SUBSIDY RATE DISPUTES**

Adoption support subsidy payment rates must comply with state law [MCL 400.115g (2)], adoption assistance policies in AAM 210 and foster care policies in FOM 903-3. Administrative law judges may rule on the appropriateness of the rate established by the foster care or adoption subsidy program based on the circumstances prior to adoption and within the limits of MCL 400.115g (2).

## **HEARING DECISIONS**

The ALJ determines the facts based solely on the evidence at the hearing, draws conclusions of law, and

- For adoption support subsidy requests received after adoption finalization, recommends a decision to the DHS director.
- For all other adoption subsidy matters, issues a decision and order.

Copies of the recommended decision and order are sent to the adoption subsidy office and the claimant. In most cases, the claimant has the right to appeal the final decision to probate court within 60 calendar days after the final decision is received. The DHS director has 60 calendar days to issue a final decision and order or return the recommended decision to SOAHR for rehearing.

The hearing decision and order may require the adoption subsidy office to take action. The office must implement any required action within 10 calendar days of the mailing date of the hearing decision. The adoption subsidy office will complete the DHS-1843, Administrative Hearing Order Certification, within ten calendar days and send it to SOAHR to certify the progress of implementation.

## Rehearing/ Reconsideration

A rehearing is a full hearing which is granted when the original hearing record is inadequate for purposes of judicial review or there is newly discovered evidence that could affect the outcome of the original hearing.

A reconsideration is a paper review of the facts, law and any new evidence or legal arguments. A reconsideration is granted when the original hearing record is inadequate for judicial review and a rehearing is not necessary but the department believes the ALJ failed to accurately address all the issues.

SOAHR will determine if a rehearing or reconsideration will be granted.

## Request for a Rehearing

The department or claimant may file a written request for a rehearing. The department may request a rehearing if any one of the following exists:

- Newly discovered evidence, which could affect the outcome of the original hearing.
- Misapplication of policy or law in the hearing decision which led to a wrong conclusion.
- Failure of the ALJ to address in the decision relevant issues raised in the hearing request.
- Typographical or mathematical errors that affect the rights of one of the parties.

## Rehearing Process

The request for a rehearing must be received at SOAHR within 60 calendar days of the mailing date on the original decision and order.

SOAHR will grant or deny the request and will send written notice to all parties of the original hearing. If SOAHR grants a reconsideration, the hearing decision may be modified without another hearing unless there is a need for further testimony. If a rehearing is

granted, SOAHR will schedule and conduct the rehearing in the same manner as the original hearing.

### **Appealing a Hearing Decision**

Appeals from administrative hearing decisions must be filed in the probate court in which the adoption petition was filed or the probate court of the county in which the adoptee is found. For families living out-of-state, appeals must be filed in the probate court in which the adoption petition was filed.

### **MANUAL MAINTENANCE**

This policy will be added to the adoption subsidy manual (AAM) at the next policy release.

**MANUAL  
MAINTENANCE  
INSTRUCTIONS**