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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

██████████ ██████████
████████████████████
████████████████████

DECISION

AAP/150983

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 2013, under Wis. Admin. Code §DCF 50.065, to review a decision by the Wisconsin Department of Children and Families [“DCF”] in regard to Adoption Assistance Program [“AAP”], a Hearing was held on September 19, 2013 at the Division of Hearings and Appeals [“DHA”] in Madison, Wisconsin.

The issue for determination is whether, under the law, the amount of petitioner’s Adoption Assistance may be increased.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
████████████████████
████████████████████

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
BY: Therese Durkin
Attorney
Office of Legal Counsel
Department of Children and Families
State of Wisconsin
Room G200
201 East Washington Avenue
P.O. Box 8916
Madison, Wisconsin
53708-8916

OTHER PERSON PRESENT:

Amy E. Anderson, MA, DCF Social Services Specialist

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County.
2. Petitioner adopted the following 2 children and entered into an *Adoption Assistance Agreement* with DCF for each of them: AMD; female now 15 years old; adopted in 2006; and, YJD; female now 17 years; adopted in 2003. Exhibits #R-1 & #R-8.
3. At the time of adoption petitioner begin receiving monthly Adoption Assistance payments from DCF for AMD and YJD. Exhibits #R-1, #R-2, #R-8 & #R-9.
4. In May 2013 petitioner requested that the amount of monthly Adoption Assistance be increased for both AMD and YJD. Exhibits #R-3 & #R-10.
5. By letters dated July 17, 2013 DCF approved an Adoption Assistance Agreement Amendment without the increased Adoption Assistance requested by petitioner. Exhibits #R-5 & #R-11.
6. Petitioner is currently receiving monthly Adoption Assistance in the amount of \$798.00 for AMD and \$717.00 for YJD. Exhibits #R-5 & #R-11.
7. Petitioner file an appeal concerning the amount of Adoption Assistance for both AMH and YJF; at the time of the September 19, 2013 Hearing in this matter petitioner stated that she was appealing the amount of monthly Adoption Assistance for only YJF (she is not disputing the amount for AMH).
8. The \$717 monthly Adoption Assistance that petitioner receives for YJF consists of the following: basic maintenance payment of \$329; exceptional payment of \$100; \$72 (moderate, Level C) for physical/personal care needs; \$108 (the maximum allowed; intensive, Level D) for emotional needs; and, \$108 (the maximum allowed; intensive, Level D) for behavioral needs. Exhibit #R-7.
9. YJD has Tourette Syndrome (including body jerking 3 or 4 times per day), asthma, a mood disorder, and requires special diet preparation. See, Exhibits #R-10, #R-12 & #R-13.

DISCUSSION

Petitioner is requesting that the amount of Adoption Assistance for YJD be increased.

The law does not allow a Basic Maintenance payment or an Exceptional payment to be adjusted after an Adoption Assistance Agreement is entered into. Wis. Admin. Code §§ DCF 50.045(3)(c)intro, & (c)3. (August 2011). Therefore, petitioner's Basic Maintenance payment and Exceptional payment cannot now be increased.

Adoption Assistance Agreement provides for supplemental payments for level of care needs in the following 3 categories: emotional care; behavioral care; physical and personal care. Wis. Admin. Code §§ DCF 50.042 & 50.045(3)(c)1.a. (August 2011); See also, Wis. Stat. §§ 48.975(3)(b) & (5)(b) (2011-12). The highest level of payment for each of the 3 categories is the intensive payment level (Level D).

Wis. Admin. Code § DCF 50.045(3) (August 2011). Petitioner is now receiving supplemental level of care payments at the intensive payment level (Level D) for YJD in the both emotional and behavioral categories. The law does not allow for any further increase.¹

Petitioner is now receiving a \$72 monthly payment for YJD for the category of physical/personal care needs. This is at the moderate level (Level C) which is one level below the highest payment (intensive, Level D). Wis. Admin. Code § DCF 50.045(3)(c)3. (August 2011). In order to qualify for Level D in the physical/personal care category a child must exhibit physical or personal characteristics that include or correspond in extent or degree with one or more of the following:

- a. Non-ambulatory, may have uncontrollable seizures and need appliances for drainage, colostomy, aspiration or suctioning.
- b. Even with proper medical attention, vision, speech or hearing functions are impaired and may require foster parent training.
- c. Need daily prescribed exercise routines to improve or maintain gross or fine motor skills that require home administration.
- d. Require prevention procedures such as daily irrigation.
- e. Require extra cleaning and laundry to maintain body hygiene and control of the child's body waste.
- f. Orthotics care.
- g. Prescribed physical therapies taking 2 to 3 hours a day.

Wis. Admin. Code § DCF 50.045(3)(c)4. (August 2011).

YJD does have Tourette Syndrome (including body jerking 3 or 4 times per day), asthma, a mood disorder, and requires special diet preparation. However, petitioner has not shown that YJD exhibits the physical or personal characteristics required for Level D, as detailed above. See, Exhibits #R-10, #R-12 & #R-13. Therefore, the \$72 monthly payment for YJD for the category of physical/personal care needs cannot be increased.

CONCLUSIONS OF LAW

For the reasons discussed above, under the law, the amount of petitioner's Adoption Assistance may not be increased.

NOW, THEREFORE, it is

ORDERED

that the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

¹ Petitioner testified that YJD's behavior is out of control and that she violent and destructive. See, Exhibit #R-10. The DCF attorney stated that DCF does not disagree that the amount allowed under the law for YJD's behavior (\$108 per month) is not enough but it is all that is allowed. As explained above, the DCF attorney is correct -- \$108 per month is the maximum amount allowed under the law.

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of November, 2013

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 4, 2013.

Adoption Assistance
therese.durkin@wisconsin.gov