



Ohio Department of Job and Family Services

County Review Decision

COUNTY AGENCY:

Franklin County of Children Services
Legal Department
855 W. Mound St., Third Floor
Columbus, Ohio 43223

CASE NO. □

APPEAL NO(S). 1143503

DOCKET NO. 2004-CR-0004

IN RE:

By request received January 27, 2004, the director of Franklin County Children Services (Agency) has requested a review of a state hearing decision issued on January 20, 2004. The issue raised in this county review request is whether the hearing officer was correct in finding after consideration of the circumstances in this case that an uncontrollable delay in obtaining the judicial determination of best interest statement should not count adversely in the Public Children Services Agency (PCSA) determination of the applicant's adoption assistance eligibility. This county review decision finds that the hearing decision is incorrect.

A finding through a county-requested review does not change a state hearing decision for the specific individual or assistance group affected nor does the finding excuse the county agency from complying with the hearing decision. A copy of this decision will be forwarded to all state hearing supervisors and the Bureau of State Hearings.

SUMMARY OF CASE

A review of the hearing record indicates that the child for whom adoption assistance was requested was born on February 11, 2003. The permanent surrender of the child occurred on February 16, 2003. On June 17, 2003, the PCPA requested a determination that the continuation of the child's placement in his home would be contrary to the child's welfare or best interest of the child. On that day, a final hearing was set for July 22, 2003. The hearing was subsequently continued to August 25, 2003 due to an extended vacation of the assigned Magistrate.

On August 6, 2003, the PCSA received an application for adoption assistance on the child's behalf. The PCSA approved medical assistance only for the child.

The court hearing was held on August 25, 2003. At which time, the Magistrate found that it was in the best interest of the child to remove him from his home. The Magistrate's order stated an effective date of July 17, 2003.

The PCSA acknowledged August 25, 2003 as the date of the judicial determination of best interest. The PCSA proposed to terminate Appellant's medical coverage on the basis that the PCPA failed to obtain the judicial determination of best interest within one hundred eighty (180) days from the date of the permanent surrender on February 16, 2003.

The child's parents disagreed with the PCSA's proposed action and requested a state hearing which

was held on January 6, 2004.

At the hearing, the agency representative summarized the case as stated above.

The child's parents presented a letter dated October 29, 2003 written by the PCPA attorney detailing a summary of events which caused the PCPA's delay in obtaining the judicial determination. The attorney's letter states that the case was filed on June 17, 2003 and on that same day, the final hearing was set for July 22, 2003. Both birth parents were issued service by certified mail at their respective last known addresses. The attorney states on July 22, 2003, the Magistrate continued the case because the court learned that the certified mail service sent by the court personnel to the birth father had an incorrect zip code. Service by publication was issued to the father on July 23, 2003. The matter could not be continued until August 25, 2003 because the assigned Magistrate began an extended vacation on July 22, 2003. Counsel for the agency asked the assigned Magistrate to sign the permanent surrender form on August 12, 2003. The assigned Magistrate refused to sign the permanent surrender without the approval of the Administrative Magistrate. On August 13, 2003, the Administrative Magistrate refused to sign the permanent surrender or authorize the assigned Magistrate to sign the form. The Administrative Magistrate indicated that the assigned judge should sign the permanent surrender form. On August 13, 2003, counsel for the agency sought the signature of the assigned judge. However, the assigned judge was on vacation until after the August 15, 2003, 180 day deadline, for obtaining the judicial determination of best interest statement. The child's parents asserted that given the circumstances in this case which were beyond the PCPA's control, the child should not be denied assistance.

HEARING DECISION

The hearing officer determined that a total of one hundred ninety (190) days lapsed between the date the child was removed from the home of a specified relative (February 16, 2003) and the date of judicial determination of best interest (August 25, 2003). However, after consideration of the circumstances described by the PCPA attorney which resulted in an uncontrollable delay by the PCPA to obtain the judicial determination of best interest statement, the hearing officer concluded that the delay in obtaining the judicial determination should not adversely affect the PCSA's adoption assistance eligibility determination for the child. The hearing officer therefore sustained the appeal.

REQUEST FOR HEARING REVIEW

The director asserts that the hearing decision relied on an incorrect application of law or rule. The director states OAC 5101:2-47-29(B)(4)(b) requires that the PCSA or PCPA obtain, **within one hundred eighty days from the date the child was removed from the home of a specified relative and prior to the final decree of adoption**, a judicial determination that continuation in the home would be contrary to the welfare of the child or that placement is in the best interest of the child (emphasis added). The director states the one hundred eightieth day in this case from the permanent surrender date of February 16, 2003 would have been August 15, 2003. The director states the hearing decision clearly states that the judicial determination was made one hundred ninety days after the removal of the child from the specified relative. Consequently, the provision in OAC 5101:2-47-29(B)(4)(b) was not met and the hearing decision incorrectly finds otherwise.

ANALYSIS

Ohio Administrative Code (OAC) 5101:6-8-02(A) provides that any county agency that disagrees with a state hearing decision to which it was a party may request that the decision be reviewed by the office of legal services. Such written request must be from the director and may be reviewed for any of the following reasons: the decision is contrary to the weight of evidence presented; a prejudicial error was committed in the course of the hearing; or the decision relies upon an incorrect application of law or rule.

In this case, the director asserts that the hearing decision clearly violates the provision in OAC 5101:2-47-29(B)(4)(b) which states the PCSA or PCPA shall obtain from the court of competent jurisdiction within one hundred eighty days (180) from the date the child was removed from the home of a specified relative and prior to the final decree of adoption a judicial determination to the effect that continuation of the child in the home would be contrary to the welfare of the child or that the placement is in the best interest of the child. Both the hearing officer and the agency agree that the judicial determination of best interest in this case was not obtained until one hundred ninety days (190) from the date the child was removed from his home which is beyond the 180 day deadline stated in the rule. The county director is correct; the mandate in OAC 5101:2-47-29(B)(4)(b) clearly was not met in this case. The hearing officer's consideration of the circumstances surrounding the delay in the issuance of the judicial determination was inappropriate. While the hearing officer's sympathetic treatment of the case is understandable, the finding that the PCPA's failure to timely obtain the judicial determination should not adversely affect the adoption assistance eligibility determination clearly violates the specific provision in OAC 5101:2-47-29(B)(4)(b). As such, the state hearing decision is incorrect.

DECISION

This County Hearing Review position memo finds that the State Hearing Decision related to 1143503 is INCORRECT.

Linette M. Alexander, Attorney-at-Law
Administrative Hearing Examiner

Marcia K. Slotnick, Attorney-at-Law
Chief Administrative Hearing Examiner
Office of Legal Services on behalf of
Thomas J. Hayes, Director

DATE OF ISSUANCE February 26, 2004

Please note that this decision is advisory only and cannot serve to change the outcome of the state hearing decision addressed by this review nor excuse the agency from complying with that decision. A copy of this review will be forwarded to all state hearing supervisors and the Bureau of State Hearings.

cc: Director, Stark County Department of Job and Family Services
Dorothy Smith, Office of Legal Services
Hearings Supervisor
Bureau of State Hearings