

Adoption Subsidies for Special Needs Children

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ROLE OF THE GAL IN SUBSIDY CASES

- Role of GAL in Colorado is quite expansive. See e.g., C.R.S § 19-3-203 (GAL charged in “general with the representation of the child’s interests (and) if reunification is not possible, to find another safe and permanent living arrangement for the child”); People in Interest of M.N., 950 P.2d 674 (Colo. App. 1997) (GAL may file a motion to terminate parental rights); People in Interest of M.C.P., 768 P.2d 1253 (Colo. App. 1988) (GAL may have access to the name and address of the prospective adoptive home).
- Based upon the GAL’s responsibilities, my opinion is that a GAL should play a role: (1) in educating prospective adoptive parents about subsidy program; (2) in referring adoptive parents to independent counsel, if necessary; (3) in ensuring that the child’s needs as discerned through professional evaluations are fully updated and understood and are met post-adoption; (4) in the negotiations of the subsidy; and (4) in intervening in an administrative appeal, if pursued, by adoptive parents.

General Considerations Regarding Adoption Subsidies

- 2 Programs: Title IV-E and State/County
- Subsidy shall be established in accordance with the county department's written policy.
- County must make a good faith effort to negotiate an adoption assistance agreement with the adoptive parents.
- Subsidy is based upon the special needs of the child and the circumstances of the adoptive parents.

BENEFITS AVAILABLE

- Monthly Maintenance Payments
- Medical or Other Case Services
- Non-Recurring Adoption Expenses
- Medicaid

MONTHLY MAINTENANCE PAYMENTS

- 3 Types: Long-Term Subsidy; Time Limited Subsidy; and Dormant Subsidy
- No Restrictions on Spending \$
- Adoptive Parents can Seek Additional Assistance if Subsequent Problems Arise.
- If Title IV-E, Subsidy Cannot be Reduced Without the Concurrence of the Adoptive Parents.

MEDICAL AND CASE SERVICES SUBSIDY

- Colorado, as with many states allow for adoptive parents to receive a separate subsidy for case services that are not covered by the maintenance subsidy or Medicaid.
- In Colorado, for example, services covered may include Orthodontia (not for cosmetic reasons), Eye Glasses (for more than one pair), Prescribed Medications, Speech, Occupational and Physical Therapies, Special Medical Equipment, Psychological Exams and Outpatient Therapy, Respite Care and Transportation
- Typically, the need for the medical subsidy must be established prior to the adoption, although the service might not actually be needed until a later date.

NON-RECURRING ADOPTION EXPENSES

- Nonrecurring Expenses Include Adoption Fees (homestudy, court costs, post-placement supervision, birth certificate fees, transportation, etc.) and Legal Fees
- Federal Reimbursement Limit is \$2,000 Per Child But Colorado Limit is \$800 per child.

MEDICAID

- Medicaid is Automatically Available For Children with a Federal or State/County Only Subsidy

FEDERAL ADOPTION TAX CREDIT

- See <http://www.irs.gov/pub/irs-drop/n-10-66.pdf> for a general review of how the adoption tax credit works.

TIPS IN NEGOTIATING AND SIGNING THE AGREEMENT

- Identify all Current and Prospective Needs Of the Child and Additional Costs (Both Actual Costs and Lost Opportunity Costs) to Meet Those Needs
- Obtain a Financial Affidavit from PAP's to Understand Family Circumstances and Family Resources
- Develop a Plan to Meet Those Needs
- Understand All of the Benefits Available Under the Program

TIPS IN NEGOTIATING AND SIGNING THE AGREEMENT (CONTINUED)

- Send a Letter to the Agency Outlining Subsidy Request
- Be *Patient* in the Process
- Recognize the Inherent Conflict that Exists
- Require that the Agency “Negotiate”
- Emphasize the “Needs of the Child and Circumstances of the Family”
- Use Specific Language in Agreement
- Agreement Must Be Signed Prior to Adoption’s Finalization

Interstate Placements

- Which State Is Responsible for Entering into an Adoption Assistance Agreement in Interstate Adoptions?
- What Happens if a Family Moves to a Different State While the Adoption Assistance Agreement is Still in Effect?

DURATION AND TERMINATION OF BENEFITS

- Assistance Generally Continues Until Age 18. (However, If a state determines that the child has a mental or physical handicap subsidy can be continued to 21).
- Assistance Terminates if: (1) Family Requests Payments End; (2) Child Ages Out; (3) Adoptive Parents No Longer Are Legally Responsible for Child; (4) Child No Longer Receives Support from the Adoptive Family; or (5) Child Dies or Marries.

APPEALS AND FAIR HEARINGS

- CCR § 7.306 Provides for Administrative Appeal Where County Denies an Application for Adoption Subsidy, or Reduces or Terminates the Subsidy.
- Most Disputes Concern the Provision of Services and/or Money Grant Amounts
- Burden of Proof on PAP's to Prove Extenuating Circumstances and Eligibility
- Timely File For Appeal Within 90 Days of County's Decision

APPEALS AND FAIR HEARINGS

(Continued)

- Informal Proceeding
- Focus is on the Family Circumstances and the Child's Needs
- Consider Whether the Agency "Negotiated"
- Order Should Contain Specific and Detailed Language About Services and Maintenance Subsidies that Can Be Incorporated into an Agreement

OUT OF HOME PLACEMENTS

- Federal Law Requires that During Out-of-Home Placements, Benefits Continue.

-Ark. Dep't of Human Services v. Welborn 987 S.W.2d 768 (Ark. Ct. App. 1999); See also CCR § 7.306.59. But cf. CCR §§ 7.306.59 and 7.404(E)(if a child is receiving a state/county only subsidy and child is placed out of the home for more than 30 days, adoption assistance payments and case services will be discontinued. However, family is excluded from fee collection for the out of home care).

- Federal Law Allows Adoptive Parents to be Assessed a Fee for the Costs of Out-of-Home Placement. C.R.S. § 19-1-115(4)(d)(II) Caps Costs of Out of Home Care to the Amount of the Adoption Assistance Payment.

RESOURCES

- North American Council on Adoptable Children--
<http://www.nacac.org>
- Child Welfare Policy Manual: Chapter 8--
<http://www.acf.dhhs.gov/programs/cb/laws/cwpm/index.jsp>
- C.R.S. § 26-7-101 et seq. (Subsidization of Adoption)
- Colorado Department of Human Services Policies, Volume 7: www.colorado.gov/CDHS
- C.R.S. § 24-60-2401 et seq. (Compact for Adoption Assistance and Interstate Medical and Adoption Subsidy Payments)
- Sapp v. El Paso County Dept. of Human Services, 181 P.3d 1179 (Colo. App. 2008)