



CHILDREN, YOUTH AND FAMILIES BULLETIN

COMMONWEALTH OF PENNSYLVANIA ● DEPARTMENT OF PUBLIC WELFARE

ISSUE DATE
March 17, 1999

EFFECTIVE DATE
Immediately

NUMBER
3140-99-01

SUBJECT
Adoption Assistance
Questions and Answers

BY

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SCOPE: COUNTY CHILDREN AND YOUTH ADMINISTRATORS
PRIVATE CHILDREN AND YOUTH ADOPTION AGENCIES
COMMON SENSE ADOPTION SERVICES (CSAS)
COUNTY COMMISSIONERS AND EXECUTIVES
JUVENILE COURT JUDGES
JUVENILE COURT JUDGES' COMMISSION
ORPHANS' COURT JUDGES
STATEWIDE ADOPTION NETWORK ADVISORY COMMITTEE
COMPETENCY-BASED TRAINING AND CERTIFICATION
PROGRAM
JUVENILE LAW CENTER

PURPOSE:

To transmit policy and procedures that clarify issues raised during the implementation of adoption assistance.

BACKGROUND:

The Pennsylvania Adoption Opportunities Act was signed December 30, 1974. Its purpose was to facilitate the adoption of children who might otherwise be hard to place due to financial burdens associated with

REFER COMMENTS AND QUESTIONS REGARDING THIS BULLETIN TO
Regional Children and Youth Directors

ORIGIN: Eileen West 717-787-7756

meeting their needs. The Adoption Assistance and Child Welfare Act of 1980 (PL 96-272) was passed by Congress requiring every state to have an adoption assistance program that complied with federal law. The law provides federal matching funds for adopted children who meet federal Title IV-E eligibility criteria.

DISCUSSION:

The adoption assistance program has gradually evolved since it became law in Pennsylvania in 1974. The attached questions and answers attempt to bring greater clarity and uniformity to the implementation of this benefit program.

Following the questions and answers are the Attachments:

Pennsylvania Adoption Opportunities Act is included as Attachment A.

Pennsylvania Adoption Assistance regulations are Chapter 3140, subchapter C and are included as Attachment B.

Federal Policy Interpretation Question (PIQ) documents: PIQ 98-02, PIQ 92-02, PIQ 90-02, PIQ 89-02, PIQ 87-05 and PIQ 85-12 are included as Attachment C.

The balance of the federal policy clarifications on adoption assistance are available upon request.

It is suggested that you consider keeping this bulletin with your Adoption Help Manual since this is the most recent clarification of federal and state policy. It may provide an update to information provided in the Adoption Help Manual. The document is three-hole punched for your convenience.

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ADOPTION ASSISTANCE QUESTIONS

Eligibility Issues

1. QUESTION: Who in the county must sign the adoption assistance agreement in order for it to be a binding agreement?

RESPONSE: **OCYF policy does not establish who at the county level has the authority to sign the adoption assistance agreement. Counties are therefore free to designate who may sign on behalf of the county.**

2. QUESTION: May a child in the custody of a private agency be considered as eligible to receive adoption assistance?

RESPONSE: **Yes. The Pennsylvania Adoption Opportunities Act and enabling regulations specify that children who meet the child eligibility criteria and who are in either public or private agency custody are eligible to receive adoption assistance. The law's cite is located in the Public Welfare Code, Article VII, Section 772. Regulatory reference can be found in Chapter 3140, Subchapter C, §3140.202 (b) (3).**

In response to a similar question, the United States Department of Health and Human Services provided an answer in PIQ 87- 05, Question # 1. The answer was that states may not exceed the eligibility requirements as contained in federal law. Federal law makes no requirement that the child must be in the custody of a public agency (See Appendix C).

3. QUESTION: If a child in the custody of a private agency is being placed for adoption, which agency determines if the child is eligible for adoption assistance?

RESPONSE: **County children and youth agencies are responsible for making child eligibility determinations for adoption assistance.**

Regarding which county agency should make the determination, the following guidance is provided:

- **the county where the birth parent (s) with whom the child was living when the child was placed in the custody of the private agency; or**

- **for abandoned children or when parents are unknown, the county where the child was located when taken into custody.**

4. QUESTION: A child who is in the custody of a private agency is determined to be eligible for adoption assistance by the appropriate county agency. Which agency has final authority for selecting the most appropriate adoptive family?

RESPONSE: **Based on the overriding principle established in both the Public Welfare Code and Chapters 3130 and 3140, the county agency has the ultimate authority for decision making when the issue involves funding liability for dependent, neglected and delinquent children.**

The process decision to select a family for a child in private agency custody should involve the private agency and the county agency that certifies the child eligible. If a disagreement over family suitability develops, the county agency would have final authority to make the decision.

To facilitate the most efficient adoption assistance process, the private agency should involve the public agency as soon as possible.

5. QUESTION: Pennsylvania regulation at §3140.202 (c) states that:

"Prior to certification for adoption assistance, the county agency shall make reasonable efforts to find an adoptive home without providing adoption assistance. Evidence of this effort shall be recorded in the case record and include registration with the Department's adoption exchange for at least three months."

Does this mean that if a child has not been registered on the adoption exchange the child is not eligible for adoption assistance?

RESPONSE: **No. THE REGULATION IN QUOTATIONS PRE-DATES FEDERAL POLICY AND THE REQUIREMENT TO REGISTER THE CHILD ON THE ADOPTION**

EXCHANGE AS A CONDITION OF ADOPTION ASSISTANCE ELIGIBILITY IS NO LONGER APPLICABLE. Necessary changes to this sub of the regulation will be made when the regul are revised.

6. **QUESTION:** What constitutes "reasonable, but unsuccessful, efforts" to locate a family willing to adopt without adoption assistance?

RESPONSE: Federal regulation (Policy Interpretation Question (PIQ) 92-02 issued 6-25-92) provides specific guidance on this. An agency should look at a number of families to try to find the placement that is most suitable for the child. When the agency is satisfied that it has identified the "most suitable family for the child", a full disclosure is made to the potential family that includes the child's background and known and potential problems. Following full disclosure, the prospective parents should be asked if they are willing to adopt the child without a subsidy. If they say that they cannot adopt the child without the subsidy, then the agency has met the requirements of "reasonable, but unsuccessful, efforts."

There is one exception to the "reasonable, but unsuccessful, effort" requirement to place a child without adoption assistance. Federal regulation (PIQ-89-02 issued 5-23-89) states that this exception is when "...it would be against the best interests of the child because of factors such as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child."

7. **QUESTION:** May a family adopting through a private attorney apply for and receive reimbursement for nonrecurring costs?

RESPONSE: Yes. It is possible for adoptions arranged by private attorneys to be eligible for nonrecurring costs. It is unlikely, that a family would be eligible for nonrecurring costs because they must meet all of the following conditions:

1. Parental rights have been terminated under Pennsylvania law.

2. **Reasonable efforts have been made by the county agency to find a home that will adopt without adoption assistance.**
3. **The child has one of the special needs characteristics.**
4. **The child is under the age of 18.**

An adoption arranged through a private attorney does not usually meet conditions 2 and 3.

8. **QUESTION:** A child born in a foreign country is brought to the United States for the purpose of adoption. May the child receive nonrecurring cost benefits as specified within the adoption assistance regulations?

RESPONSE: Generally, no. Nonrecurring cost benefits is a type of adoption assistance. Therefore the child must meet the federal and state eligibility requirements for adoption assistance.

Federal guidance on this issue is contained in ACYF-PIQ-89-02, issued 5-23-89. That document clarifies that states may not exclude reimbursement for intercountry adoptions; however, it emphasized that states must assure that the child being adopted meets "special needs" eligibility criteria defined by the individual state.

Pennsylvania eligibility criteria states that the child's parental rights must be terminated under the Pennsylvania Adoption Law. The parental rights of foreign-born children would generally not be terminated under Pennsylvania law; therefore, foreign-born children would generally not be eligible.

Additionally, for a child to be eligible, reasonable but unsuccessful efforts must have been made by the county agency to place the child without adoption assistance. Since prospective parents interested in adopting foreign children identify the child they want to adopt without county agency involvement, the requirement for reasonable but unsuccessful efforts would not be met.

9. **QUESTION:** Could a family receive adoption assistance payments on behalf of a child whose parental rights have not yet been terminated if all other conditions regarding child eligibility as defined in §3140.202 are met and local court practice regularly handles parental rights terminations and adoption proceedings simultaneously?

RESPONSE: **No. The adoption assistance law is included as an amendment to the Public Welfare Code. In Section 772 of the code within the definition of “eligible child”, the following is written: “means a child in the legal custody of local authorities where parental rights have been terminated pursuant to the procedure set forth in Article III of the act of July 24, 1970 (P. L. 620, No. 208), known as the “Adoption Act,....”**

10. **QUESTION:** A judge terminates parental rights and gives child custody to a family. May the family then receive adoption assistance for the child?

RESPONSE: **The family may receive non-recurring cost assistance payments for a child in their legal custody, but may not receive an ongoing monthly assistance payment or medical assistance for a child who is not in agency custody. A court order awarding custody to adults intending to adopt would result in the child becoming ineligible for ongoing adoption assistance benefits. Adoption Assistance regulations in § 3140.202 require as a condition of eligibility that a child be in agency custody. The exception for non-recurring cost assistance benefits is contained in § 3140.205 (c).**

11. **QUESTION:** Can a child who has been seriously physically or sexually abused be determined eligible for adoption assistance even though the child is not currently exhibiting problematic behavior but may later in childhood?

RESPONSE: **Yes. Pennsylvania adoption assistance regulations, § 3140.202 (b) (4) (I) require that “The child shall have at least one of the following characteristics: A physical, mental or emotional condition or handicap.” A child who has been physically or sexually abused is considered to have an emotional condition or handicap even if current behaviors may not exhibit the condition or handicap. In determining assistance**

eligibility, it will be important to consider the evidence of abuse events.

12. QUESTION: If a child is determined to be eligible for adoption assistance but is currently functioning without the need for benefits, does the adoption assistance agreement need to contain specified benefits?

RESPONSE: **No, if the child's special needs at the time of adoption do not necessitate specific benefits, the agreement can be signed without authorizing benefits. The agreement should be worded in such a way as to allow for adoption assistance benefits to be authorized at a later time based on changing child need.**

13. QUESTION: Can an agency use criteria, such as state median income adjusted for the family size or a sliding income scale, in determining the potential adoptive family's eligibility for adoption assistance?

RESPONSE: **No, federal regulations (45 CFR 1356.40 (c)) prohibit use of a means test in determining eligibility for adoption assistance. Therefore, states are prohibited from using criteria such as state median income or sliding income scales to determine the eligibility of adoptive parents to receive adoption assistance benefits on behalf of a special needs child.**

14. QUESTION: If monies are available for the child's care such as a trust fund, may the agency deny adoption assistance eligibility because adequate funding is available to care for the child?

RESPONSE: **Child eligibility for adoption assistance may not be denied based on income or resources that may be available to a child. Child eligibility criteria are found at §3140.202. These are the only criteria that can be used to determine the child's eligibility for adoption assistance.**

Monies available to a child such as a trust fund may be considered when deciding upon the specific terms of the adoption assistance agreement.

15. QUESTION: A child meets the eligibility criteria and the adoptive parents state they need the adoption assistance for the

child. Can the county agency refuse to provide the assistance by not budgeting for it or by stating that funds are not available?

RESPONSE: No. Section 3140.202 (b) states: "The county agency shall certify for adoption assistance children whose placement goal is adoption and who meet the following requirements...." Counties may not deny benefits to an eligible child based on availability of funding.

16. **QUESTION:** Can a child lose assistance benefits if the parents' income changes?

RESPONSE: No. Once determined eligible for adoption assistance and an assistance agreement is signed, a child may not lose the benefits until one of the conditions as identified in §3140.204 (e) is met.

17. **QUESTION:** A child who has been adopted and is receiving adoption assistance moves from the county that is providing the adoption assistance to another county. The adoption dissolves, the child is taken into custody in the new county and the child is placed in a new adoptive home. Which county is responsible for the adoption assistance payments for the child in the child's new adoptive home?

RESPONSE: The county agency in which the child is currently living must process a new application for adoption assistance. The current county of child residence is responsible for preparing the adoption assistance agreement and for providing benefits as defined in the agreement.

18. **QUESTION:** What responsibility does a county agency accept when it certifies a child eligible for adoption assistance?

RESPONSE: Section 3140.203 details the responsibilities of the county agency. Briefly, these include:

- **negotiate and execute a legally binding agreement between the parties;**
- **provide the adoptive parents with a signed copy of the agreement;**
- **contact the family at least annually to assess the child's continued dependency; and**
- **pay the county share of adoption assistance costs.**

Agreement Issues

19. QUESTION: What issues must be covered in the adoption assistance agreement?

RESPONSE: **Section 3140.203 (b) specifies that the following shall be included in the adoption assistance agreement:**

- **the dollar amount of the adoption assistance payment, if any;**
- **the availability and scope of Medical Assistance coverage under Title XIX of the Social Security Act;**
- **circumstances which would cause a reduction in or termination of the amount paid;**
- **responsibility of adoptive parents to notify the county of changes in circumstances and that the county will contact the family at least annually to assess the child's continued dependency;**
- **information about additional services that may be available to the child;**
- **statement that the agreement remains in effect if the family moves out of the certifying county;**
- **duration of the agreement; and**
- **the schedule for making payment and the date on which payment will commence.**

Each party gets a signed copy of the agreement.

20. QUESTION: Is an actual discussion and negotiation with adoptive parents a required part of the process for determining the amount of adoption assistance?

RESPONSE: **Yes, in order to determine the amount of the adoption assistance a discussion with the adoptive parents must include what the child's needs are and the family's circumstances. Each agreement is individually designed to meet the needs of the child being adopted within the context of the family that will be adopting.**

United States Code Title 42 §673 (a) (3) states "The amount of the payments to be made...shall be

determined through agreement between the adoptive parents and the...agency administering the program..."

Per state regulations at § 3140.204 (a), "The county agency shall certify the child's eligibility for adoption assistance and, in consultation with the adoptive parent, shall determine the terms of the adoption assistance agreement."

21. QUESTION: Can an agency use criteria, such as state median income adjusted for the family size or a sliding income scale, in determining the amount of the adoption assistance?

RESPONSE: **No, federal policy (ACYF PIQ-90-02) states that regulations "prohibit the use of a means test...in negotiating an adoption assistance agreement (including the amount of the adoption assistance payment)." The amount of the payment must consider the needs of the child and the circumstances of the adopting parents. The same policy document goes on to state; "The language is interpreted to pertain to the parents' ability to incorporate the child into their household in relation to their lifestyle, standard of living and future plans and to their overall capacity to meet the immediate and future needs (including educational needs) of the child."**

22. QUESTION: A child in the custody of a county agency is being supervised by a private foster care agency and subsequently moves into an adoptive home. The child is eligible for adoption assistance. Is the maximum amount available in adoption assistance payment the amount being paid to the private foster care agency, or is it the amount the private foster care agency pays the foster family? For example, a child is supervised by the ABC private agency and is living with the Smith foster family. The ABC Agency is receiving \$50.00 per day from the county agency for the child's foster care. The ABC agency pays the Smith family \$25.00 per day for providing the foster care.

RESPONSE: **The maximum amount available to the adoptive parents is the amount being received by the foster family. In the example, that would be \$25.00 per day.**

A private agency is paid a fee that includes administrative costs as well as the amount paid to the foster family. Administrative costs are not included in the definition of foster care maintenance payments for children placed in foster family homes and may not, therefore, be included in determining the amount of the adoption assistance. For this reason, in the example cited, the adoption assistance cannot exceed the \$25.00 per day paid to the foster parents.

23. **QUESTION:** How much can the adoption assistance payment be when a child is in a "treatment" foster home?

RESPONSE: The payment cannot be higher than the amount the county would have paid to the foster parent if the child had remained in foster care. This requirement applies whether the child is in specialized foster care or in non-specialized foster care.

24. **QUESTION:** Some mental health placements are shared rates – mental health/mental retardation monies combined with children and youth monies. In this situation, what would the maximum adoption assistance payment be?

RESPONSE: Shared cost arrangements involving agencies with a common interest in the adoptive family may continue following an adoption. The maximum amount that the county children and youth agency may contribute to such an adoption assistance agreement is found in regulations at § 3140.204 (b) (1) (I), which states: "The amount of the adoption assistance payment may not exceed the foster care maintenance payment which would have been paid if the child for whom the adoption assistance payment is made were living in a foster family home."

There is no prohibition against another agency such as MH/MR participating in an adoption assistance agreement, when the involved agencies choose to continue to work together on behalf of a child. Participation in an adoption assistance agreement by an agency other than the county children and youth agency would be of a voluntary nature.

The adoption assistance agreement should specify the share that each participating agency will be

contributing to the adoption assistance benefits as established through agreement with the adoptive family.

25. QUESTION: When may the child's adoptive family begin to receive adoption assistance payments?

RESPONSE: **Payments may begin after all child eligibility criteria, including the termination of parental rights are met, the child is placed with the adoptive family, and the adoption assistance agreement is signed by those who are party to the agreement (§ 3140.204 (d)).**

Current regulations contain an incorrect cite that addresses when assistance payments may begin. The incorrect regulation states that adoption assistance may not begin until the adoption is finalized. This incorrect cite at § 3140.203 (b) (2) will be deleted when the regulations are revised.

26. QUESTION: As part of the terms of the adoption assistance agreement, may the county agency reserve the right to reduce subsidy if the child becomes eligible for third party payments after the adoption assistance agreement is signed?

RESPONSE: **No. The adoption assistance agreement must specify the assistance dollar amount (§ 3140.203 (b) (1)). Any changes to the agreement, either an increase or a decrease in assistance, must be made with concurrence of the adoptive parents (§ 3140.204 (b) (1) (iv)).**

27. QUESTION: Under what circumstances are parents who receive an adoption assistance payment on behalf of a child no longer entitled to receive it?

RESPONSE: **Regulation §3140.204 (e) sets forth the following basis to terminate adoption assistance payments:**

1. **The child reaches 18 years of age.**
2. **The adoptive parents are no longer providing for the financial support of the child.**
3. **The parents are determined by court action to no longer be legally responsible for the child.**
4. **The adoptive parents request termination of adoption assistance.**

28. QUESTION: Can families be held accountable for the use of adoption assistance benefits such as providing receipts for therapy, tutoring, etc.? Instead of paying a family directly, can agencies pay the provider for the specific service the child is receiving?

RESPONSE: **No. Parents who adopt with adoption assistance are parents with full and complete parental rights. To expect parents to produce receipts for purchases relating to their child, or to make payment directly to a provider on the parents' behalf, is a practice that does not fully recognize the adoptive parents as the child's parents.**

29. QUESTION: If one of the adoptive parents dies or the parents divorce, must the parent who retains custody/responsibility for the child reapply for the adoption assistance?

RESPONSE: **No. However, the parent may want to request that an amended adoption assistance agreement be drafted. The parent with custody would, if needed, initiate contact with the agency to amend the adoption assistance agreement. The amended agreement could then reflect the correct payee and any change that may be needed with regard to benefits.**

30. QUESTION: In a case where a single parent adopts and enters into an adoption assistance agreement with the county agency, what happens in the following situations?

- A. The single parent later marries and the new spouse adopts the child. Can the adoption assistance agreement be amended to include the spouse?
- B. The original adoptive parent dies. Can the spouse now receive subsidy on behalf of the child?
- C. What if, in this same situation the spouse had not legally adopted the child, could the adoption assistance agreement be amended to include the new spouse? What then if the original adoptive parent dies, could the spouse receive the subsidy?
- D. Can a widow/widower adopt the deceased spouse's child who was receiving adoption assistance?

RESPONSE:

- A. Yes
- B. Yes, if the spouse is recognized as the child's legally adopted parent.
- C. No. Adoption assistance is given to adoptive parents only.
- D. Yes, but a new adoption would need to take place and a new adoption assistance agreement negotiated according to existing regulations.

Appeal Issues

31. QUESTION: When can subsidy be appealed?

RESPONSE: Regulations at 3140.210 (a) state that, "a child applying for or receiving adoption assistance or a person acting on behalf of a child has a right to a department hearing to appeal:

- (1) A finding of ineligibility after determination of eligibility.
- (2) A denial or reduction of service.
- (3) The termination or suspension of service."

Subsequent to the publication of regulations the federal government released a Policy Interpretation Question (PIQ) that gave more information on fair hearings. This PIQ is included with this bulletin as attachment C (ACYF PIQ-92-02). Refer to that PIQ for more details on when appeals are appropriate.

32. QUESTION: Is a request for an increase in subsidy that is denied in full or in part considered a "denial or reduction of service" and thus grounds for an appeal?

RESPONSE: Yes. Federal policy clarification (ACYF-PIQ-90-02), page # 6, question # 6, allows for "periodic adjustments" to adoption assistance benefits. Adjustment can mean either an increase or a decrease. In the case where the adoptive parents request an increase based on changed circumstances, the county agency "cannot arbitrarily" dismiss the request.

Federal fair hearing regulations at 45 CFR 205.10 apply to the Title IV-E Adoption Assistance Program. Section 205.10 (1) (3) indicates that:

“Every applicant or recipient shall be informed in writing at the time of application and at the time of any action affecting his claim:

- (i) of his right to a fair hearing, as provided in paragraph (a) (5) of this section;**
- (ii) of the method by which he may obtain a hearing;**
- (iii) that he may be represented by an authorized representative...or he may represent himself.”**

33. **QUESTION:** If an adoption has been finalized without an adoption assistance agreement, can an appeal be filed later?

RESPONSE: It is possible to file for a fair hearing and request adoption assistance after an adoption has been finalized. The types of situations which would constitute grounds for a fair hearing are found in federal policy at ACYF-PIQ-92-02 and ACYF-PIQ-90-02. State regulations are found at § 3140.210.

These situations include:

- 1. relevant facts regarding the child, the child’s background or biological family were known and not presented to the adoptive parents prior to the finalization of the adoption;**
- 2. assistance was denied based on a means test of the adoptive family;**
- 3. an erroneous determination was made by the county agency regarding the child’s eligibility status; or**
- 4. the county agency failed to advise the adoptive parents of the availability of adoption assistance.**

It is the responsibility of the fair hearing officer to determine if the circumstances fall within one of the above areas.

The appealable circumstances include any action resulting in disagreement. For instance, the agreement may not be in place because the adoptive family and the agency could not agree on the amount of the subsidy. The family may want a higher amount

(but not more than the foster care maintenance agreement) than the agency is willing to provide. Or, after the agreement is in place, the family may request an increase, which the agency denies. These circumstances are examples of appealable circumstances. They are not the only circumstances.

In the event an agency agrees with the adoptive family that they made an error, an appeal still must be filed. The agency can help speed up the process by providing the hearing officer with documentation to indicate their agreement with the appeal as filed by the adoptive parents.

34. QUESTION: What is the process for filing an adoption assistance fair hearing request?

RESPONSE: If the parents are dissatisfied with a county agency decision relating to adoption assistance, they may file an appeal in writing within 15 calendar days of receiving written notice of an adverse decision from a county agency.

Upon receipt of the appeal the county agency shall date stamp the appeal and submit the appeal with a copy of the agency action that is being appealed to the Department of Public Welfare, Bureau of Hearing and Appeals. The Bureau of Hearing and Appeals has exclusive authority to grant or dismiss the appeal.

In addition to county agency responsibility in relation to appeals as described in question # 32, the county agency is responsible for ensuring the following:

- explain to parents how to file an appeal;**
- if necessary, help the parents to complete the written appeal request;**
- explain that all oral appeal requests must be put in writing within three days of the appeal;**
- assure that the appellant has signed the appeal;**
- date stamp the appeal when it is received and review it to determine if its actions were correct in accordance with Departmental regulations and policies;**
- take steps to resolve the issue without a hearing;**

- forward any appeals that are not resolved at the county agency level within three working days from the date the appeal was received and date stamped to:

Department of Public Welfare
Bureau of Hearings and Appeals
Bertolino Building, 6th Floor
PO Box 2675
Harrisburg, PA 17105-2675.

The appeal process is per Chapter 275 Appeal and Fair Hearing and Administrative Disqualification Hearings.

35. QUESTION: If a family files a timely appeal while receiving adoption assistance will the adoption assistance continue during the appeal process?

RESPONSE: **Yes. If parents file a timely appeal relating to adoption assistance benefits, the terms of the existing agreement remain in effect pending the outcome of the appeal.**

36. QUESTION: If a family files an appeal with the Bureau of Hearings and Appeals (BHA) and "loses", can the appeal continue at another level? If so, where?

RESPONSE: **The appellant may ask the Secretary of Public Welfare to reconsider the BHA decision if the request is made within 15 days of the decision of the Bureau of Hearings and Appeals.**

The appellant may also file a Petition for Review (PFR) with the Pennsylvania Commonwealth Court within 30 days of the mailing of the BHA decision. The case will be heard by the higher court and reviewed to determine:

- if an error of law was made;
- whether there is substantial evidence in the record to support the BHA decision; or
- whether constitutional rights were violated.

The time for both options tolls concurrently. Both options may be selected concurrently.

Financial Issues and Placement

37. QUESTION: May the Domestic Relations Section (DRS) assess financial liability to a family receiving adoption assistance if their adopted child enters placement?

RESPONSE: **Yes, adoptive parents, like birth parents, are legally responsible for their children.**

38. QUESTION: A child receiving adoption assistance benefits is removed from his/her adoptive family and re-enters out-of-home placement. The county agency accepts child custody. Can the assessment of parent financial liability as determined by the DRS be limited to the amount that the family receives in adoption assistance payments?

RESPONSE: **Federal law allows deviation from the presumptive support payments, which are routinely determined pursuant to State child support guidelines under Title IV-D. According to guidance received from the Administration of Children, Youth and Families in ACYF-CB-PIQ-98-02, it is permitted for states to deviate from the presumptive payment amounts as required by Title IV-D guidelines. The PIQ permits the Title IV-E agency to avoid referral for support to the Title IV-D agency "on an individual basis, considering the best interests of the child and the circumstances of the family."**

The federal PIQ further states that the Title IV-E agency and the Title IV-D agency should review and recommend criteria when best interests of the child would make a referral for support to the Title IV-D agency unnecessary. The following Pennsylvania criteria have been reviewed and agreed upon by the Office of Children, Youth and Families and the Office of Income Maintenance.

IT IS NOT NECESSARY TO REFER A FAMILY RECEIVING ADOPTION ASSISTANCE TO THE OFFICE OF DOMESTIC RELATIONS FOR CHILD SUPPORT

**ENFORCEMENT WHEN ALL OF THE FOLLOWING
CRITERIA ARE MET:**

1. A county children and youth agency has accepted custody of the child and determined that placement is necessary to protect the best interests of the child.
2. The adoptive parents continue to accept a level of financial responsibility on behalf of the child.
3. Referral to the Domestic Relations Section could impede the adoptive family's ability to reunify with the child in a timely manner.
4. The adoptive family is agreeable to pay to the county, which accepts custody of the child, an amount not greater than the amount of the monthly adoption assistance, which the family receives, on the child's behalf. This parent payment is intended to help offset child placement costs. The agreed upon amount should consider that adoptive families will continue to incur child related expenses during the period of placement. Such expenses may include costs associated with visiting or personal incidentals that a child may continue to need.

CAUTION: When a family receiving adoption assistance is referred to Domestic Relations for a determination of support payments, all obligations in accordance to the Pennsylvania Rules of Civil Procedure, Chapter 1910, Actions for Support, Rule 1910.16-1, will be applied to the adoption assistance family. Referral to Domestic Relations could mean that the adoptive parents could be assessed an amount greater than their adoption assistance payment.

39. **QUESTION:** A child enters a residential program from a pre-adoptive home and the child's family is receiving adoption assistance for the child. Is the pre-adoptive parent liability for support different than if the adoption had been finalized?

RESPONSE: Yes. If the adoption were not finalized, the pre-adoptive family would have no financial liability and the situation should not be referred to the DRS for support action against the adoptive parents. The

agency would retain full legal responsibility for the child in such a situation.

Medical Assistance Issues

40. QUESTION: If a family has private medical insurance and adopts a child, must the family add the adopted child to their medical insurance policy?

RESPONSE: **The agency should advise the parents of their responsibility to add the child to their employer paid health insurance. The child may also have a medical assistance card to cover those costs that are not fully or partially covered by the private insurance. Note that neither adoption assistance nor medical assistance regulations require that parents add the child to their health insurance coverage.**

41. QUESTION: Can a child who was receiving adoption assistance, for whom the assistance was terminated upon the child reaching 18 years of age, continue to receive a medical assistance card if the child is still enrolled in school? Is this the same for both the state and federal medical assistance card?

RESPONSE: **No. All benefits through the adoption assistance program end when the child reaches 18 years of age. The family may assist the 18-year-old in accessing other available medical benefits, which may include medical assistance, SSI or private medical insurance benefits.**

42. QUESTION: After an adoption is finalized, can the adoptive family "spend down" to qualify for the child's Medical Assistance coverage?

RESPONSE: **The family income or resources have nothing to do with the child's eligibility for Medical Assistance.**

Other Issues

43. QUESTION: May parents who have adopted and are receiving adoption assistance make an informal arrangement with a relative to provide care for the adopted child? May the

parents transfer their adoption assistance payment to the relative providing the care?

RESPONSE: Adoptive parents, like biological parents, may at times be faced with making arrangements for their child's care outside the home without any need for agency intervention. In such a case the parents may make private informal arrangements to provide for the child's care. These arrangements may, at times, involve the transfer of money.

44. **QUESTION:** Why are post-placement services not included in non-recurring costs?

RESPONSE: Nonrecurring costs are by definition once only costs associated with facilitating an adoption. The costs are not related to maintaining an adoption. Non-recurring costs include court costs, home study and travel costs associated with bringing together the child and the adoptive family.

45. **QUESTION:** Is a child automatically eligible for "subsidized child day care" if the child receives adoption assistance?

RESPONSE: No, the child is not automatically eligible for subsidized child day care. A child is eligible for the subsidy only if the child's adoptive family meets the criteria for subsidized day care. The family would need to contact their Child Care Information Service to have their eligibility determined.

46. **QUESTION:** Are adoption assistance payments taxable?

RESPONSE: No, neither federal or Pennsylvania income tax rules consider adoption assistance payments as income. If the adoptive family can prove that they are paying more than 50% of the cost of child rearing from their own resources, then the child can be claimed as a dependent for federal income tax purposes.

47. **QUESTION:** Who is responsible when the child who received adoption assistance turns 18 and the family is no longer able to care for this child?

RESPONSE: Although the adoption assistance agreement terminates by law when the child turns 18 years of age, parental support responsibility does not

automatically cease when a child reaches 18 years of age.

48. QUESTION: If birth parents die after termination of parental rights but before adoption finalization, will the child receive Social Security survivor benefits?

RESPONSE: **We recommend that the local Social Security Administration Office be contacted on a case-by-case basis regarding possible survivor benefits that an adoption assistance eligible child may be entitled to receive.**

49. QUESTION: In cases where termination of parental rights has not yet occurred, what can be done to provide adoption assistance to the adoptive family? Can a medical assistance card be provided?

RESPONSE: **If the family is approved as a foster family, the family may receive foster care payments. Adoption assistance may start only when parental rights are terminated.**

50. QUESTION: Regarding question #49, what if the agency responsible for the adoptive placement is not an approved foster family care agency (FFCA), must the agency be licensed as an FFCA to make the interim foster care payments?

RESPONSE: **Yes, the agency must be approved to provide foster care.**