



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

Memo No. 6

TO: MEMBERS OF THE SPECIAL COMMITTEE ON ADOPTION AND TERMINATION OF PARENTAL RIGHTS LAW

FROM: Laura Rose, Deputy Director

RE: Adoption and Post-Adoption Financial and Other Assistance

DATE: October 5, 2004

This Memo presents information on the following different types of adoption and post-adoption assistance programs:

- Adoption tax deductions and credits.
- Adoption assistance.
- Post-adoption services.
- Medical assistance (MA) extension.

Information on the first two listed items is taken from Wisconsin Legislative Council Staff Brief 04-1, *Adoption and Termination of Parental Rights Law*, dated August 17, 2004.

ADOPTION TAX DEDUCTIONS AND CREDITS

State Income Tax Deduction

Statute allows a maximum of \$5,000 in adoption expenses may be deducted from an adoptive parent's modified adjusted gross income (AGI). Adoption expenses include adoption fees, court costs, or legal fees relating to the adoption of a child for whom a final order of adoption has been entered in a Wisconsin court during the taxable year. The deduction is available for amounts expended during the period that consists of the year to which the claim relates and the prior two taxable years. The deduction is available only to full-year residents. [s. 71.05 (6) (b) 22., Stats.]

Federal Income Tax Credit

Current law provides that taxpayers may claim a nonrefundable credit of up to \$10,000 for qualified adoption expenses for each eligible child. The credit is phased-out for taxpayers with a modified AGI over \$150,000 and no credit is allowed to taxpayers with a modified AGI of \$190,000 or more. These amounts are adjusted for inflation. For 2004, the amount of the credit is projected to be approximately \$10,390. Unused credits may be carried forward for up to five years. A taxpayer who adopts a special needs child may claim the maximum adoption credit regardless of actual expenses paid or incurred in the year the adoption became final.

Qualified adoption expenses include reasonable and necessary adoption fees, court costs, attorney fees, and other expenses that are directly related to the legal adoption of an eligible child. Expenses for the adoption of a spouse's child are not eligible for the credit. An eligible child is an individual who has not attained the age of 18 at the time of the adoption or who is physically or mentally incapable of caring for him or herself. [SEC. 23, Internal Revenue Code.]

ADOPTION ASSISTANCE FOR CHILDREN WITH SPECIAL NEEDS

Adoption assistance is payments by the Department of Health and Family Services (DHFS) to adoptive or proposed adoptive parents of a child, which are designed to assist in the cost of care of that child. Adoption assistance is available for children with special needs when DHFS has determined that such assistance is necessary to assure the child's adoption. [s. 48.975 (1) and (2), Stats.]

In fiscal year 2003-04, \$62,166,600 was expended on adoption assistance maintenance and adoption expense payments (\$31,532,400 general purpose revenue (GPR), \$30,634,200 federal funding.) In January 2004, 5,810 children were eligible for adoption assistance payments.

Eligibility for Assistance: Eligibility Criteria for the Child

A child must be under 18 years of age at the time of the adoption and available for adoption to be eligible for adoption assistance. A child is available for adoption if the child is in the guardianship of DHFS, a county department, or an adoption agency and DHFS, the county department, or the adoption agency decides that the child cannot or should not return to the home of his or her parents. In addition, the child must have at least one of the following special needs at the time of the adoptive placement:

- The child is 10 years old or older, if age is the only factor in determining eligibility.
- The child is the member of a sibling group of three or more children who must be placed together.
- The child exhibits special need characteristics judged to be moderate or intensive or is at high risk of developing a moderate or intensive level of special needs.
- The child belongs to a minority race and children of that minority race cannot be readily placed due to a lack of appropriate placement resources.

A child brought to Wisconsin for adoption from another state or from another nation under an orphan, relative, or medical immigrant visa may not be provided with adoption assistance. [s. HFS 50.03 (1), Wis. Adm. Code.]

Placement Efforts

Law requires that reasonable efforts be made to assure a timely placement of the child with the best available family without adoption assistance. The adoption agency must make efforts to consider a number of families in order to locate the most suitable family for the child, with consideration given to the availability of an adoptive placement with a relative. If two or more appropriate families are not available within the agency, the agency must make an effort to locate additional families.

Once the agency determines that placement with a specific family is most suitable for the child, the agency must make full disclosure to the family of the child's background, to the extent known, and of any existing or potential problem related to the child that is known by the agency. The agency must also inform the family of the availability of adoption assistance and ask the family whether they are willing to adopt without adoption assistance. If the family is not willing to adopt without adoption assistance, the requirement that a reasonable effort to place the child without adoption assistance is met and a child may not be removed from a current adoptive placement based upon a request for adoption assistance. [s. HFS 50.03 (2), Wis. Adm. Code.]

Requirement to make reasonable efforts to place a child without adoption assistance is waived if the child has developed significant emotional ties with the foster family that proposes to adopt the child or if a child is in an adoptive placement without adoption assistance and, prior to making the adoption final, problems arise and the family requests adoption assistance. [s. HFS 50.03 (3), Wis. Adm. Code.]

Requesting Assistance

Except in extenuating circumstances, adoption assistance must be requested and approved no later than the time of the adoptive placement of the child occurs. [s. HFS 50.04 (1), Wis. Adm. Code.] Extenuating circumstances include the adoptive parents not being informed of pertinent information about the child or the child's biological family that was known by the adoption agency at the time of the placement, an erroneous decision that the child was ineligible for adoption assistance, or the adoptive parents not being informed of the availability of adoption assistance. [See s. HFS 50.065 (2), Wis. Adm. Code.]

If adoption assistance is approved, an adoption assistance agreement must be completed and signed by the prospective adoptive parent or parents ("adoptive parents"), the adoption worker, and a representative of DHFS. If at any time prior to the adoption, the prospective adoptive parents believe there has been a substantial change in circumstances, the prospective adoptive parents may file an application for an amended agreement. Following an assessment, DHFS may offer to amend the agreement. [s. HFS 50.044, Wis. Adm. Code.]

Adoption assistance agreements may also be amended following the adoption. If an adoption agreement is for a child who is at high risk of developing a special need, the adoptive parents may request an amendment if at least 12 months have elapsed since the date of the adoption and the parents believe a substantial change in circumstances has occurred.

Parents of a child identified as having a special need at the time of the adoption may request an increase in their maintenance payment (described below) if they believe there has been a substantial change in circumstances since the agreement was signed. Such a request may be made at least 12 months after the adoption, 12 months after the last request for increased maintenance payments, 12

months following the amendment of an agreement for a child at risk of developing a special need, or within 120 days prior to the expiration of an amended agreement.

If DHFS determines that there has been a substantial change in circumstances and that there is no substantiated report of abuse or neglect by the adoptive parents, DHFS must offer to amend the adoption assistance for maintenance for up to one year. DHFS reviews amended agreements annually. [s. HFS 50.045, Wis. Adm. Code.]

Types of Adoption Assistance

DHFS may provide adoption assistance for maintenance, medical care, or nonrecurring adoption expenses or for any combination of those types of adoption assistance. [s. 48.975 (3), Stats.]

The amount of adoption assistance takes into consideration the circumstances of the adoptive family and the needs of the child being adopted. The circumstances DHFS must consider include the following:

- The burden on the family's financial resources is significant because of the need to provide for the adoptee.
- Although the family's financial resources are substantial, unusual circumstances have placed demands on the family income to the extent that providing for an adoptee would result in a significant financial burden.
- The family lacks health insurance or sufficient insurance to cover the expected medical needs of the adoptee.
- Resources needed by the adoptee are not available in the family's community and the expense of gaining access to the necessary resources would place a significant financial burden on the family.

[s. HFS 50.05 (4), Wis. Adm. Code.]

Maintenance

This is a monthly payment to provide support for the child. Each adoptive child's situation is considered individually in computing the adoption assistance.

Basic Maintenance Rate. This rate is the same as the uniform foster care basic rate. [s. HFS 50.05 (1) (a) and (b), Wis. Adm. Code.] The uniform foster care basic rate for 2004 is:

| <i>Age of child</i> | <i>Monthly rate</i> |
|---------------------|---------------------|
| 0 to 4 years | \$302.00 |
| 5 to 11 years | \$329.00 |
| 12 to 14 years | \$375.00 |
| 15 to 18 years | \$391.00 |

Supplemental Maintenance Payments. In addition to the basic maintenance rate, the monthly payment may include a supplemental payment to cover the costs of caring for a child who needs more than the usual amount of care and supervision because of emotional, behavioral, or physical characteristics or personal care needs. The supplemental payments vary based on the child's care and supervision needs and are determined using the difficulty-of-care levels established for foster children, but may not exceed \$324. [DCS MEMO Series 95-26.]

Exceptional Maintenance Payments. In addition to the basic maintenance rate and the supplemental payment, the child may be eligible for an exceptional payment if the child's needs are so extreme that the basic and supplemental payments do not provide sufficient funding to ensure that the child can be cared for in the home and that placement in a more restricted setting can be prevented or ended. The combined monthly payment for the basic, supplemental, and exceptional maintenance payments may not exceed \$2,000. [DCS MEMO Series 95-26.]

Medical Care

All children eligible for adoption assistance are also eligible for MA. MA pays for covered health care costs of the child that are not covered by the parent's health insurance policy. [s. HFS 56.05 (2), Wis. Adm. Code.]

Nonrecurring Adoption Expenses

If a child is adopted with an approved adoption assistance agreement, DHFS must reimburse the adoptive parents for nonrecurring adoption expenses of up to \$2,000. Nonrecurring adoption expenses include reasonable and necessary adoption fees, court costs, attorney fees, and other expenses that are directly related to the adoption. [s. 48.975 (3) (c), Stats., and s. HFS 50.05 (3), Wis. Adm. Code.]

POST-ADOPTION RESOURCE CENTERS

There are five regional post adoption resource centers in Wisconsin, as follows:

- Northeastern region: Family Services of NE Wisconsin, Inc., Green Bay.
- Northern: Catholic Charities Diocese of La Crosse: Stevens Point.
- Southeastern: Adoption Resources of Wisconsin Inc., Milwaukee.
- Southern: Catholic Charities Diocese of Madison: Madison.
- Western: Catholic Charities Diocese of Lacrosse: La Crosse.

According to Adoption Resources of Wisconsin, the post-adoption resource centers do all of the following:

- Provide education, support, and services to adoptive families.
- Improve community awareness of adoption and promote a positive image of adoption and an increased understanding of the unique issues facing adoptive families, especially among human service providers, schools, and health care providers to enable these professionals to better serve adoptive families.
- Increase the availability of services for adoptive families by providing referral services such as: respite care, crisis intervention, child care, legal services, family counseling, support groups related to adoption, and planning for the transition of an adopted child into adulthood.
- Establish collaborative efforts among public and private organizations and the general public to address the needs of adoptive families.

MA EXTENSION

The Chafee Foster Care Independence Act of 1999 is federal legislation that allows states to provide various services for youths leaving out-of-home care. In Wisconsin, funds are allocated to counties and three tribes to provide services for children who have spent at least six months in out-of-home care after they turn age 15. Services provided include housing assistance, planning for financial well-being, involvement in employment or education-related activities, and assistance in gaining access to medical services.

The Chafee Act also provides states with the option of extending MA coverage for youth leaving out-of-home care. In the DHFS 2005-07 Biennial Budget Request submitted to the Governor on September 15, 2004, DHFS proposed providing MA coverage for youths leaving out-of-home care, as follows:

The DHFS is requesting \$374,100 GPR and \$463,900 FED in FY06 and \$1,085,800 GPR and \$1,476,100 FED in FY07 to phase in an expansion of MA eligibility to youths who age out of out-of-home care. Under this proposal, starting January 1, 2006 MA coverage would be expanded to all eligible youths who are 18 or 19, and coverage would be further expanded to include 20 year olds in FY07.

Based on studies conducted in Wisconsin and other Midwestern states, it has been documented that children and youths in out-of-home care have higher than average health care needs particularly in the areas of mental health, chronic recurrent diseases and substance abuse. [See Courtney, Mark E.; Terao, Sherri; and Bost, Noel; *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Conditions of Youth Preparing to Leave State Care (Executive Summary)*; Chapin Hall Center for Children at the University of Chicago; 2004; (enclosed with this Memo).]

In the narrative accompanying this budget request. DHFS states:

Extended MA eligibility could reduce future health care costs by limiting breaks in health care coverage, increasing preventative care and maintaining treatment regimens for chronic conditions. Additionally, extended MA eligibility could reduce long-term social costs by addressing mental health, and substance abuse issues before complications from these health problems negatively affect family relationships, productivity, and personal achievement. [DHFS 2005-07 Biennial Budget Request, pp. 33-34, dated September 15, 2004.]

The following chart summarizes the dollar amounts being requested by DHFS for this MA extension:

| | <i>Fiscal Year 2006</i> | <i>Fiscal Year 2007</i> | <i>Biennial Total</i> |
|------------------------|-------------------------|-------------------------|-----------------------|
| <i>Source of Funds</i> | <i>Dollars</i> | <i>Dollars</i> | <i>Dollars</i> |
| GPR | \$374,100 | \$1,085,800 | \$1,459,900 |
| FED | \$463,900 | \$1,476,100 | \$1,940,000 |
| PR | | | |
| PRS | | | |
| SEG | | | |
| Total | \$838,000 | \$2,561,900 | \$3,399,900 |

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Enclosure