

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-27017

Issue No: 6000

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 29, 2009

Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on September 29, 2009. Claimant appeared and testified. Connie Adams, FIM, appeared on behalf of the department.

ISSUE

Did the Department properly process claimant's Child Development and Care Program (CDC) application?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for CDC benefits on May 24, 2008, requesting her mother be the provider.

2. The department was unable to register claimant's mother as a provider due to an OTIS hit. (Exhibit 2)

3. Claimant testified her mother was not provided written notice that she could not be registered as a provider.

4. The Department issued a Verification Checklist on June 30, 2008, requesting that claimant choose another provider and submit additional information by July 11, 2008.

(Exhibit 3)

5. Claimant did not choose another provider and the department denied the CDC application on July 14, 2008. (Exhibit 4)

6. Claimant filed a hearing request on July 24, 2008, contesting that the department was not allowing her mother to be the provider for unknown reasons.

7. At the hearing, the department agreed to refer claimant's case to the central office where the Administrative Review Process for Providers or applicants whose enrollment is denied or terminated as a result of a criminal conviction or pending crime is completed.

CONCLUSIONS OF LAW

The Child Development and Care program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (DHS or department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Under Program Administrative Manual Item 600, clients have the right to contest any agency decision affecting eligibility or benefit levels whenever they believe the decision is illegal. The agency provides an Administrative Hearing to review the decision and determine if it is appropriate. Agency policy includes procedures to meet the minimal requirements for a fair hearing. Efforts to clarify and resolve the client's concerns start when the agency receives a hearing request and continues through the day of the hearing.

In the present case, claimant filed a hearing request contesting the department's CDC determination that her mother can not be the provider and a lack of proper notice. Under PEM 705, a day care aide or relative care provider's enrollment must be denied or terminated if the department is made aware that they have been convicted of any of the terminable crimes unless an administrative review of the crime(s) determines he/she is eligible. PEM 704 further specifies that notice is to be provided to the client and Aide/Relative applicant of provider eligibility:

Notice to Client and Aide/Relative Applicant of Provider Eligibility

Within 6 workdays of receiving the DHS-220-A/220-A-SP or DHS-220-R/220-R- SP from a person applying to be a day care aide or relative care provider, the local office must:

Review the provider application to determine if the provider applicant has self reported a crime outside of Michigan.

Complete a central registry check.

Complete all criminal history checks (ICHAT, OTIS, PSOR, NSOPR).

Determine eligibility of the provider applicant to be enrolled.

Send a notice to the client and provider applicant informing him/ her whether the provider application is approved or denied. Use the DHS-4807, Notice of Child Care Provider Eligibility. Send a DHS-759, Request for Administrative Review of Criminal Conviction/Pending Charges, if applicable.

If the client has questions about the denial of the aide/relative applicant's enrollment he/she should be told to discuss the issue with the aide/relative provider applicant.

In the present case, claimant testified that neither she nor her mother received the required notice. Claimant testified she only received the DHS 3503 Verification Checklist and did not know why the department could not register her mother as the provider. Therefore, they did not know to request Administrative Review of the Criminal Conviction/Pending Charges. The record does not include a copy of any other notice sent to claimant or her mother regarding provider eligibility.

However, PEM 704 further specifies that neither child care providers nor CDC recipients are entitled to DHS administrative hearings based on provider/applicant termination or denial. Therefore, this ALJ lacks the requisite jurisdiction to review that department action. PEM 704 explains the Administrative Review Process for providers or applicants whose enrollment is denied or terminated as a result of a criminal conviction or pending crime. All documentation should be sent to the central office where the review is completed. PEM 704.

At the hearing, the department agreed to refer claimant's case to the central office where the Administrative Review Process for Providers or applicants whose enrollment is denied or terminated as a result of a criminal conviction or pending crime is completed. Since the claimant and the department have come to an agreement it is unnecessary for this Administrative Law Judge to make a decision regarding the facts and issues in this case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department and claimant have come to a settlement regarding claimant's request for a hearing.

Therefore it is ORDERED that the department refer claimant's case to the central office where the Administrative Review Process for Providers or applicants whose enrollment is denied or terminated as a result of a criminal conviction or pending crime is completed.

/s/ _____
Colleen Lack
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 1, 2000

Date Mailed: October 2, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CL/cv

cc:

