

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: 2008-30044
Issue No: 6019
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 1, 2009
Chippewa County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 telephone hearing was held on October 1, 2009. Claimant personally appeared and testified along with his mother.

Claimant was represented by [REDACTED], [REDACTED]
[REDACTED]

ISSUE

Did the department correctly take action to terminate claimant's Child Development and Care (CDC) benefits in August, 2008?

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 was a recipient of CDC benefits based on his alleged inability to care for his children while his wife works due to a medical condition. Claimant's mother was providing day care for the children.

2. Claimant's CDC case came due for a review at which time the department mailed him a Child Care Family Preservation Need Verification, DHS-4575, form to be completed by his doctor and returned to the Department by July 25, 2008.

3. Department received DHS-4575 back on August 14, 2008, with a diagnosis of compression fracture C5 with chronic muscular neck pain. The form was signed by a nurse practitioner and indicated that the child care is required due to "patient reports unable to care for children due to pain".

4. Department did not find the form acceptable because it was signed by a nurse practitioner and not a physician, and the form cited the claimant's reason as to why he could not take care of his children, and why he could not do so medically.

5. Department took action to terminate claimant's CDC benefits effective August 27, 2008. Claimant requested a hearing on August 21, 2008, and continues to receive CDC benefits pending the outcome of this hearing.

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).

Departmental policy states:

CDC PROGRAM REQUIREMENTS

PROGRAM OVERVIEW

The goal of the Child Development and Care (CDC) program is to preserve the family unit and to promote its economic independence and self-sufficiency by promoting safe, affordable, accessible, quality child care for qualified Michigan families.

The Department of Human Services (DHS) may provide payment for child care services for qualifying families when the parent(s)/substitute parent(s) is unavailable to provide the child care because of employment, education and/or because of a health/social condition for which treatment is being received and care is provided by an eligible provider. PEM, Item 703, p. 1.

Claimant stated as his CDC need his health condition that prevents him from being able to take care of his children while his wife works. Departmental policy further states:

NEED

There are four CDC need reasons. Each parent/substitute parent of the child needing care must have a valid need reason during the time child care is requested. Each need reason must be verified and exists only when each parent/substitute parent is unavailable to provide the care because of:

- . Family Preservation
- . High school completion
- . An approved activity
- . Employment PEM, Item 703, p. 3

Family Preservation

Child Development and Care payments may be approved for P/SPs who are:

- . unavailable to provide care because they are participating in a treatment activity for their health or social condition; or

- . unavailable to provide care because they are required to participate in the treatment activity of another member of the CDC program group, the CDC applicant or the CDC applicant's spouse who lives in the home; or
- . unable to provide care due to a health condition or social condition for which they are being treated by a physician; or
- . unable to provide care due to an educational need which is part of the Foster Care Services plan. PEM, Item 703, p. 9.

The DHS-4575, Child Care Family Preservation Need Verification, must be used to document the Family Preservation day care need. The form must be signed by one of the following:

- . a physician (M.D. or D.O.); or
- . the DHS children's protective services, foster care services, or preventive services worker if day care is needed to allow a parent/substitute parent to participate in a treatment activity as a component of an active children's protective services or preventive services case plan; or
- . a clinical psychologist; or
- . a clinical social worker; or
- . the clinical supervisor or director of a substance abuse treatment program; or
- . a substance abuse counselor; or
- . the FIS for child care needed to participate in one of the allowable treatment activities if it is a FIS-assigned Family Support Services (FSS) activity. PEM, Item 703, pp. 6-7.

The DHS-4575 must be completed:

- . at application, required within 30 calendar days of CDC case opening; and
- . at redetermination; and
- . when there is a change in the parent/substitute parent's treatment schedule, activities or service plan. PEM, Item 703, p. 7.

Claimant's representative argued that the claimant was approved for disability Medicaid and State Disability Assistance by an Administrative Law Judge in 1999, and that this should be sufficient evidence to grant him CDC benefits at present time. Policy quoted above clearly requires that the department verify claimant's medical condition at application, redetermination and when there are changes. Therefore, this argument has no merit.

Hearing testimony however established that there are other facts surrounding this issue that were not contained in department's Hearing Summary or in the documentation provided for the hearing. It must be noted that departmental staff present at the hearing did not handle the issue of DHS-4575 from a year ago, and were therefore in a difficult position of trying to figure out what was in the claimant's record. With the assistance of claimant's mother and search through claimant's case record it was discovered that the DHS-4575 was initially provided to the department with only physician assistant's (PA) signature on it. Claimant lives in a rural area and the clinic available to him is staffed by PA with physician visiting there on a weekly basis, but not being present on the premises on a daily basis. Claimant's mother then talked to a departmental manager and was told that the form is not acceptable due to it lacking physician's signature. Claimant's mother then had the physician place his signature on the DHS-4575 and re-faxed the form to the department. Information in claimant's record shows two DHS-4575's, one with only the PA signature, and then the second DHS-4575 that was contained in the hearing packet with physician's signature after the PA's signature. Therefore, the requirement that the DHS-4575 be signed by a physician was satisfied.

Second issue is that of description of why the claimant needs day care. Department did not find the explanation on the DHS-4575 detailed enough. The form does not ask specifically what medical tests, opinions, exams, etc. were used to support the conclusion that child care is required. A medical professional completing the form could therefore reasonably assume that

the description of claimant's medical condition and the fact that he reports pain is sufficient response to the questions on the DHS-4575. DHS-4575 contains the telephone number of the health professional that completed it. Departmental policy requires that the department assist the clients in obtaining verifications if they cannot obtain them despite a reasonable effort. PEM 130. There is no verification to show that the department either requested that the claimant have the medical provider lists additional medical information and what kind of information was needed, or that the department attempted to assist the claimant in obtaining this information. Therefore, this Administrative Law Judge concludes that the claimant complied with department's requirements in providing the DHS-4575.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department incorrectly took action to terminate claimant's CDC benefits in August, 2008.

Accordingly, department's action is REVERSED. Department shall continue claimant's CDC benefits without interruption. SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 22, 2009

Date Mailed: October 26, 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 mailing 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.

IR [REDACTED]

cc: [REDACTED]