

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: 2009-27165
Issue No: 6004
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 8, 2009
Lansing AH - Adoption Subsidy

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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, an in-person evidentiary hearing was held on October 8, 2009.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's request for medical subsidy reimbursement?

FINDINGS OF FACT

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

- (1) Unrefuted evidence on the record is that claimant's daughter is entitled to the medical adoption subsidy program.
- (2) On April 15, 2008, claimant requested reimbursement totaling \$353.39.

(3) The condition for which claimant's daughter was treated is covered and for an approved condition under the medical subsidy program.

(4) The sibling of claimant's daughter had virtually the identical treatment approximately six months prior to the one at issue herein, by the same physician. Claimant presented evidence that there had been no problem having the remaining portion of this treatment paid to claimant under the medical subsidy program. See Claimant Exhibit A.

(5) On June 23, 2008, the DHS issued a letter to claimant informing claimant that the bills claimant requested reimbursement for were being unpaid and returned to claimant for the following reason(s):

1) The adoption subsidy medical program is considered payor of last resort. All other insurance options must be exhausted prior to billing our office. Our records show that your child is covered under Medicaid. Please submit this bill to their office first for payment. You may re-bill our office with any remaining balance along with a copy of the explanation of benefits from Medicaid.

2) Your private insurance documentation omitted. Exhibit B.

(6) The department did not submit any evidence of having notified claimant on the notice of the authority applicable to the denial as required under policy and procedure.

(7) Claimant's bills submitted contained the doctor's statement including charges to the private insurer.

(8) The department had no knowledge or information regarding procedures for submission to Medicaid.

(9) The department presented no evidence and was unfamiliar with the procedures regarding hearing requests. Claimant credibly argued at the administrative hearing that she first filed a hearing request on 9/25/08. The hearing summary indicated a hearing request dated 5/29/09, which the department stipulated was in error. The department hearing request also

indicated claimant requested a hearing on 11/19/2009, which the department stipulated was also in error. Another portion of the hearing summary reads that the correct hearing request date was 11/19/2008. The department presented no evidence and had no knowledge regarding timely hearing requests.

(10) The physician claimant went to for her daughter was a physician the DHS had arranged for and had sent claimant's daughter to while she was in foster care with the DHS.

(11) Claimant has no knowledge or information or address as to how to bill Medicaid as requested by the department.

CONCLUSIONS OF LAW

The Adoption Subsidy program is established by MCL 400.115, *et seq.*, and is administered by the Department of Human Services (DHS or department) pursuant to MCL 400.10, *et seq.* Department policies regarding adoption subsidy are found in the Services Manual (SM). The federal law upon which Michigan law is based is Title IV-E of the Social Security Act, Section 473(c).

At the administrative hearing, the department argued that applicable policy is found in CFF 640 at the time of the denial (effective date 2/1/2008). This policy indicates that adoption subsidy will only be paid where other payment resources have been exhausted including private health insurance, and Medicaid. Others identified are not applicable herein.

First, in this case, the department failed to inform claimant of the applicable policy in its denial notice. Nor did the department present any evidence of having given claimant any notice of hearing rights. The department denial appeared to be a drafted letter which is not on any form documentation. Nor did the letter contain any authority, law, statute, policy or procedure informing claimant of the authority for the denial.

The purview of an Administrative Law Judge is to review the department's action and to make a determination if that action was correct under policy and procedure. The focus of that review is the negative action or denial letter. In this case, this denial letter is contained in Exhibit D--the June 23, 2008 self-composed letter by the Adoption Subsidy Program. This letter in part cites policy in CFF 640 by restatement. In essence, the denial was made on the grounds that claimant did not get a denial from Medicaid and failed to present private insurance documentation.

After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge finds that claimant did in fact comply with the requirements in CFF 640. Claimant submitted documentation from an identical case of approximately six months prior to the one herein by the same physician showing the State of Michigan cut a check on the case dated 9/14/2007. In the instant case, claimant presented documentation of having submitted to the department an itemized bill from the physician and the lab. The department indicated that claimant should have individually and personally contacted Medicaid, wherever that may be or exist, and received something in a denial form personally from Medicaid. Claimant indicated she had no knowledge, information, or address for which to do so and in the past has always relied on a physician's statement. Upon questioning, the department could not lay out any address, or procedures which would apply but requested time to research the question. The undersigned Administrative Law Judge denied the department's request. The department is expected to be prepared at the administrative hearing to present relevant evidence applicable to the case. There is no indication herein that claimant failed to follow policy and procedure as required under CFF 640. Claimant also complied with general department verification policy and procedure as found in general PEM and PAM items as well as followed the evidentiary general rules as laid out under PAM Item 600 and/or as would be deferred to under general circuit court rules to the extent

these are practical as required under CFF 130. The party to an action cannot be expected to come to the administrative hearing and request additional time to research issues where the party would generally be expected to be prepared to present an adequate case under general evidentiary rules. The department has failed to do so and in the alternative, failed to rebut claimant's *prima facie* case. See CFF 130. Moreover, general evidentiary rules as well as CFF 130 require the Administrative Law Judge to make a ruling based solely upon the facts presented as evidence at the administrative hearing. As the record stands, claimant's evidence complies with policy and procedure. The department's denial is reversed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's denial was incorrect.

Accordingly, the department's denial is hereby REVERSED.

The department is ORDERED to issue a medical subsidy payment check/voucher to claimant on behalf of her adopted daughter in the amount of \$353.39.

/s/ _____
Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 16, 2009

Date Mailed: October 16, 2009

NOTICE: The law provides that within 60 days of mailing of the above Decision and Order the claimant may appeal the Decision to the probate court for the county in which the petition for adoption was filed. If the adoptee is a resident of the State, the petition may be filed in the probate court for the county in which the adoptee is found. Administrative Hearings, on its own motion, or on request of a party within 60 days of the mailing date of this Decision and Order, may order a rehearing.

JS/cv

cc:

