

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],

Reg. No.: 2009 26343
Issue No.: 6015
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 1, 2010
Oakland County DHS (04)

ADMINISTRATIVE LAW JUDGE: JAN LEVENTER

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) Sections 400.9 and 400.37, and the Customer's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on July 1, 2010. The Customer appeared and testified. [REDACTED], Family Independence Manager, appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether the Customer refused to cooperate with DHS?

FINDINGS OF FACT

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

1. On June 6, 1996, November 1, 2003 and December 10, 2006, DHS determined that the Customer was eligible for Child Development and Care (CDC) benefits. The Customer's eligibility expired on July 31, 2008. DHS Exh. 1, p. 9.

2. On or before March 11, 2009, the Customer obtained three forms from DHS: DHS-4583, Child Development and Care (CDC) Application; DHS-4025, Child Care Provider Verification; and DHS 220-R, Relative Care Provider Application.
3. On March 11, 2009, the Customer submitted to DHS the three completed DHS forms and pay records for both employed family group members.
4. As of April 2, 2009, DHS had not taken any action on the Customer's application.
5. On April 2, 2009 the Customer filed her first hearing request.
6. On April 10, 2009 the Customer withdrew her first hearing request based on the case manager's willingness "to make me whole provided I turn in sufficient paper-work (sic)."
7. Also on April 10, 2009, DHS gave the Customer a Verification Checklist, Verification of Employment form, and a Child Care Provider Verification form.
8. After April 10, 2009, the Customer submitted her paperwork to DHS a second time.
9. On April 22, 2009 the Customer submitted her paperwork to DHS a third time.
10. On April 28, 2009, DHS denied the Customer's application, stating that the reason for the denial was that she "failed to supply verifications."
11. On May 7, 2009, Claimant filed a second Notice of Hearing with DHS.

CONCLUSIONS OF LAW

CDC was 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. DHS provides CDC services to adults and children pursuant to Michigan Compiled Laws Sections 400.14(1) and Michigan Administrative Code Rules 400.5001-5015. DHS' current policies and

procedures are set forth in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). These manuals are available online at www.mich.gov/dhs-manuals.

In this case DHS cites an older manual from 2007, as the basis for its negative action, that is, the denial of CDC benefits based on the Customer's failure to provide verifications. This is the Program Eligibility Manual (PEM), Item 702, entitled "CDC Verifications," in effect on March 11, 2009.

PEM 702 states the Department's policy in the opening sentence: "The client is responsible for obtaining any requested verifications needed to determine eligibility." PEM 702, p. 1. However, in this case the Customer's responsibility is not in dispute. I conclude that the evidence in this case clearly indicates that the Customer and DHS are aware that it is the Customer's responsibility to provide verification. The Customer's testimony demonstrates that she knew of her responsibility and because of this she obtained the forms in advance in order to comply. Also, as the Customer fulfilled the verification requirements before in 1996, 2003 and 2006, I think it is reasonable to conclude she was knowledgeable about the system.

I also determine that PEM 702 does *not* require provider and relative provider verification at the time of entrance into the program, and the Customer is to be started as a CDC recipient with or without provider verifications. PEM 702 provides that childcare provider documents are necessary in order to enroll the provider and authorize the date that childcare began, but they are not necessary in order for the Customer to qualify for the program itself. *Id.*, pp. 1-2.

I conclude and determine that as DHS policy does not require provider verification upon initial application for CDC, there is no authority for DHS to require it in the daily business of accepting a CDC application, and I cannot require provider verifications as a condition of a valid CDC application. Accordingly in this case, the sole issue is whether the Customer refused to provide verification of employment and adequate wage information at the time of the application or thereafter. If the Customer refused to cooperate in providing group employment information, her application must be denied.

I conclude that the applicable DHS policies and procedures regarding this issue are found in the 2009 Program Administrative Manual (PAM), Item 105, "Rights and Responsibilities," and PAM Item 130, "Verification and Collateral Contacts." I will examine these regulations and decide whether DHS' action was in accordance with them. As PAM is not available online I will quote extensively from it. In this manner the parties will be aware of the basis of my decision.

PAM 105, "Rights and Responsibilities," is divided into six units, and the first unit is "Department Policy:"

All Programs – Clients have rights and responsibilities as specified in this item. The local office must do **all** of the following:
Determine eligibility.
Calculate the level of benefits.
Protect client rights. PAM 105, p. 1. (Bold print in original.).

The third unit in "Rights and Responsibilities" is "Client or Authorized Representative Responsibilities." The first section of this unit is "Responsibility to Cooperate – All Programs." It states as follows:

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of necessary forms. See **“Refusal to Cooperate Penalties”** in this section....Allow the client at least 10 days (or other timeframe specified in policy) to obtain the needed information. *Id.*, p. 5. (Bold print in original.).

The second section of the Client or Authorized Representative Responsibilities unit is “Refusal to Cooperate Penalties:”

Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. Specific penalties are in the applicable PEM and PAM items. *Id.*

I find that in this case there has not been a refusal to cooperate with DHS. In this case the testimony indicates that, far from refusing to cooperate, the Customer obtained the forms in advance and submitted the verification materials three times. The Customer found out that the documents were misplaced as a result of her own action in filing the April 2, 2009 hearing request. If DHS had not received the necessary verifications on March 11, 2009, DHS would have requested them, and this was never done. Further, based on the Customer’s credible and unrebutted testimony, I find that she remains willing and able to cooperate in providing verification to DHS a fourth time.

Based on all of the testimony and evidence in this case taken as a whole, I accept the Customer’s testimony and her written statement that she submitted wage verification three times. I determine that due to Agency error her group’s employment verifications were not properly associated with her file, causing denial of her CDC application. I determine that the agency error constitutes a violation of PAM 105 in that DHS failed to protect the Customer’s rights in this case.

I further find that DHS itself did not find that the Customer refused to cooperate in this case, stating that the Customer's action was merely a failure to provide verification. I do not find that failure to do an act is the same as a refusal to do an act. I conclude therefore that DHS used an incorrect standard in denying the Customer's application in this case.

I conclude that DHS has not established that the Customer refused to cooperate in providing verification of employment. I conclude she is entitled to CDC benefits effective March 11, 2009, the date of her application and the Department's negative action must be REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS' action was erroneous and shall be REVERSED. The Department shall process Claimant's CDC application as of March 11, 2009, in accordance with DHS policies and procedures, and, allowing the Customer reasonable time and if necessary, extensions of time, to submit her group's employment verifications.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/07/2010

Date Mailed: 07/07/2010

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.

JL/cjp

cc:

