

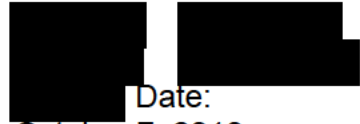
STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2010-10562

Issue No: 3052



Date:

October 7, 2010

Genesee County DHS

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on October 26, 2009. After due notice, a telephone hearing was held on Thursday, October 7, 2010.

**ISSUE**

Whether the Department of Human Services (Department) properly determined that the Claimant received an overissuance of CDC benefits?

**FINDINGS OF FACT**

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

1. The Claimant was an ongoing CDC recipient on September 11, 2009.
2. On September 11, 2009, the Office of Child Support sent the Claimant a Noncooperation Notice, which did not specify the reason for her noncompliance. Department Exhibit 2.
3. On November 3, 2009, the Office of Child Support sent the Claimant a Cooperation Notice. Department Exhibit 1.
4. On October 22, 2009, the Department sent the Claimant notice that she had received an overissuance of CDC benefits from May 24, 2009, through August 1, 2009.

5. The Department received the Claimant's request for a hearing on October 26, 2009, protesting the recoupment of CDC benefits.

### **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 found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

CDC may be provided for income eligible clients who:

- Do not qualify as a member of a categorically eligible group.
- Have a valid need reason.
- Pass the income eligibility test.
- Cooperate with child support requirements; see BEM 255.
- Have child(ren) needing care who meet the U.S. citizenship/alien status requirements as described in BEM 225. BEM 703.

Cooperation is a condition of eligibility for CDC benefits and the following individuals who receive assistance for themselves or on behalf of a child are required to cooperate in establishing paternity and obtaining support, unless good cause has been granted or is pending:

- Grantee (head of household) and spouse.
- Specified relative/individual acting as a parent and spouse.
- Parent of the child for whom paternity and/or support action is required. BEM 255.

Cooperation is required in all phases of the process to establish paternity and obtain support. It includes all of the following:

- Contacting the support specialist when requested.
- Providing all known information about the absent parent.

- Appearing at the office of the prosecuting attorney when requested.
- Taking any actions needed to establish paternity and obtain child support (including but not limited to testifying at hearings or obtaining blood tests). BEM 255.

An overissuance is the amount of benefits issued to the client group in excess of what they were eligible to receive. BAM 705. The amount of the overissuance is the amount of benefits the group actually received minus the amount the group was eligible to receive. BAM 720. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700.

Department errors are caused by incorrect actions by the Department. BAM 705. Department error overissuances are not pursued if the estimated overissuance is less than ██████ per program. BAM 700. Client errors occur when the customer gave incorrect or incomplete information to the Department. Client errors are not established if the overissuance is less than ██████ unless the client group is active for the overissuance program, or the overissuance is a result of a quality control audit finding. BAM 700.

The Claimant was an ongoing CDC recipient on September 11, 2009. On September 11, 2009, the Office of Child Support sent the Claimant a Noncooperation Notice. This memo from the Office of Child Support does not indicate when the Claimant failed to respond to letters concerning the paternity of her children. On November 3, 2009, the Office of Child Support sent the Claimant a Cooperation Notice. On October 22, 2009, the Department sent the Claimant notice that she had received an overissuance of CDC benefits from May 24, 2009, through August 1, 2009.

The Claimant testified that she has always cooperated with the Office of Child Support.

The Department's representative testified that the Claimant was not eligible for CDC benefits while she was noncompliant with the Office of Child Support. The Department's representative indicated that the overissuance was determined by taking the difference between the Claimant receiving full CDC benefits, and the Claimant receiving no CDC benefits. In conclusion, the Department alleges that the Claimant was not eligible for any of the CDC benefits she received from September 11, 2009, through November 3, 2009.

The Department failed to establish how noncooperation with the Office of Child Support from September 11, 2009, through November 3, 2009, results in an overissuance of CDC benefits from May 24, 2009, through August 1, 2009.

The Department has the burden of proving that its actions were a proper application of its policies. The Department had a duty to present the following:

- An explanation of the action(s) taken.
- A summary of the policy or laws used to determine that the action taken was correct.
- Any clarifications by central office staff of the policy or laws used.
- The facts which led to the conclusion that the policy is relevant to the disputed case action.
- The DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. BAM 600

The Department failed to establish the amount of overissued CDC benefits the Claimant may have received. The Department alleges that the Claimant was not eligible for any benefits and any benefits that she received constituted an overissuance. However, the Department did not present evidence identifying the overissuance amount.

The Department has the burden of establishing that its recoupment action was an appropriate application of policy. Based on the evidence and testimony available during the hearing, the Department has failed to establish that the Claimant received an overissuance of CDC benefits.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department failed to establish that the Claimant received an overissuance of CDC benefits.

Accordingly, the Department's recoupment of CDC benefits from May 24, 2009, through August 1, 2009, is REVERSED. It is further ORDERED that the Department shall:

1. Initiate a determination of whether the Claimant received an overissuance of CDC benefits at any time during the benefit period.
2. If the Department determines that the Claimant received an overissuance of CDC benefits, provide the Claimant with written notification of the Department's revised overissuance determination and process the overissuance in accordance with Departmental policy.

\_\_\_\_\_/s/\_\_\_\_\_  
Kevin Scully  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: \_\_10/28/2010\_\_\_\_\_

Date Mailed: \_\_10/28/2010\_\_\_\_\_

**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 60 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.



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