

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: 2010-8776  
Issue No: 6019  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 4, 2010  
Branch County DHS

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, a telephone hearing was held on 8/4/2010.

ISSUE

Did the Department of Human Services (DHS) meet its burden of proof to establish with credible evidence by preponderance that claimant received an overissuance of child daycare payments for 2009?

FINDINGS OF FACT

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

- (1) At all relevant times pursuant to the purported negative action herein, claimant was a CDC recipient.
- (2) Effective 8/15/2008, claimant received a child support sanction.

- (3) The hearing summary indicates in part:

Child support sanction effective 8/15/2008. Non-cooperation notice. CDC should have been closed. Daycare case closed effective 11/7/2009 due to the child support sanction. Recoupment for the time period that daycare should have been closed needs to be recouped due to agency error.

(4) The department had no evidence in the evidentiary packet nor was the department able to find any evidence of documentary notices issued to claimant indicating that there was a notification of an overissuance.

(5) The department was given a recess to attempt to obtain notice. After the recess, the department indicated that the Bridges system did not contain copies of notice(s). The department had inconsistent notations regarding an overpayment: \$882.36 and \$1,906.65. The department stipulated at the Administrative Hearing that it did not know which, or even if either amount was correct.

(6) The department stated at the Administrative Hearing that it did not have any information back from the recoupment specialist to show the amount of overissuance or how the amount was calculated.

(7) The department stipulated at the Administrative Hearing that “we do not have enough evidence to proceed with the hearing.”

- (8) On 11/06/09 claimant requested a 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).

Applicable policy and procedure to the case herein with regard to substantive issues would be found primarily in BAM Item 705. However, with regards to the department going forward, the department does have the burden of proof to establish the action in the case and the authority for taking the action. The department is required to bring forth with credible and substantial evidence showing that it acted correctly.

Moreover, notice requirements under BAM requirement policy do indicate that the notice must contain specific information. As noted in the Findings of Facts, in this case, the department was unable to locate the notice. The department indicated at the Administrative Hearing that it did not have any information back from the recoupment specialist to show the exact amount how the recoupment specialist came up with the amounts the department at one point thought might be correct but at another point could not verify.

Under general evidentiary rules regarding Administrative Hearings, the department must show by preponderance of evidence with credible and substantial evidence the action it took and the reason it took the action. Specifically, the DHS Administrative Hearings Handbook published by the Department of Human Services states:

The burden of proof is the responsibility to produce adequate evidence to establish a fact or facts. Decide that the burden of proof must present enough evidence so the Judge believes the facts' existence is more likely than its nonexistence (that is, there is a preponderance of evidence). When there is no evidence on a fact, or the evidence is evenly balanced, the ALJ rules against the side of the burden of proof..... (Page 14.)

Under the above-cited authority, this Administrative Law Judge finds that the department failed to meet its burden of proof in failing to establish with credible evidence an overissuance in this case. The department has had its day in court and had an opportunity to prepare for this case. The department will not be given another opportunity at some point down the road if it should find the missing evidence or if any evidence exists at all. Claimant has a right to have her case reviewed with a final determination made. This ALJ finds no overissuance for the period of time from August, 2008 until November, 2009.

DECISION AND ORDER

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

Accordingly, the department's determination in this matter is hereby REVERSED.

The department is ORDERED to remove any file(s) on Bridges or elsewhere which would indicate any overissuance for claimant's CDC case from August 2008 until November, 2009. It is SO ORDERED.

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

Date Signed: September 10, 2010

Date Mailed: September 13, 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.

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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 mailing date of the rehearing decision.

JS/vc

cc:

