

**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.: 2010-8728
Issue No.: 6019
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: October 27, 2010
Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a hearing was held in Clinton Township, Michigan on Wednesday, October 27, 2010. The Claimant appeared and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Claimant.

ISSUE

Whether the Department properly determined an over-issuance of Child Development and Care ("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 a CDC recipient.
2. The Claimant earns \$945.00 every two weeks.
3. At redetermination, the Department determined that the Claimant was not eligible for CDC benefits due to excess income.
4. As a result, the Department determined that due to Agency error, the Claimant received a \$1,439.93 CDC over-issuance for the period of September 13, 2009 through October 24, 2009.

5. The November 2, 2009, the Department notified the Claimant of the CDC over-issuance.
6. On November 12, 2009, the Department received the Claimant's timely written request for hearing.

CONCLUSIONS OF LAW

The Child Development and Care program is established by Chapter 7 of the Social Security Act, 42 USC 1397, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services, formerly known as the Family Independence Agency, provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Departmental policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Manual ("BRM").

The goal of 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 families. BEM 703 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. BEM 703 Child care may be provided in or out of the child(ren)'s home. BEM 704 Clients have the right to choose where the care will be provided as well as the type of child care provider they wish to use. BEM 704 In order for DHS to pay, care must be provided in Michigan by an eligible provider. BEM 704 Day care aides and relative care providers are enrolled by DHS to provide care but are not required to be regulated. BEM 704 A day care aide is an individual, including a relative, who provides care in the home where the child lives. BEM 704 A relative care provider is related to the child needing care by blood, marriage or adoption. BEM 704

All countable earned and unearned income available to the client must be considered in determining the Claimant's eligibility for program benefits. The Department must consider the gross benefit amount before any deduction, unless Department policy states otherwise. BEM 500 A group's monthly benefits are based in part, on a prospective income determination. BEM 505 A standard monthly amount must be determined for each income source used in the budget. BEM 505 Weekly benefit amounts are converted to a monthly amount by multiplying the weekly amount by 4.3. BEM 505 Bi-weekly amounts are converted by multiplying the amount by 2.15. BEM 505

In this case, the Department seeks recoupment of an over-issuance of CDC benefits due to the Department's failure to include reported earned income. An over-issuance ("OI") occurs when a client group receives more benefits than they are entitled to receive. BAM 700 A claim is the resulting debt created by the over-issuance of benefits. BAM 700 Recoupment is an action to identify and recover a benefit OI. BAM 700 The Department must take reasonable steps to promptly correct any overpayment of public assistance benefits, whether due to department or client error. BAMs 700, 705, 715, and 725 An agency error OI is caused by incorrect actions by DHS, DIT staff, or department processes. BAM 705 In general, agency error OIs are not pursued if OI amount is under \$125.00 per program. BEM 705

MCL 400.43a defines a "public assistance recipient" as an "individual who is receiving, or who did receive, assistance under this act." MCL 400.43a(1)(b) The statute provides in relevant part:

* * *

- (2) The state department **shall take all necessary steps to recover an overpayment** made to a public assistance recipient, . . . (emphasis added)

* * *

- (4) In the case of an individual **who is no longer a public assistance recipient**, . . . the state department **may waive recovery of an overpayment if the recovery would result in undue hardship** . . .

In this case, the Claimant was earning \$945.00 bi-weekly. When calculating CDC eligibility, the Department prospectively had to budget the Claimant's income and determined her monthly gross earnings were \$2,031.00 (\$945.00 x 2.15). As a result the Claimant was over the income limit of \$990.00/month thus not eligible for CDC benefits. Upon further review, it was discovered that due to Agency error, the Claimant's earnings were not correctly entered in the CDC budget resulting in an over-issuance for the period of September 13, 2009 through October 24, 2009 in the amount of \$1,439.93. The Claimant asserted that the payment of the over-issuance would result in an undue hardship. According to MCL 400.43a, the Department is required to take all necessary steps to recover an overpayment of an individual who is currently a public assistance recipient. The Claimant is a current recipient of Food Assistance ("FAP") benefits and the over-issuance was over \$125.00 thus the Department is entitled to recoupment. Ultimately, it is found that the Department acted in accordance with department policy when it determined the Claimant received a CDC over-issuance due to Agency error, in the amount of \$1,439.93 for the period of September 13, 2009 through October 24, 2009.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Department acted in accordance with department policy when it found the Claimant no longer eligible for CDC benefits due to excess income.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 11/03/2010

Date Mailed: 11/03/2010

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.

CMM/jlg

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