

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.: 2011-10185
Issue No.: 6021
Case No.: [REDACTED]
Hearing Date: January 31, 2011
Wayne County DHS (31)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 telephone hearing was held on January 31, 2011. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

Whether DHS properly failed to process Claimant's request for a Child Development and Care (CDC) provider beginning 7/2009.

FINDINGS OF FACT

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

1. Claimant is an ongoing CDC recipient stemming from an application dated 8/19/08.
2. From 7/2009-10/2010, Claimant's CDC provider was [REDACTED].
3. On 9/21/2009, DHS attempted to approve [REDACTED] as an eligible CDC provider.
4. DHS initially found that [REDACTED] failed to pass a DHS criminal background clearance which resulted in denial of [REDACTED] as an eligible CDC provider.
5. Beginning with CDC pay period 6/6/10, DHS approved [REDACTED] to receive CDC payments.

6. DHS has yet to approve [REDACTED] as an eligible CDC provider from 7/2009-6/5/2010.
7. On 10/25/10, Claimant requested a hearing disputing the failure by DHS to approve [REDACTED] as an eligible CDC provider from 7/2009-6/5/2010.
8. Claimant also requested a hearing concerning "FIP" (Family Independence Program) benefits but states that there is no current dispute concerning FIP.

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 (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. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The first issue to determine is whether the present case involves issues already decided by a previous administrative decision. The undersigned would have no authority to determine a previously decided issue. The previous Administrative Law Judge (ALJ) ordered DHS to reprocess Claimant's CDC application dated 8/19/08. The previous ALJ also made findings of fact that the DHS denial of CDC benefits was based on Claimant's alleged failure to obtain an eligible CDC provider; the CDC provider involved in the previous administrative decision was a different CDC provider that is involved in the present hearing decision. Thus, whether DHS properly failed to process the eligibility of [REDACTED] as a CDC provider from 7/2009-6/05/2010 has not yet been considered by administrative decision.

Providers or applicants whose enrollment is denied or terminated as a result of a criminal conviction or pending crime may request an administrative review. *Id.* at 10. Instructions on the DHS-759, direct providers to send all documentation to central office where the review is completed. *Id.* Neither child care providers or CDC recipients are entitled to DHS administrative hearings based on provider/applicant termination or denial. *Id.*

If the issue within the present case involved whether DHS properly denied Claimant's CDC provider based on a criminal conviction or crime than the undersigned would not have jurisdiction to determine the matter. The issue in the present case is not whether

Claimant's CDC provider is or was ineligible to be a provider based on a criminal background clearance; it was not disputed that Claimant's CDC passed the criminal background clearances. DHS indicated that [REDACTED] initially failed a criminal background clearance resulting in denial of [REDACTED] provider eligibility; however, DHS conceded that the denial was improper and that Ms. Hampton was approved for CDC provider eligibility. The issue is whether DHS properly processed Claimant's provider's eligibility; this is an issue within the authority of the undersigned.

In order for DHS to pay (a CDC provider), care must be provided in Michigan by an eligible provider. BEM 704 at 1. A relative care provider (RCP) is a provider type that is not regulated. *Id* at 2. To begin the enrollment process, an RCP must complete the Relative Care Provider Application, certifying that the applicant meets all of the requirements listed on the application. *Id.* at 4. The provider applicant must provide the following verifications within 6 workdays of the application receipt date:

- Proof of identity.
- Proof of age.
- A copy of a valid social security number (the social security number must be verified with a copy of the card). The name on the social security card must match the name on the DHS-220-A/R. If the social security card states that it is not valid for employment, the prospective aide/relative may not be enrolled. *Id.*

Within 6 workdays of receiving the DHS-220-A/R the local office must:

- Review the provider application to determine if the provider applicant has self reported a crime.
- Complete all background clearances (central registry, ICHAT, OTIS, PSOR, NSOPR, FIL).
- Determine eligibility of the provider applicant.
- Send the DHS-4807, Notice of Child Care Provider Eligibility to the client and provider applicant informing the client and applicant whether the provider application is approved or denied. If the application is denied due to a criminal conviction or pending crime, send a DHS-759, request for Administrative Review of the Denial or Termination of Provider Enrollment. *Id.* at 5.

If approved, the effective date of enrollment for a relative care provider is the most recent of the following:

- The date care began.
- The client's effective date of eligibility.
- The first day of the pay period beginning after the day care aide's or relative care provider's 18th birthday.

- The date verification is received indicating an adult household member with a criminal conviction or pending criminal charge, no longer resides in the home of the relative care provider. *Id.*

It was difficult to ascertain why DHS was unwilling to process [REDACTED] eligibility as a CDC provider from the requested date of 7/2009. The DHS specialist representing DHS at the administrative hearing was willing to approve [REDACTED] CDC provider eligibility but lacked the authority to process it. Thus, the DHS specialist had to defend DHS' actions without a full or first hand understanding of what was causing the lack of eligibility effective 7/2009.

The testifying DHS specialist raised two issues on behalf of the absent DHS representative. First, the absent representative wanted clarification because the previous administrative decision involved a black male CDC provider and Claimant sought authorization from 7/2009-6/5/2010 on behalf of a female CDC provider. This issue should have been easily clarified by the explanation that there were two different CDC providers, a black male and subsequently, a female.

A second issue is whether documents were submitted to DHS from [REDACTED] prior to 4/2010. In other words, DHS contended that there was no notice of Claimant's intention to use [REDACTED] as a CDC provider prior to 4/2010. The undersigned has documentation that a CDC provider clearance check was performed in 9/2009 on behalf of [REDACTED]. Based on DHS' regulations, it is known that DHS could not have performed a background clearance on [REDACTED] without first receiving a Relative Care Provider Application and other necessary documents. Thus, [REDACTED] must have provided necessary documents to DHS prior to 9/21/09. Accordingly, DHS had no apparent basis to deny [REDACTED] eligibility prior to 9/21/09. Though the undersigned has no evidence of the exact date of the submission of [REDACTED] Relative Care Provide Application and other documents (proof of age, identity...), the undersigned also has no documents that would prevent DHS from authorizing [REDACTED] as a CDC provider as of 7/2009. As DHS failed to establish any basis for denying [REDACTED] eligibility as of 7/2009, it may only be found that DHS erred in not approving [REDACTED] as a CDC provider as of 7/2009.

DHS established that [REDACTED] began receiving CDC payments effective 6/5/2010. Thus, Claimant is not owed a remedy for any CDC payments after 6/5/10.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly failed to approve [REDACTED] as an authorized CDC provider for Claimant effective 7/2009-6/4/2010. It is ordered that DHS approve [REDACTED]

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██████████ as a CDC provider for the aforementioned dates to allow Claimant's CDC provider to bill for CDC payments. The actions taken by DHS are REVERSED.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 2/7/2011

Date Mailed: 2/7/2011

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.

CG/jlg

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