

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201128705
Issue No.: 6052
Case No.: [REDACTED]
Hearing Date: [REDACTED]
Wayne County DHS (55)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Respondent's request for a hearing. After due notice, a telephone hearing was held on August 24, 2011. The Respondent appeared and testified. Agent [REDACTED], Office of Inspector General, appeared on behalf of the Department.

ISSUE

Whether the Department is entitled to recoup an overissuance of Child Development and Care (CDC) benefits and whether the Department has established a debt.

FINDINGS OF FACT

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

1. The Department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of benefits it claims were received by Respondent as a result of Respondent having received CDC benefits during periods she was not entitled to receive benefits. The OIG also requested that a debt in the amount of \$6,764.00 be established.
2. The Respondent received CDC benefits pursuant to her employment with the [REDACTED] during the period 1/1/03 through 11/12/05.
3. The Department alleged the Respondent received overissuance of CDC benefits for the period 4/20/03 through 7/12/03 in the amount of \$547.20.

4. The Department alleged the Respondent received overissuance of CDC for the period 1/11/04 through 11/12/05 in the amount of \$6,216.80.
5. In 2003 the Respondent was eligible to receive the CDC benefits for the following Michigan holiday, 5/26/03 AHOL. The overissuance amount the Department seeks to establish includes this day. Item 1, page 14.
6. In 2003 the Respondent was also eligible to receive CDC for the two days she had a sick child, 5/25/03 SLDC, and 5/27/03 SLDC. The overissuance amount the Department seeks to establish includes these days. Item 1, page 14.
7. In 2004 the Respondent was eligible to receive the CDC benefits for the following days, which were Michigan holidays: 1/19/04, 2/16/04, 5/31/04, 7/4/04, 9/5/04, 11/23/04, and 12/25/04. Item 2, pages 21 and 22. The overissuance amount the Department seeks to establish includes these days. Item 2, pages 21 and 22.
8. In 2004 the Respondent was eligible to receive CDC benefits for the following sick days: October 17, 18, 19, 2004. The overissuance amount the Department seeks to establish includes these days Item 2, page 22.
9. In 2004 the employer's attendance records indicate that the following days were taken as unscheduled Family Medical Leave days without pay: 2/29/04, 3/1/04, 3/27/05, 4/5/04, 4/9/04, 4/10/04, 4/23/04, 4/26/04, 5/9/04, 5/10/04, 5/11/04, 5/15/04, 5/16/04, 5/21/04, 5/22/04, 5/24/04, 5/30/04, 6/8/04, 6/19/04, 8/29/04, 9/4/04, 9/10/04. The overissuance that the Department seeks to establish includes these days. Item 2, pages 22 and 22.
10. In 2005 the Respondent was eligible to receive CDC benefits for the following days which were Michigan holidays: 1/1/05 1/17/05, 2/21/05, 5/30/05, 7/2/05, and 9/5/05. The overissuance that the Department seeks to establish includes these days. Item 2, page 22 and Item 2A, pages 23 and 24.
11. In 2005 the Respondent was eligible to receive CDC benefits for the following sick days: 3/12/05, 3/13/05, 3/14/05, and 3/15/05, 5/22/05, 5/23/05, and 5/24/05. The overissuance that the Department seeks to establish includes these days. Item 2 A, page 23.
12. The 2005 caseworker notes attached to the Respondent's 2005 application indicate that the Department was aware and advised that the Respondent was pregnant with twins and hospitalized in October 2005 to December 2005 and the twins were born 12/1/05. Item 6, page 52.

13. The case notes further indicate that the Respondent would be off work until September (2006) and that [REDACTED] will allow the Respondent to be off without pay. Item 6, page 52.
14. In 2005 the Respondent was eligible to receive CDC benefits for unscheduled Family Medical Leave Days: October 1,4, 7, 11, 14-18, 21-31; for the month of November 1,4-8,10-15, 2005. The overissuance that the Department seeks to establish includes these days. Item 2 A, page 24.
15. The Respondent advised her caseworker when she was ill or on medical leave.
16. The Respondent received an overissuance of CDC benefits for days where she took annual leave and received CDC benefits.
17. The Department has established that the Respondent received an overissuance of CDC benefits only for those days where the Respondent took annual leave and received CDC benefits.
18. The Department did not establish the total overissuance amount of \$6,674.

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 Michigan Administrative Code Rules R 400.5001-5015. Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Department policy found in PEM 703 provides: Child care may be paid for Michigan holidays, and absences due to child's illness for up to two weeks. A careful review of the records indicates that the Department included Michigan holidays which were taken by the Respondent and were included as days that she received an overissuance. (Findings of Fact, paragraphs, 5, 7 and 10.) Likewise, the Department included in its overissuance calculation dependent care sick leave. (Findings of Fact, paragraph 6). The Department incorrectly included these days in its overissuance calculation and thus must recalculate the overissuance to remove these days for the amount it seeks to collect. PEM 703, page 4.

The Department also included in the overissuance sick leave days taken by the Respondent. As one of the need reasons for CDC eligibility is a Family preservation need for parents who are unable to provide care due to a health condition for which they are being treated by a physician, disability or illness, these days are not appropriately included in the overissuance calculation. (Findings of Facts, paragraphs 8 and 11). PEM 703 page 9 and 10. Items 2 and 2A.

Lastly, the Department did not establish that an overissuance occurred for a period when the Respondent took unscheduled family medical leave during the period in 2004 and 2005 indicated on the employer's attendance records and as enumerated in the Findings of Facts paragraphs 9 and 12 herein. Items 2 and 2A.

As regards the period of time when the Respondent took unscheduled family medical leave days without pay in 2004, the Department did not establish that the Respondent was not entitled to receive CDC benefits on these days as the Respondent was entitled to family medical leave for herself or to care for a family member and thus no overissuance was established. This conclusion was also reached, as the Respondent did not receive pay for this period she was employed by the postal service and on family medical leave. (Findings of Fact paragraph 9).

As regards the period of time when the Respondent took unscheduled family medical leave days in 2005, the Department did not establish that the Respondent was not entitled to receive CDC benefits on these days.

This conclusion was reached as a result of the 2005 caseworker notes attached to the 2005 application for benefits where the notes indicate that the Respondent was pregnant with twins and went into the hospital in October 2005 to December 2005 and the twins were born 12/1/05. Item 6, page 52. The notes further indicate that the Respondent would be off work until September (2006) and that [REDACTED] will allow the Respondent to be off without pay. These notes clearly indicate that the Respondent advised her worker of her situation and that she was off during the period and hospitalized.

Further, the attendance records substantiate her absence and indicate that during the period beginning September 24, 2005 and continuing through the end of the period, January 6, 2006 the Respondent took a combination of sick leave, family medical leave, sick leave in lieu of annual leave and several days of leave without pay. The department records confirm the Department knew that the Respondent was not at work and was hospitalized due to her pregnancy, which would establish a need basis for her CDC benefits at that time as she was still employed by [REDACTED] and was unable to work due to her medical need established by the case notes. Therefore no overissuance is established for the period September 24, 2005 through November 15, 2005. This determination was also influenced by the Respondent's testimony indicating

that she was ill and advised her caseworker of her illnesses during the period she was receiving CDC benefits.

As the total overissuance amount and yearly amounts must be recalculated in light of this decision, and thus are not established, the question of whether the actual overissuance amount meets the minimum amount of overissuance required to pursue the overissuance and debt collection cannot be determined. The Department should determine whether the overissuance threshold is reached before initiating debt collection procedures.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds that the Department is entitled to collect that part of the CDC overissuance which covers days taken by the Respondent for annual leave days but not for the Michigan holidays, dependent sick leave, sick days and family medical leave days as outlined in this Decision and the Findings of Fact. No final overissuance amount is established as the Department must recalculate the debt amount in accordance with the Findings of Fact and Conclusions of Law contained in this Decision.

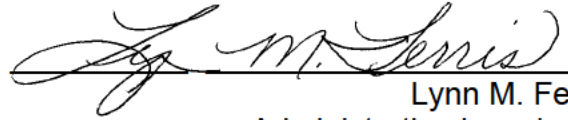
Accordingly it is ORDERED:

1. The Department is not entitled to collect an overissuance of CDC benefits for the following Michigan Holidays: 5/26/03, 1/19/04, 2/16/04, 5/31/04, 7/4/04, 9/5/04, 11/23/04, 12/25/04, 1/1/05 1/17/05, 2/21/05, 5/30/05, 7/2/05, and 9/5/05.
2. The Department is not entitled to collect as an overissuance of CDC benefits for time off for dependent care illness on the following days: 5/25/03 and 5/27/03.
3. The Department is not entitled to collect as an overissuance of CDC benefits the following days taken as sick days by the Respondent: October 17, 18, 19 2004 and 3/12/05, 3/13/05, 3/14/05, and 3/15/05, 5/22/05, 5/23/05, and 5/24/05.
4. The Department is not entitled to collect an overissuance of CDC benefits during the period in 2004 when she was off on unpaid family medical leave for the following days: 2/29/04, 3/1/04, 3/27/05, 4/5/04, 4/9/04, 4/10/04, 4/23/04, 4/26/04, 5/9/04, 5/10/04, 5/11/04, 5/15/04, 5/16/04, 5/21/04, 5/22/04, 5/24/04, 5/30/04, 6/8/04, 6/19/04, 8/29/04, 9/4/04, 9/10/04.
5. The Department is not entitled to collect an overissuance of CDC benefits during the period in 2005 when she was off on unscheduled family medical leave, and sick leave for the following days: October 1,4, 7, 11, 14-18, 21-31; for the month of November 1,4-8,10-15, 2005. The Department shall recalculate the

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overissuance amount for the periods in question and remove from the totals those dates which overissuance was not established as set forth above.

6. The Department shall initiate debt collection for the overissuance amount as recalculated in accordance with this decision and Department Policy.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: September 29, 2011

Date Mailed: September 29, 2011

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the respondent may appeal it to the circuit court for the county in which he/she lives.

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