

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-18503

Issue No: 4060, 6021

[REDACTED]

Kent County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the DHS client's (or "Claimant's") request for a hearing received on January 6, 2010. After due notice, a telephone hearing was held on August 3, 2011. The claimant personally appeared and provided testimony.

ISSUE

Whether Claimant received an overissuance of Child Development & Care (CDC) benefits that the department is entitled to recoup?

FINDINGS OF FACT

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

1. Claimant, at all times pertinent to this hearing, received CDC benefits and was authorized for 90 hours for her 3 (three) children. (Department Exhibits 1 & 2).
2. Claimant, at all times, was a full-time student enrolled in a college nursing program. (Department Exhibits 10-12) Claimant's nursing program included class time, work study and laboratory hours. (Department Exhibits 10-12).
2. On November 25, 2009, the department, pursuant to an audit, mailed Claimant a Verification Checklist (DHS-3503) requesting verification regarding her day care provider and the hours she was outside of the home for purposes of CDC benefits. (Department Exhibit 8).

3. In response to the verification requests, Claimant submitted documents, which were referred to as “paystubs,” that reflected her hours in class. (Department Exhibits 2 & 4).
4. On December 14, 2009, the department sent Claimant a Notice of Case Action (DHS-1605) which reduced her CDC benefits from 90 hours to 50 hours for two of her children and found the third child ineligible because “parent does not have a need for child day care services due to employment, education or family preservation.” (Department Exhibit 2).
5. On December 14, 2009, the department also mailed Claimant 2 (two) Notices of Overissuance for CDC in the amount of [REDACTED] for a period of August 30, 2009 through December 5, 2009 and for [REDACTED] from July 5, 2009 through August 15, 2009. Both OIs were considered agency error. (Department Exhibit 13).
6. On January 6, 2010, Claimant submitted a hearing request protesting the decrease in her CDC benefits. (Request for a Hearing).

CONCLUSIONS OF LAW

The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

The Department of Human Services (“the department”) has policies that govern the administrative hearing process pertaining to a benefit recipient or a “client.” These policies are contained in the Bridges Administrative Manual (BAM). The client has the right to request a hearing for any action, failure to act or undue delay by the department. BAM 105. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600.

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).

For CDC eligibility to exist for a given child, each parent/substitute parent (P/SP) must demonstrate a valid need reason. BEM 703. This section specifies who must demonstrate those valid need reasons. BEM 703. Parent/substitute parents (P/SP) are often the same for all the children in the family. BEM 703. However, there are some homes where the children may not all share the same P/SP. BEM 703. Therefore,

P/SPs must be identified separately for each child for whom CDC is requested. BEM 703. P/SPs means the following persons who live in the home and are unavailable to care for the child due to a valid need reason:

- The child's legal or biological parent(s).
- The child's stepparent.
- The child's foster parent(s).
- The child's legal guardian(s).
- The applicant/client, if:
 - The child has no parent, stepparent or legal guardian who lives in the home.
 - The child's only parent/substitute who lives in the home is excluded from providing the care. BEM 703.

There are four valid CDC need reasons. BEM 703. Each parent/substitute parent of the child needing care must have a valid need reason during the time child care is requested. BEM 703. Each need reason must be verified and exists only when each parent/substitute parent is unavailable to provide the care because of:

1. Family preservation.
2. High school completion.
3. An approved activity.
4. Employment.

The department shall consider each need reason (family preservation, high school completion, approved activity, employment) separately to determine the appropriate eligibility group. BEM 703. More than one eligibility group and/or need reason may exist in some cases. BEM 703.

Hours of participation must be verified. BEM 703. Training and educational programs are presumed to be occupationally relevant. BEM 703. Online educational programs can only be approved if all of the following three requirements are met:

- Attendance is mandatory.
- The number of required hours of online attendance time is verified.
- Attendance is required at specific, regularly scheduled times. If the program is self-paced and can be completed at any time, care can not be approved for this need reason.

Child care benefits for this need reason cannot be approved for graduate, medical or law school. BEM 703. Client need must be reviewed and re-verified whenever the term, semester or program ends, whichever is earliest. BEM 703. The authorization end date must not exceed the term, semester or program end date. BEM 703.

2011-25784/VLA

For all other activities and for MWA and DHS assigned education activities, department policy requires it to verify:

- The activity.
- The number of hours of the activity.

For verification, the department must use a copy of a document(s) containing at least the following elements:

- The name and location of the assignment.
- The begin and end date of the approved activity plan.
- The schedule for the assignment (a separate printed class schedule is acceptable) or the DHS-4578, Child Care Education Verification. The activity end date on the DHS-4578 should correspond with the approved activity need end date on Bridges.
- A collateral contact with the MWA or other employment preparation agency verifying the above elements, and documenting the same in the case record, may be used as verification. The specialist should obtain this verification and file it in the case record:
 - At application.
 - At the beginning of a new term or semester.
 - When there is a change in the client's enrollment status or schools. BEM 703.

If requested, study time for up to one hour for each hour of class time and required lab time may be authorized. BEM 703.

CDC eligibility ends based on an approved activity need reason when:

- The client is no longer participating with the MWA or other employment agency.
- The activity is no longer approved.
- The client no longer meets CDC eligibility requirements.
- The need no longer exists. BEM 703.

CDC payments may be approved for clients who are employed or self-employed and receive money, wages, self-employment profits or sales commissions within six months of the beginning of their employment. BEM 703.

Clients participating in paid employment portion of a co-op, or work study program are considered to meet the need criteria based on employment. BEM 703. To verify, the department shall use one of the following as tools to verify the need for CDC based on employment:

- A copy of a work schedule indicating the number of hours worked.
- Pay stubs indicating number of work hours.
- DHS-38, Verification of Employment, completed by the employer. TALX/Work Number and MIS (Management Information System) may be used for starting income.
- DHS-3569, Agricultural Worker Income Verification, completed by the employer.
- Signed statement by the employer that contains:
 - Employment begin date.
 - Number of hours client works.
 - For income eligible clients, dates and amounts of client's paychecks for the requested period.
- Collateral contact with the employer **if** the employer refuses or is unable to complete the DHS-38, DHS-3569, or a signed statement, or, if the client is unable to obtain his/her work schedule from the employer or the pay stubs do not indicate number of work hours. Complete the DHS-38 or DHS-3569 based on the information obtained from this contact. BEM 703.

The department must determine the valid need hours for each parent/substitute parent (P/SP) at application, redetermination, and when a change in work or activity hours is reported. BEM 710. Bridges will determine the authorization based on the actual need hours entered. BEM 710.

Policy requires the department to calculate the actual need hours considering:

- Time spent in the activity. See BEM 703 to determine if a particular activity may be approved.
- Meal periods during the work day.
- Study and required lab time.
- Travel time from the child care provider to and from the place of employment, education or family preservation activity. Travel time may be allowed for each need reason. BEM 710.

The department shall round the biweekly figure up to the next whole hour if it includes a fraction and enter the calculated figure into Bridges. BEM 703. Bridges will adjust and

authorize to the correct:

- 30 hours.
- 50 hours.
- 75 hours.
- 90 hours.

Hours of need are based on the P/SP's schedule, not the child's schedule. BEM 710. The department is required to document each need determination in the case record. BEM 710. This documentation must include:

- Calculations used to arrive at the need determination.
- The source of the information used in the need determination. BEM 710.

If requested, up to five hours of travel time may be added to the weekly work or approved activity hours of the P/SP. BEM 710. Multiply the result by two to convert to bi-weekly valid need hours. BEM 710. If travel time is in excess of five hours per week, follow the instructions in BEM 100 to request a policy exception. BEM 710.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). PAM 700. An overissuance (OI) is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive. PAM 700. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). PAM 700. Recoupment is a DHS action to identify and recover a benefit OI. PAM 700.

Department errors are caused by incorrect actions by the Department. PAM 705. Department error OIs are not pursued if the estimated overissuance is less than [REDACTED] per program. PAM 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 [REDACTED] unless the client group is active for the overissuance program, or the overissuance is a result of a quality control audit finding. PAM 700.

Here, Claimant is challenging the department's recalculation of her approved hours under the CDC program. Initially, the department determined that Claimant was authorized for 90 hours for her 3 (three) children. Following an audit, the department recalculated that Claimant's authorized hours should have been reduced to 50. The department contends that the "paystubs" show that Claimant only required 50 hours based on her scheduled class time. Based on this recalculation, the department determined that Claimant received overissuances (OIs) of CDC in the amount of [REDACTED] for a period of August 30, 2009 through December 5, 2009 and [REDACTED] from July 5, 2009 through August 15, 2009. Both OIs were considered agency error.

Claimant, on the other hand, contends that the department, following the audit, improperly calculated her actual need hours when it reduced them from 90 to 50. In support of her position, Claimant offered documents that demonstrated she was employed in a work study program through Grand Rapids Community College and worked approximately 20 hours biweekly. Claimant was required to be in class Claimant also testified that during the relevant time period, she was required to be in class

including study time and lab time which equaled 90 hours. In addition to her testimony, Claimant submitted documents to support her position. Claimant has shown that she had at least 90 hours of need for purposes of CDC eligibility.

During the hearing, the department failed to provide documentation that could refute Claimant's position nor did the department offer any testimony to establish that Claimant received an overissuance of CDC benefits in excess of what she were eligible to receive. Accordingly, this Administrative Law Judge finds that based on the material, substantial and competent evidence the department did not establish that Claimant received OIs of CDC benefits of [REDACTED] from August 30, 2009 through December 5, 2009 and [REDACTED] from July 5, 2009 through August 15, 2009.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not act in accordance with policy in determining that Claimant received an OI of CDC benefits for which she was not eligible.

The department's determination that Claimant's received overissuances of CDC benefits of [REDACTED] from August 30, 2009 through December 5, 2009 and [REDACTED] from July 5, 2009 through August 15, 2009 is REVERSED.

It is SO ORDERED.

/s/

C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 8/23/11

Date Mailed: 8/23/11

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.

2011-25784/VLA

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.

CAP/ds

■ [REDACTED]