

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.: 2011-2283
Issue No.: 6021
Case No.: [REDACTED]
Hearing Date: January 12, 2011
Wayne County DHS (41)

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 12, 2011. The claimant appeared and testified; [REDACTED] appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED], Manager, appeared and testified.

ISSUE

Whether Claimant is entitled to have her Child Development and Care (CDC) provider bill for CDC payments prior to the date that Claimant's CDC provider completed required CDC training.

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 applied for CDC benefits on an unspecified date.
2. On 7/19/10, Claimant submitted to DHS notice that she requested a new CDC provider, [REDACTED].
3. [REDACTED] began performing CDC services for Claimant on approximately 7/19/10.
4. [REDACTED], completed CDC provider training on 9/25/10.
5. DHS authorized Claimant's CDC provider for CDC payments effective 9/16/10.

6. On 9/27/10, Claimant requested a hearing disputing her CDC provider not being able to bill DHS for CDC provider services performed prior to 9/16/10.

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).

All aide and relative care providers applying or reapplying on or after March 7, 2010, must complete a one time basic training requirement before they will be eligible to receive DHS payments. BPB 2010-010 at 1. Aide and relative care providers will not be eligible for payment until the pay period that includes the date training was completed. *Id.*; this policy is reiterated in DHS eligibility policy. BEM 704 at 6.

When a specialist receives an application from a CDC provider that has not yet taken the required CDC provider training, the local office must do the following within 10 working days:

- 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) on the provider and all adult household members at the provider's address, regardless of where the care is provided. Record results on the DHS-4661-P, Child Care (CDC) Request For Criminal History and Central Registry Clearance.
- Determine eligibility of the provider applicant.
- Enroll the provider in Provider Management.

Claimant contended that a delay by DHS in the processing of her CDC provider enrollment caused a delay in her CDC provider's notice to attend CDC provider training which in turn cost Claimant (and her provider) several weeks of CDC eligibility. It was not disputed that DHS violated their regulations by taking longer than 10 days to process Claimant's CDC provider request causing a delay in notice for Claimant's CDC provider to attend required CDC training. Other evidence also established that DHS

provided outdated forms to Claimant and her provider which lacked information concerning the CDC provider training requirements. In the present case, the central issue is to determine Claimant's proper remedy.

Claimant contended that it would be appropriate to order CDC billing at a time at or near the time she submitted her CDC provider's application to become a CDC provider. If the issue is determined based on one of fairness or equity, Claimant has presented a compelling argument. It would be reasonable to find that had DHS acted sooner in processing Claimant's CDC provider's application, then Claimant's CDC provider would have received a notice to attend CDC training sooner, the CDC provider would have attended training sooner and that CDC provider eligibility would have been allowed earlier than 9/16/10.

Claimant appealed the issue of her CDC provider's eligibility within the administrative process. In the administrative appeal process, the undersigned only has the authority to determine whether DHS did or did not follow their own regulations. If DHS did not, the undersigned must limit the remedy of clients to what is allowable under DHS regulations. The appropriate remedy for a failure by DHS to timely process a CDC provider request is to order that DHS process the request. Once the request is processed, there is no other remedy to consider.

The undersigned may not allow CDC billing prior to the pay period which contains the CDC training completion date because DHS regulations strictly prohibit such a remedy. The undersigned cannot order DHS to violate their own regulations, even if is intended to correct a separate policy violation by DHS. Claimant would contend that two wrongs are necessary to make a right; the undersigned does not have the authority to order a second wrong to make a right.

If the undersigned had the authority to determine this matter on one of fairness and equity, Claimant might have received her requested remedy of an earlier CDC provider eligibility date. However, as the undersigned is restricted within his administrative review, it is found that DHS properly determined Claimant's CDC provider's eligibility based on their regulations and that Claimant is not entitled to additional CDC pay periods of eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly determined the billing begin date for Claimant's CDC provider based on the attendance date of CDC training by Claimant's CDC provider.

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The actions taken by DHS are AFFIRMED.

Christian Gardocki

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

Date Signed: 1/31/2011

Date Mailed: 1/31/2011

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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