

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.: 2011-2691
Issue No.: 6019
Case No.: [REDACTED]
Hearing Date: December 16, 2010
DHS County: Wayne (82-43)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was held on December 16, 2010. Claimant appeared and testified. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS properly processed Claimant's application for Child Development and Care (CDC) benefits?

FINDINGS OF FACT

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

1. On November 11, 2009, Claimant applied for CDC benefits with DHS.
2. On February 6, 2010, the enrollment period for Claimant's Child Care Provider, [REDACTED], expired, making her ineligible as a CDC Provider.
3. On or about February 2, 2010, Claimant hired [REDACTED] as her child day care provider.
4. On October 4, 2010, Claimant filed a hearing request notice with DHS.

CONCLUSIONS OF LAW

CDC was established by Titles IVA, IVE and XX of the U.S. Social Security Act, the U.S. Child Care and Development Block Grant of 1990, and the U.S. 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. DHS provides services to adults and children pursuant to MCL 400.14(1) and Michigan Administrative Code Rules 400.5001-400.5015. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT). These materials can be found online at www.michigan.gov/dhs-manuals.

The manuals are the policies and procedures that DHS officially created for its own use. While the manuals are not laws created by Congress or the Michigan Legislature, they constitute the legal authority which DHS must follow. It is to the manuals that I look now in order to see what policy applies in this case.

In this case, DHS has cited as authority for its action BEM 300, "Preventive Services for Families (PSF) Program Overview." I reviewed this item and I conclude that it applies to situations where the issue is child abuse and not child day care. I determine instead that the correct manual section that sets forth the requirements of the parties in this case is BEM 704, "CDC Providers."

BEM 704, which I have reviewed in its entirety, contains no requirement of child day care provider training. BEM 704 does not indicate that DHS has the authority to conduct provider training, what training will be required for each of the nine provider categories, when in relation to a provider's eligibility the training must be completed, and what the training requirements are for providers who are already enrolled with DHS. More specifically, I find nothing in BEM 704 that states that DHS has the authority to refuse to pay an eligible, enrolled provider for services rendered simply because they did not complete a training program.

I find that failure to attend a training program is the sole reason for DHS' failure to pay Claimant's CDC provider, [REDACTED], from November 11, 2009-February 6, 2010. After that date, [REDACTED] enrollment expired and she was no longer eligible to be a provider; in any event, at that time Claimant chose another provider. DHS at the hearing provided no evidence to show that Claimant's November 11, 2009, application was denied. Accordingly, I find and conclude that Claimant is eligible for CDC benefits for child day care services rendered by [REDACTED] from November 11, 2009-February 6, 2010.

Next, I turn to the period beginning February 6, 2010. I find nothing in the record to indicate that Claimant advised DHS of her new provider, [REDACTED], in

February 2010. Claimant's Exhibit 1, which is a portion of her February 2010 application, does not identify any providers by name. Therefore, other than Claimant's testimony at the hearing, I have nothing to justify a conclusion that [REDACTED] was ever named as a provider in February 2010.

Jumping over from February 2010 to May 2010, I have also examined Claimant's Exhibit 2, which is a May 28, 2010, DHS Notice of Authorization for child care to be provided by [REDACTED]. The Notice indicates authorization for [REDACTED] retroactively for only two weeks, January 31-February 13, 2010, and for only one of the two children for whom child care was requested. The name of [REDACTED] appears on the May notice in handwriting, but there are no authorized period dates and no authorized children. I do not consider this an official notice as it does not contain sufficient detail to be meaningful. I do not accept Claimant's Exhibit 2 as proof that Claimant applied for child care services to be provided by [REDACTED].

I consider the fact that without more evidence that [REDACTED] actually applied to be a provider, [REDACTED] may not have background clearance. Background clearance is mandatory and it is specified in great detail in BEM 704.

BEM 704, "CDC Providers," states as follows with regard to background clearance:

Background Clearances

Before enrolling an aide or relative care provider, a central registry check and criminal history background **clearances must be completed on all aides, relative care providers and adults, age 18 and over, living in the relative care provider's home.**

...

Central Registry (CR) Check at Provider Application

Complete a central registry check first. If a valid match is found, no further clearances need to be completed.

Central Registry Match

Deny or terminate the aide or relative care provider's enrollment if central registry clearance indicates a valid match. BEM 704, pp. 5-6 (bold print added for emphasis).

I find and determine that BEM 704 requires that Claimant's provider shall receive background clearance. I note that clearances must be obtained not only for the provider but for all adults who live in the provider's home as well. I cannot infer that background clearance occurred merely from the handwritten name on the Notice.

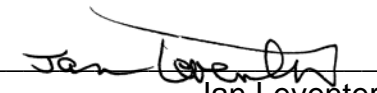
I find and determine that Claimant's request for CDC services from [REDACTED] is not correct under BEM 704 and I DENY it. I determine that DHS acted properly on the question of Claimant's second provider, [REDACTED]. DHS is hereby AFFIRMED. DHS need take no further action as to [REDACTED].

In conclusion, DHS is PARTIALLY AFFIRMED AND PARTIALLY REVERSED in this case. IT IS ORDERED that DHS shall provide appropriate CDC benefits to Claimant on behalf of provider, [REDACTED], from November 11, 2009-February 6, 2010. IT IS FURTHER ORDERED that Claimant is not entitled to CDC benefits of behalf of the subsequent child care provider, [REDACTED], and DHS need take no further action in regard to this provider. All DHS actions shall be taken in accordance with DHS policies and procedures.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, determines that DHS is PARTIALLY AFFIRMED AND PARTIALLY REVERSED. DHS is ORDERED to reopen and reprocess Claimant's CDC application with regard to provider, [REDACTED], for November 11, 2009-February 6, 2010, in accordance with this decision and all DHS policies and procedures.

IT IS FURTHER ORDERED that DHS need take no further action with regard to Claimant's request for CDC benefits on behalf of provider, [REDACTED], as there is insufficient evidence to establish the request.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 21, 2010

Date Mailed: December 22, 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.

2011-2691/JL

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.

JL/pf

cc:

