

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

IN THE MATTER OF:



Reg. No: 201135788
Issue No: 6019
Case No: [REDACTED]
Hearing Date: JUNE 28, 2011
Genesee 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 (referred to as "the claimant") request for a hearing received on May 9, 2011. After due notice, a telephone hearing was held on June 29, 2011. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly denied the claimant's Child Development and Care (CDC) benefit application for lack of verification?

FINDINGS OF FACT

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

1. On February 28, 2011, the claimant applied for CDC benefits and also submitted the provider application along with copies of the provider's driver's license and social security card. (Department Exhibits 1 & 2).
2. The provider was actively enrolled, but the provider's address on the department's computer database was different than listed on the provider's application and driver's license. (Hearing Summary).
3. The provider answered "no" to section on the application which asked, "Do you or any adult household member have any criminal charges pending or have ever been convicted of a crime?" (Department Exhibits 1 & 2).
4. The department caseworker received a telephone call from an anonymous enrollment clerk that someone in the provider's home had a criminal record. (Hearing Summary).¹

¹ The department caseworker who testified at the hearing did not bring the enrollment clerk as a witness and indicated that the identity of the enrollment clerk is confidential.

5. The department caseworker spoke to the provider and advised the provider that she needs to come to the local office and change the criminal record section of the application from “no” to “yes.” The provider refused to change the application and indicated that there is no one in the home with a criminal record. (Hearing Summary).
6. The department denied the CDC application because the provider refused to change the criminal history portion of the application. (Hearing Summary).
7. On May 5, 2011, the department mailed the claimant a Notice of Case Action (DHS-1605), informing the claimant that his CDC application had been denied because the claimant failed to verify necessary information. (Department Exhibits 5-8).
8. On May 9, 2011, the claimant requested a hearing, protesting the denial of his CDC application.

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 (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).

Clients are not eligible for CDC services for care provided by any of the following persons:

- A member of the CDC program group.
- The applicant/client.
- The applicant/client’s spouse who lives in the home.
- The parent of the child(ren) or a legal guardian who is not a member of the CDC program group.
- A home help provider who is also providing adult home help at the same time as child care is being provided.
- Individuals on central registry determined to be responsible for the neglect or abuse of a child(ren) or convicted of a crime listed in the crime codes exhibit.
- A CDC program group member, applicant or applicant’s spouse who owns in whole or part the child care center, group or family child care home where the child care is provided. (BEM 704).

To begin the enrollment process, unlicensed providers must complete the DHS-220, Child Development and Care Unlicensed Provider Application. If the application is not

completely filled out, it must be returned to the specialist for completion prior to beginning the enrollment process. The application certifies that the provider applicant meets all the requirements listed on the application. (BEM 704).

Within 10 workdays of receiving the DHS-220 and all required verifications, 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) on the provider and all adult household members listed on the provider's application, 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; see the DHS Net for the Provider Management training. (BEM 704).

The policy provides that the department, before enrolling an unlicensed provider, must complete a central registry clearance and criminal history background clearances on the provider and household members, age 18 and over, listed on the DHS-220. (BEM 704). All names used by the applicant/provider and adult members, such as maiden or alias names as listed on the provider's application, must be cleared. (BEM 704).

Background clearances must also be completed whenever DHS becomes aware that a new household member, age 18 and over, has moved into the unlicensed provider's home or when information is provided that an adult household member, age 18 and over, is on central registry as a perpetrator, has a criminal conviction or pending criminal charge. (BEM 704).

If the provider/applicant self-discloses that he/she or a household member, age 18 and over, has been convicted of a crime that is comparable to a crime code in the exhibit, the department must deny the enrollment. (BEM 704). If a match is found on any of the clearances, the department is required to compare the crime code number of the conviction or pending criminal charge to the crime codes exhibit. (BEM 704). If the code is listed, the provider enrollment must be denied or terminated. (BEM 704).

If a match is received on a crime code that is not listed and it is believed the crime could impact the health and safety of a child, email the Policy-CDC-DHS Policy-CDC mailbox with all pertinent information. A decision will be made as to whether this is a terminable crime. If an unlicensed provider's enrollment is denied or terminated as a result of a criminal conviction or pending criminal charge on an adult household member, and it is reported the adult no longer resides in the home of the provider:

- Obtain a new DHS-220.
- Request verification such as a lease, ID, utility bill, etc., showing the household member has a new address.
- Fax the DHS-220 and verifications to CDC Policy at 517-241-8679

with a cover sheet listing the specialist's contact information and fax number. (BEM 704).

If it is determined that the provider is eligible for enrollment, CDC Policy will remove the closure reason and contact the local office. (BEM 704). For purposes of determining continued eligibility, the department conducts automated clearances on providers. However, the automated process does not replace or eliminate the policy requirement to complete all required background clearances prior to provider enrollment and at all other required times. (BEM 704).

Department policy further provides that clients must take actions within their ability to obtain verifications and the department staff must assist when necessary. BAM 130, BEM 702. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. (BAM 130). The verifications sources listed in the specific BEMs are the acceptable verification sources the department should utilize. (BAM 130). However, the department may use other less common sources, if it is accurate and reliable. (BAM 130).

In this case, there is no evidence that the department properly completed the necessary background clearances (central registry, ICHAT, OTIS, PSOR, NSOPR, FIL) on the provider and all adult household members listed on the provider's application. Rather, the department caseworker relied upon a statement from an anonymous "enrollment clerk" that a member of the provider's household had a criminal record. Insofar as practical, an administrative law judge shall follow the rules of evidence as applied in a nonjury civil case in circuit court. Admin Rule 400.913. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Mich Rule of Evidence (MRE) 801. Here, the statement that one of the provider's household members has a criminal record meets the definition of hearsay and is not admissible. The department did not provide any independent evidence in the form of a document that someone in the provider's household had a criminal record nor did the department bring the enrollment clerk to the hearing to testify at the hearing.

The department should not have denied the claimant's application based on the provider's failure to admit that a member of the household has a criminal record. There has been no reliable evidence that a member of the provider's household has a criminal record. Without such evidence, the department has no basis to require the provider to make this admission and alter the criminal record section of the application. The department is required to promptly complete a proper background clearance prior to provider enrollment.

Consequently, based on the evidence presented at the hearing, the department may not compel the provider to indicate that a member of the household has a criminal conviction as a condition of processing the claimant's application for CDC benefits. Based on competent, material and substantial evidence, this Administrative Law Judge finds that the claimant's application for CDC benefits shall not be denied because the provider refuses to admit that a member of the household has a criminal record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the department's CDC eligibility determination is REVERSED. Further, the department shall:

- Promptly conduct a criminal background check in accordance with policy,
- Process the claimant's application in accordance with the applicable policy and redetermine the claimant's eligibility for CDC benefits.
- In addition, the department shall issue any supplement benefits that the claimant is otherwise eligible to receive.

It is SO ORDERED.

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

Date Signed: 07/01/2011

Date Mailed: _____

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.

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/cr

cc:

