

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.: 2011-7151
Issue No.: 6012
Case No.: [REDACTED]
Hearing Date: January 31, 2011
DHS County: Wayne (82-55)

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 January 31, 2011. Claimant appeared and testified. [REDACTED], appeared and testified for the Department of Human Services (DHS).

ISSUE

Whether Claimant is eligible 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 March 30, 2010, [REDACTED] became the child care provider for Claimant's two children.
2. On May 13, 2010, Claimant applied for CDC benefits.
3. Also on May 13, 2010, [REDACTED] received clearance from DHS as a child care aide provider in the CDC program.
4. Claimant erred on her application and failed to identify [REDACTED] as her child care provider.
5. From May 13, 2010-July 31, 2010, Claimant's child care provider was [REDACTED]

6. From May 13, 2010-July 31, 2010, Claimant did not receive CDC benefits.
7. On or about August 1, 2010, DHS conducted a Redetermination process to update Claimant's eligibility.
8. Beginning August 1, 2010, DHS provided CDC benefits to Claimant, payable to her provider [REDACTED].
9. On October 20, 2010 filed a hearing request 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 CDC services to adults and children pursuant to MCL 400.14(1) and Michigan Administrative Code Rules 400.5001-400.5015. Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

The administrative manuals are the policies and procedures DHS officially created for its own use. While the manuals are not laws created by Congress or the Michigan State Legislature, they constitute 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. After setting forth what the applicable policy is, I will examine whether it was in fact followed in this case.

Following DHS' citation of BAM 115, "Application Processing," in the Hearing Summary, I refer first to this Item. The starting date for CDC benefits is addressed in this Item on page 18 as follows:

CDC Eligibility Effective Date – CDC

The first day of care that may be authorized is the latest of the following:

- The CDC application receipt date.
- The date the child care need begins.
- The date the provider becomes eligible for subsidy payments.
- The date the aide or relative care provider completes the basic training requirement.

BAM 115, p. 18.

In the case before me, there are two possible dates to consider in deciding the first day of care that may be authorized, and they are March 30, 2010, and May 13, 2010. I find and determine that March 30, the earlier date, is the date that Claimant's child care need began, but the later date of May 13 is when Claimant applied, the provider became eligible, and the provider completed the basic training requirement. Therefore, I decide and determine that May 13 is the latest of the two dates and it is the proper date to be selected as the first day of care that may be authorized according to BAM 115.

BAM 115 also directs DHS how to calculate the benefit period in an individual case.

Assigning a Benefit Period

Bridges assigns the **longest** benefit period possible based on the group's circumstances. Certain groups are given a specific **minimum** or **maximum** benefit period. Unless a specific period is required, benefits periods are assigned to accommodate the group's circumstances. The prorated month counts as the first calendar month of the benefit period. *Id.*, p. 20 (emphasis in original).

I read this Item to mean that, as a general principle of selecting a benefit period, DHS is to accommodate the group's circumstances wherever possible. In the case before me, I determine that the group's circumstances were that CDC benefits were needed as of May 13, 2010, and the need continued through July 31, 2010, the end of the time period that DHS did not award Claimant CDC benefits.

Claimant's acknowledged error on her application appears to be the only possible reason that Claimant did not receive CDC benefits from May 13-July 31, 2010. I next look to the DHS manuals to see if there is any guidance to the State Office of Administrative Hearings and Rules (SOAHR) as to whether a customer error can be corrected.

Correction of client errors is addressed in BAM 105, "Rights and Responsibilities," in the opinion of this SOAHR Administrative Law Judge. The very first section of BAM 105, which is titled "Department Policy," establishes DHS' duty in this regard:

RIGHTS AND RESPONSIBILITIES

DEPARTMENT POLICY

All Programs

Clients have rights and responsibilities as specified in this item.

The local office must do **all** of the following:

- Determine eligibility.
- Calculate the level of benefits.
- Protect client rights.

BAM 105, p. 1 (emphasis in original).

I find and conclude that, in this case, DHS failed to provide all three of the BAM 105 rights to Claimant. First, based on the record before me, DHS never approved or rejected the erroneous child care provider. The record before me contains Claimant's application, but it does not contain a DHS decision on the required Notice of Case Action form or other written decision form. I find and conclude that because DHS never informed Claimant that her CDC provider was officially accepted or rejected, she never knew of her error. I find and conclude that DHS' responsibility to determine eligibility serves the purpose of notice to customers as to what benefits they will or will not receive. I find that DHS failed to do so in this case.

Second, I find and conclude that as a result of its failure to determine Claimant's eligibility, DHS then failed to calculate Claimant's benefit level. I find nothing in the record before me that Claimant's CDC benefit level was ever calculated. Here again, if such a calculation had been made and then communicated to Claimant, she would have known that the provider she listed was the wrong provider, because the wrong provider name would be identified as the payee receiving the benefits.

Third, I find and conclude that DHS failed to protect client rights in this case, in that other than a clerical error on Claimant's part, Claimant is eligible for CDC benefits for the May 13-July 31, 2010 period. I find and determine that accommodating the client's circumstances, and not denying benefits when information is admittedly incorrect, is the principle that must be paramount, and that must be observed, in this situation. I find and decide that Claimant is entitled to CDC benefits for this period and DHS has the duty and responsibility to allow the correction and provide CDC benefits to Claimant.

Claimant, for her part, has a responsibility to cooperate with DHS, and this is also set forth in BAM 105:

CLIENT OR AUTHORIZED REPRESENTATIVE RESPONSIBILITIES

Responsibility to Cooperate

All Programs

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of necessary forms. See Refusal to Cooperate Penalties in this section. *Id.*, p. 5.

I have reviewed all of the testimony and evidence in this case as a whole, and I find nothing in the record to indicate that Claimant refused to cooperate with DHS at any time. Indeed, at the hearing, Claimant candidly acknowledged her error on the application and was in all ways cooperative with the administrative hearing process. I find that this paragraph on page 5 of BAM 105 means that the client is entitled to benefits even if they make a mistake, as long as they have cooperated with DHS and have not refused to do so.

In conclusion, based on the findings of fact and conclusions of law above, I find and conclude that DHS shall be REVERSED in this case. DHS is ORDERED to reopen and reprocess Claimant's application using the corrected CDC provider aide information. DHS is FURTHER ORDERED to provide CDC benefits to Claimant for May 13-July 31, 2010, in accordance with all DHS policies and procedures.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that DHS' action was in error and shall be REVERSED. IT IS ORDERED that DHS shall reopen and reprocess Claimant's May 13, 2010, CDC application using Claimant's corrected provider information, and provide CDC benefits to Claimant from May 13-July 31, 2010, in accordance with this decision and with all DHS policies and procedures.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 8, 2011

Date Mailed: February 9, 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.

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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:

