

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201272900
Issue No.: 6000
Case No.: [REDACTED]
Hearing Date: February 27, 2013
County: Washtenaw 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 following Claimant's request for a hearing. After due notice, a telephone hearing was held on February 27, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Family Independence Manager).

ISSUE

Did the Department properly determine Claimant's eligibility for Child Development and Care (CDC) benefits?

FINDINGS OF FACT

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

1. Claimant applied for CDC on August 29, 2011.
2. On December 12, 2011, Claimant requested a hearing concerning her CDC application.
3. On May 16, 2012, Administrative Law Judge (ALJ) Kevin Scully issued an Order of Dismissal where Claimant agreed to dismiss her hearing in exchange for the Department's agreement to redetermine Claimant's eligibility for CDC back to the August 29, 2011 application.

4. On May 23, 2012, ALJ Carmen Fahie signed a Consent Order of Dismissal which dismissed Claimant's request for a hearing because it was duplicative as it involved the same issue previously determined by ALJ Scully on May 16, 2011.
5. The Department failed to take proper action to implement ALJ Scully's May 16, 2012 order.
6. On August 15, 2012, Claimant again submitted a request for a hearing concerning her August 29, 2012 CDC application.

CONCLUSIONS OF LAW

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 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 application forms and each written notice of case action inform clients of their right to a hearing. BAM 600. These include an explanation of how and where to file a hearing request, and the right to be assisted by and represented by anyone the client chooses. BAM 600. The client must receive a written notice of all case actions affecting eligibility or amount of benefits. When a case action is completed it must specify: (1) the action being taken by the Department; (2) the reason(s) for the action; (3) the specific manual item(s) that cites the legal base for an action, or the regulation, or law itself. BAM 220.

The Michigan Administrative Hearing System (MAHS) may grant a hearing about any of the following: (1) denial of an application and/or supplemental payments; (2) reduction in the amount of program benefits or service; (3) suspension or termination of program benefits or service; (4) restrictions under which benefits or services are provided; (5) delay of any action beyond standards of promptness and (6) for FAP only, the current level of benefits or denial of expedited service. BAM 600.

Policy requires the Department resolve disagreements and misunderstandings **quickly** at the lowest possible level to avoid unnecessary hearings. BAM 600. Upon receipt of a hearing request, the Department should schedule a prehearing conference with the client or authorized hearing representative and conduct a supervisory review. BAM 600 at page 12. The client or authorized hearing representative is not required to phone or meet with any Department staff in order to have a hearing and any notice of prehearing conference must explain this. See BAM 600 page 12.

Department policy further discusses the importance of conducting a prehearing conference. See BAM 600 pages 12 and 13. This policy provides that the Department must assure that clients receive the services and assistance to which they are entitled. BAM 600. Concerns expressed in the hearing request should be resolved whenever possible through a conference with the client or authorized hearing representative rather than through a hearing. BAM 600.

When the Department conducts a prehearing conference, the Department must do all of the following: (1) determine why the client or authorized hearing representative is disputing the DHS action; (2) review any documentation the client or authorized hearing representative has to support his allegation; (3) explain the department's position and identify and discuss the differences; (4) determine whether the dispute can be resolved locally or requires MAHS to resolve; (5) mention to clients the availability of reimbursement for child care or transportation costs incurred in order to attend the hearing. BAM 600 p 13.

For each hearing not resolved at a prehearing conference, the Department is required to complete a Hearing Summary (DHS-3050). BAM 600. In the hearing summary, all case identifiers and notations on case status must be complete; see RFF 3050. BAM 600. The DHS-3050 narrative must include **all** of the following: (1) clear statement of the case action, including all programs involved in the case action; (2) facts which led to the action; (3) policy which supported the action; (4) correct address of the AHR or, if none, the client; and (4) description of the documents the local office intends to offer as exhibits at the hearing. BAM 600.

Department workers who attend the hearings, are instructed to **always** include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. BAM 600.

BAM 600 also discusses how and when the Department is required to implement an ALJ's decision. All hearing decisions must be recorded in the Department's computer system known as "Bridges," on the Hearing Restore Benefits screen. BAM 600. Some hearing decisions require implementation by the local office. BAM 600. **The Department must implement a decision and order within 10 calendar days of the mailing date on the hearing decision. BAM 600.** Further, the Department must implement the decision and order (D&O) pending a court appeal unless a circuit court or other court with jurisdiction issues an Order requiring a stay. BAM 600.

The process of certifying the implementation of the Decision and Order is set forth in BAM 600. For all programs, when a decision requires a case action different from the one originally proposed, the Department sends an Administrative Hearing Order Certification (DHS-1843) with the D&O. BAM 600. The Department should complete the

necessary case actions within 10 calendar days of the mailing date noted on the hearing decision. BAM 600. The Department shall then complete and send the DHS-1843 to MAHS to certify implementation and place a copy of the form in the case file. BAM 600. A local office manager or hearings coordinator is responsible to follow-up to ensure implementation of the D&O is completed. BAM 600.

Claimant's request for a hearing in the instant matter concerns the Child Development and Care (CDC) program. The Child Development and Care (CDC) 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 provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

In the instant matter, the Department has failed to comply with BAM 600. According to Claimant's most recent request for a hearing, the dispute concerns her CDC application and the inability of her CDC provider to receive payment for services. During the hearing in this matter, the Department representative acknowledged that an error has occurred relative to Claimant's CDC case and that a D.I.T. remedy ticket has been requested. At the time of the instant hearing; however, the Department representative was unable to demonstrate that any steps were taken toward resolving Claimant's concerns. In addition, the Department representative was also unable to confirm whether Claimant's CDC issues had been assigned an actual ticket number.

Based on the record in this matter, the Department violated BAM 600 when it failed to implement ALJ Scully's May 16, 2012 order within 10 days. The Department also failed to properly follow BAM 600 by failing to conduct a pre-hearing conference, which may have eliminated the necessity of an administrative hearing. Thus, this Administrative Law Judge finds the Department did not act properly.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did not act properly when it failed to properly register and process Claimant's CDC application dated August 29, 2011. The Department also failed to properly address Claimant's concerns regarding payment to her CDC provider.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall initiate a re-register and reprocess of Claimant's CDC application back to August 29, 2011.
2. The Department shall initiate a request for a remedy ticket on an expedited basis to address Claimant's CDC application.
3. To the extent required by policy, the Department shall provide Claimant with any retroactive and/or supplemental CDC benefits.

IT IS SO ORDERED.

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

Date Signed: March 7, 2013

Date Mailed: March 8, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CAP/cr

cc:

