

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-003889
Issue No.: 6007
Case No.: [REDACTED]
Hearing Date: August 26, 2014
County: Kent County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on August 26, 2014, from Lansing, Michigan. Participants on behalf of Claimant included herself. Participants on behalf of the Department of Human Services (Department) included Hearing Facilitator [REDACTED] OIG RA [REDACTED] FIM [REDACTED] and ES [REDACTED]

ISSUE

Did the Department properly sanction Claimant's Child Development and Care Program?

FINDINGS OF FACT

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

1. On April 1, 2014, the Department implemented Bridges Eligibility Manual (BEM) 708 Client Disqualifications which provides for sanction of Child Development and Care Program benefits for violation of the identified program rules.
2. On April 1, 2014, Claimant met with RA Brown regarding a Child Development and Care Program Intentional Program Violation (IPV) case against her from 2012. Claimant signed Intentional Program Violation Repayment Agreement (DHS-4350). Claimant did not sign a Request for Waiver of Disqualification Hearing (DHS-826).
3. On May 27, 2014, Claimant was sent a Notice of Case Action (DHS-1605) which stated her Child Development and Care Program benefits were closed beginning April 6, 2014.

4. On May 30, 2014, Claimant submitted a hearing request.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

None of the facts listed above are in dispute. Claimant asserts her Child Development and Care Program should not be sanctioned because she did not sign a Request for Waiver of Disqualification Hearing (DHS-826) and RA Brown told her (Claimant) her CDC would not be sanctioned. RA Brown testified that she made that statement to Claimant.

The Department is making two assertions in this case. First is that this Administrative Law Judge has no jurisdiction over the sanction because it was imposed by the Michigan Department of Education. Second is that BEM 708 provides that signing the Intentional Program Violation Repayment Agreement (DHS-4350) establishes that the CDC rule violations were intentional and should result in a disqualification.

Jurisdiction

A complete review of BEM 708 reveals that the entity that determines and imposes disqualification is "CDC Policy". There is no reference to the Michigan Department of Education. The Child Development and Care Program is administered by the Department of Human Services. The Notice of Case Action (DHS-1605) was sent to Claimant by the Department of Human Services. The current state of affairs provides that Administrative Law Judges (ALJs) in the Michigan Administrative Hearing System DHS section conduct hearings on DHS eligibility determinations, Intentional Program Violation (IPV) charges and disqualifications and over-issuances of program benefits. Bridges Administration Manual (BAM) 600 Hearings (2014) at page 2 under hearing requests for all programs still states "All clients have the right to request a hearing." No policies or directives were presented which show an alternative hearing process for CDC benefit recipients who are disqualified.

There are similar sanction/disqualification determinations made by entities other than DHS. Entities Administering the Partnership, Accountability, Training, Hope (PATH) program can decide if a Family Independence Program sanction should be applied to a benefit recipient. ALJs in the Michigan Administrative Hearing System DHS section conduct hearings on those sanctions. Prosecuting Attorney's Offices can decide if a benefit recipient is in noncooperation with the Office of Child Support. Again, ALJs in the Michigan Administrative Hearing System DHS section conduct hearings on those sanctions. Regardless of who makes the decision to disqualify a benefit recipient, DHS policy governs all the criteria for receipt off those benefits. Jurisdiction exists for this ALJ to conduct a hearing on the question of whether Claimant's Child Development and Care Program should be sanctioned.

CDC Disqualification

Bridges Eligibility Manual (BEM) 708 Client Disqualifications (2014) states:

RULE VIOLATIONS

Rule violations include failure to:

- Provide accurate eligibility information.
- Verify eligibility information.
- Cooperate with a Department investigation.
- Report changes timely and accurately.

Rule violations shall be considered intentional and result in a disqualification if established by:

- A court.
- An administrative law judge (ALJ).
- The client or adult group member's signed repay agreement or disqualification form.

Current practice when a Respondent signs an Intentional Program Violation Repayment Agreement (DHS-4350) but does not sign a Request for Waiver of Disqualification Hearing (DHS-826) is to conduct a hearing on only the IPV (disqualification) issue. The current version (10-09) of the Intentional Program Violation Repayment Agreement (DHS-4350) does not address disqualification of any assistance programs.

The Delegation of Hearing Authority issued to Michigan Administrative Hearing System specifically states "Administrative hearing officers have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or overrule or make exceptions to Department policy." Additionally, administrative adjudication is an exercise of executive power rather than judicial power, and restricts

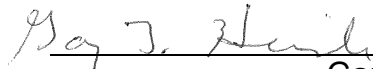
the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940); *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 303 NW2d 35 (1981); *Delke v Scheuren*, 185 Mich App 326, 460 NW2d 324 (1990), and *Turner v Ford Motor Company*, unpublished opinion per curium of the Court of Appeals issued March 20, 2001 (Docket No. 223082).

The BEM 708 provision directing that a rule violation shall be considered intentional and result in a disqualification if established by signing an Intentional Program Violation Repayment Agreement (DHS-4350) is inconsistent with the legal principles of notice and due process. However, the plain language in BEM 708 makes the Department's intention clear. Claimant's arguments against this action are a disagreement with the department's current policy. The result claimant seeks is not within the scope of authority delegated to this Administrative Law Judge pursuant to the Delegation of Hearing Authority or the established limitations of Administrative Law.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it sanctioned Claimant's Child Development and Care Program.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



Gary F. Heisler
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **9/9/2014**

Date Mailed: **9/9/2014**

GFH/hj

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

cc:

