

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

IN THE MATTER OF:



Reg. No.: 20146593
Issue No.: 6001
Case No.:
Hearing Date: January 8, 2014
County: Wayne (35)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 January 8, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included , Eligibility Specialist.

ISSUE

Did the Department properly close Claimant's Child Development and Care (CDC) case?

Did the Department properly calculate Claimant's CDC need hours?

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 was an ongoing recipient of CDC benefits.
2. On , 2013, Claimant's CDC case closed.
3. On , 2013, Claimant filed a request for hearing disputing the Department's actions concerning her CDC case.

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.

Additionally, Claimant filed a request for hearing on [REDACTED] 2013, concerning her CDC case which was tied to a Notice of Case Action dated [REDACTED] 2013. The Department did not include a copy of the Notice with its hearing packet and one was not provided after the hearing as requested. Therefore, it is unclear what actions the Department took with respect to Claimant's CDC case and when these actions were taken. At the hearing, Claimant expressed concerns about the closure of her case and the current level of biweekly need hours that she was allotted. In the absence of the relevant notice of case action, both of Claimant's CDC concerns are addressed in this hearing decision.

The CDC program may provide a subsidy for child care services for qualifying families when the parent is unavailable to provide the child care because of a need permitted under Department policy and care is provided by an eligible provider. BEM 703 (July 2013), p. 1. An acceptable need is family preservation, high school completion, an approved activity, or employment. BEM 703 (July 2013), pp. 1, 4.

In this case, Claimant is an ongoing recipient of CDC benefits who had established a need for CDC benefits based on her employment. At the hearing, the Department explained that it closed Claimant's CDC case closed because Claimant, a substitute teacher, was not employed, or had little employment, during the summer. Eligibility for CDC for income-eligible recipients ends the earliest of the following: (i) the requirements are no longer met, (ii) the family has excess income, or (iii) the need no longer exists. BEM 703 (July 2013), pp. 16-17.

In this case, it appears that Claimant's CDC provider did not bill for day care services during the summer, but the eligibility summary presented showed that Claimant's CDC case remained open until [REDACTED] 2013. The Department acknowledged that, before Claimant's case closed, it became aware by late [REDACTED] 2013 that Claimant had reengaged in her employment as a substitute teacher as of [REDACTED] 2013 and it had received at least one paystub showing employment and a Verification of Employment (VOE) from Claimant's employer, PESG. The VOE showed that Claimant's employment began [REDACTED], 2008, and continued. Therefore, at the time the

Department closed Claimant's CDC case, she had reestablished a need for benefits. Based on the evidence presented, the Department did not act in accordance with Department policy when it closed Claimant's CDC case.

At the hearing, Claimant also expressed concerns regarding the Department's calculation of her need hours. To verify need based on employment, the client must provide one of the following: (i) a copy of a work schedule indicating the number of hours worked, (ii) pay stubs indicating number of work hours, (iii) DHS-38, Verification of Employment (VOE), completed by the employer, (iv) TALX/Work Number and MIS (Management and Information System) for starting income, (v) DHS-3569, Agricultural Worker Income Verification, completed by the employer, or (vi) signed statement by the employer that contains the employment begin date, the number of hours the client works, and, for income-eligible clients, the dates and amounts of the client's paychecks for the requested period. BEM 703, pp. 12-13. If the employer refuses or is unable to complete the DHS-38, DHS-3569, or a signed statement, or if the client is unable to obtain his/her work schedule from the employer or the pay stubs do not indicate the number of work hours, the Department may collaterally contact the employer and complete the DHS-38 based on information obtained from this contact. BEM 703, p. 13.

In this case, Claimant alleged that she needed to be approved for 40 hours of weekly need hours but the Department testified that Claimant did not have a set work schedule and it was unable to obtain verification that Claimant worked as many hours as she alleged. According to the Department, Claimant's paystubs did not identify the number of hours Claimant worked. Although the Department tried contacting the employer, the employer refused to provide any information over the phone and requested that the Department fax over a DHS-38. The employer returned a completed DHS-38 that indicated that the number of hours expected to work "varies" and was stamped with a notice that "all jobs are accepted at will."

In determining a client's need hours, the Department considers the time spent in the activity and meal periods during the work day. BEM 710 (July 2013), p. 1. When neither the client nor the Department can obtain verification despite a reasonable effort, the Department must use the best available information. BAM 130 (July 2013), p. 3. If no information is available, the Department must use its best judgment. BAM 130, p. 3.

At the hearing, Claimant presented documentation that she testified that she could access from the employer showing the dates and hours that she served as a substitute teacher between [REDACTED] 2013, and [REDACTED] 2014. While this information concerns periods after Claimant's request for hearing, it supports Claimant's position that she worked more hours than the Department had authorized for CDC benefits. In this case, this evidence was the best available evidence. Thus, the Department did not act in accordance with Department policy when it determined Claimant's need hours without seeking further information concerning her work hours.

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 did not act in

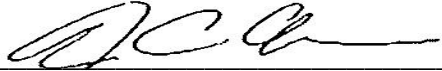
accordance with Department policy when it closed Claimant's CDC case and calculated her need hours.

DECISION AND ORDER

Accordingly, the Department's decision is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Claimant's CDC case as of [REDACTED] 2013;
2. Recalculate Claimant's need hours for [REDACTED], 2013 ongoing;
3. Issue supplements to Claimant for CDC benefits she was eligible to receive but did not from [REDACTED] 2013, ongoing; and
4. Notify Claimant in writing of its decision.


Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 23, 2014

Date Mailed: January 23, 2014

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted 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;

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- 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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

ACE/tlf

cc:

