

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-010947
Issue No.: 6006
Case No.: [REDACTED]
Hearing Date: February 10, 2015
County: Grand Traverse

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

Following Respondent'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, telephone hearing was held on February 10, 2015, from Lansing, Michigan. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Recoupment Specialist.

Participants on behalf of Respondent included [REDACTED] and [REDACTED].

ISSUE

Did the Department properly determine that the Respondent received an overissuance of 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. The Respondent was an ongoing Child Development and Care (CDC) recipient from October 9, 2011, through April 7, 2012.
2. The Respondent's received unemployment compensation benefits from August 16, 2011, through April 3, 2012.
3. The Respondent's wife received unemployment compensation benefits from August 15, 2011, through April 3, 2012.
4. Respondent and his wife did not receive earned income from their employer while receiving unemployment compensation benefits.
5. On September 5, 2014, the Department sent the Respondent a Notice of Overissuance (DHS-4358-A).
6. On September 10, 2014, the Department received the Respondent's request for a hearing protesting the recoupment of Child Development and Care (CDC) benefits.

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.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. An agency error is caused by incorrect action (including delayed or no action) by Department staff or department processes. A client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. Client and agency errors are not pursued if the estimated amount is less than \$250 per program. Department of Human Services Bridges Administrative Manual (BAM) 700 (May 1, 2014), pp 1-9.

Overissuance balances on inactive cases must be repaid by lump-sum or monthly cash payments unless collection is suspended. Department of Human Services Bridges Administrative Manual (BAM) 725 (July 1, 2014), p 8.

Each parent/substitute parent of the child needing care must have a valid need reason during the time child care is requested. Each need reason must be verified and exists only when each parent/substitute parent is unavailable to provide the care because of:

1. Family preservation.
2. High school completion.
3. An approved activity.
4. Employment. Department of Human Services Bridges Eligibility Manual (BEM) 703 (October 1, 2011), p 3.

CDC payments may be approved for clients who are employed or self-employed and receive money, wages, self-employment profits or sales commissions within six months of the beginning of their employment. If wages are not received, the need should be categorized as approved activity. BEM 703, p 9.

The Respondent was an ongoing Child Development and Care (CDC) recipient from October 9, 2011, through April 7, 2012. The Respondent and his wife were working for the same company and they were approved for Child Development and Care (CDC) benefits with employment as a valid need.

When the Respondent's employer was forced to file for bankruptcy, both he and his wife filed a claim for unemployment compensation benefits. While receiving unemployment compensation benefits, both the Respondent and his wife continued to work them same schedule. The Respondent also continued to place his children in child care and continued to receive Child Development and Care (CDC) benefits.

The Department alleges that the Respondent was no longer eligible for Child Development and Care (CDC) benefits from October 9, 2011, through April 7, 2012, while receiving unemployment benefits because he was not receiving money, wages, self-employment profits, or sales commissions.

The Respondent argued that his need for Child Development and Care (CDC) benefits had not changed because both he and his wife continued to work for their employer despite the fact that they were not receiving monetary compensation.

The Department did not dispute that the schedule of the Respondent and his wife did not change. Substantial evidence was presented on the record that the Respondent and his wife continued to perform many of the same activities that they were performing before applying for unemployment compensation benefits. The Department alleges that the Respondent and his wife were not eligible for Child Development and Care (CDC) benefits when the work they were performing no longer met the policy definition of "employment" and that the Respondent and his wife no longer had a valid need for child care.

This Administrative Law Judge finds that the receipt of unemployment compensation benefits is not proof that the Respondent and his wife were not employed since they may have been eligible for unemployment compensation benefits based on reduced employment.

This Administrative Law Judge finds that when the Respondent's employer filed for bankruptcy it became unlikely that they would be compensated for the work he and his wife performed for that company, but not impossible.


This Administrative Law Judge finds that the work the Respondent and his wife performed from October 9, 2011, through April 7, 2012, met the definition of "employment" in BEM 703, and that they had a valid need for Child Development and Care (CDC) benefits that had been previously approved by the Department because there was a possibility that they would be compensated.

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 did not act in accordance with Department policy when it determined that the Respondent received an overissuance of Child Development and Care (CDC) benefits.

DECISION AND ORDER

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

The Department is ORDERED to delete the OI and cease any recoupment action.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Acting DHS Director
Department of Human Services

Date Signed: **2/27/2015**

Date Mailed: **2/27/2015**

KS/las

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:

