

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

IN THE MATTER OF:

██████████
██████████
██████████
██████████

Reg. No.: 15-004144
Issue No.: 6001
Case No.: ██████████
Hearing Date: May 04, 2015
County: WAYNE-35 (REDFORD)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 May 4, 2015, from Detroit, Michigan. Participants on behalf of Claimant included ██████████. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Hearings Facilitator.

ISSUE

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

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 a CDC recipient.
2. Claimant was sent a notice of case action on March 3, 2015.
3. This notice of case action closed Claimant's CDC benefits, effective March 22, 2015.
4. Claimant's gross income for CDC benefits was based on income for December 2014 and January 2015 that represented excessive overtime pay.
5. On March 10, 2015, Claimant requested an administrative hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and 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.

The Department argued that Claimant was over income for the CDC benefit programs.

It appears from testimony regarding Claimant's pay checks that the income used to take a negative action with regard to these programs was based on income made by the Claimant in December, 2014 and January, 2015 that largely represented overtime pay. Income verifications obtained by the Department support Claimant's argument that the pay was overtime, as Claimant's current pay check and her testimony of current pay was around [REDACTED] dollars per month less than her pay in December and January, which is significant in that Claimant was about [REDACTED] over the income limit for the CDC program. Claimant testified credibly that she had reported this pay as overtime pay to the Department.

Per policy, when budgeting, the Department is to discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. For example, a pay would be discarded if the client worked overtime for one week and it is not expected to recur. However, the Department is to use income from the past 60 or 90 days for fluctuating or irregular income, if the past 30 days is not a good indicator of future income, and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. BEM 505, pg. 5 (2014).

Claimant had exactly one pay check at the higher [REDACTED] amount; the other paychecks were around [REDACTED]. This should have been enough to consider Claimant's income fluctuating, and allowed the Department to use income from the past 90 days, instead of the past 30 days.

As such, the undersigned must hold that the Department failed to follow policy by not averaging Claimant's income over 90 days when Claimant reported that her income from the last 30 days was representative of overtime.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Claimant's CDC benefit cases.

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. Remove the negative action on Claimant's CDC benefit cases retroactive to the date of negative action.

Reprocess Claimant's CDC budgets, using averaged income from the past 90 days, per policy found in BEM 505.



Robert J. Chavez
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/11/2015**

Date Mailed: **5/11/2015**

RJC / tm

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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 48909-8139

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]