

**CABINET FOR HEALTH AND FAMILY SERVICES
FAMILIES AND CHILDREN ADMINISTRATIVE HEARINGS BRANCH**

ADMINISTRATIVE HEARING NO: P 10-08-009

BOBBIE CHITWOOD

APPELLANT

NOTICE

DEPARTMENT FOR COMMUNITY BASED SERVICES

APPELLEE

ISSUE: The issue to be heard is whether the Appellant received an over issuance of Child Care Assistance Program benefits which is subject to recoupment in accordance with 922 KAR 2:020.

The matter captioned above will be heard on **Tuesday, October 12, 2010 at 11:30 AM** at the McCreary County DCBS office, 429 North Highway 27 Suite 2, Whitley City, Kentucky. ***DCBS staff shall ensure an appropriate conference room is available at the stated time, date and place.*** In accordance with the Americans with Disabilities Act, if any party requires special accommodations during this hearing, they should notify the Hearing Officer in advance to ensure that necessary arrangements are made. If the issue has not been worded correctly, the appellant/appellee should contact the Administrative Hearing Officer within five days from the receipt of this notification.

In accordance with KRS 13B and 922 KAR 1:320, the hearing will be administrative in nature and will be conducted in an informal but orderly manner without the Technical Rules of Evidence. The parties may be, but are not required to be, represented by an attorney. Attendance will be limited to the appellant and, if desired, an attorney, witnesses and Department for Community Based Services staff identified as being involved in the action and their attorney. Based on the issue, the Department will have the Burden of Proof.


Prior to the hearing, the appellant and/or his attorney may examine the contents of his Department for Community Based Services case record by filing a request under the provisions of the Kentucky Open Records Law. The request form and directions for submittal can be obtained from the local Department for Community Based Services office. Additionally, the parties have the right to examine the witness list, all evidence to be used in the hearing and any exculpatory information in the Department's possession at least five days prior to the hearing. Arrangements for sharing this information should be initiated by the parties within ten days of the receipt of this notice and should be coordinated between the parties. A Qualified Protective Order is attached to facilitate requests for Open Records and discovery. At the hearing, the parties should provide copies of documents to be entered into evidence and should ensure that those documents have been purged prior to submission in accordance with KRS 620.050 (5) (a).

General information related to this issue can be found in 922 KAR 2:020, 922 KAR 1:320; and DCC CCAP Policy Manual Section 15. This listing may not be all-inclusive, as details known to the Administrative Hearing Officer prior to the actual hearing are quite limited. Additional information can be secured from involved Department for Community Based Services staff prior to the hearing. The appellant and/or his attorney can review the complete Department for Community Based Services at any local Department for Community Based Services office between 8:00 AM and 4:30 PM. The policy manuals are also available through the Internet at http://manuals.chfs.ky.gov/dcbs_manuals/DPP/index_dpp.asp.

Following the hearing, all parties and their attorneys will receive a Recommended Order, which includes the Administrative Hearing Officer's findings of fact, reasoning, conclusions of law and recommended decision. KRS 13B.110 allows the parties fifteen days to file Exceptions to the Recommended Order with the Agency Head and provides that the Agency Head will issue a Final Order.

Any party who fails to attend or participate at any stage of the Administrative Hearing process may, according to KRS 13B 050 (3) (h), be held in default.

September 22, 2010



Rebecca Brock, Administrative Hearing Officer

CHFS/Families and Children Admin. Hearings Branch
P. O. Box 912
London, Kentucky 40743
Phone: 606-330-2120
FAX: 606-330-2034

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QUALIFIED PROTECTIVE ORDER

DEPARTMENT FOR COMMUNITY BASED SERVICES

APPELLEE

Appellant may file an open records request pursuant to KRS Chapter 61 et seq. seeking copies of any and all records in possession of the Department for Community Based Services ("the Department") related to the subject matter in this Administrative Hearing. The federal privacy regulation promulgated at 45 C.F.R. Parts 160 et seq., pursuant to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §201, Pub.L. 104-191, §1(a), specifically, Section 1320d-2, requires a Qualified Protective Order before these records may be released. 45 C.F.R. 164.512(e)(1). Under the federal regulations enacted pursuant to HIPAA, the Department is a "covered entity" and the records maintained by the Department may contain "protected health information". The section of the regulations pertaining to the issuance of protective orders is 45 C.F.R. §164.512 "Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required". Under that section, disclosures of information protected under the act may be made in an administrative proceeding if a Qualified Protective Order is issued setting forth the requirements under 45 C.F.R §164.512. Therefore, IT IS HEREBY ORDERED:

1. The Cabinet for Health and Family Services shall deliver to counsel for the Appellant, or the Appellant, if unrepresented, records pertaining to the subject matter in this Administrative Hearing, and any other documentation generated as a result thereof, including protected health information of other individuals, related to the Department for Community Based Services' action or inaction.
2. The parties shall not disclose any protected health information found in any records covered by this Order except in the course of this matter to persons who have a need to know that information to further the purpose of litigation.
3. Any party in possession of records containing protected health information covered by this Order at the conclusion of all appeals of this matter shall destroy those records.
4. The parties are advised that they may be subject to the civil and criminal penalties for violations of the non-disclosure requirements set forth in this Order. 42 U.S.C. 201 et seq. or

45 C.F.R. Parts 160 et seq. Section 1176 of 42 USC §1320d-5 and Section 1177 of 42 USC §1320d-6, as amended by 42 USC §201 et seq., Pub.L. 104-191, §1(a).

SO ORDERED this 22nd day of September 2010.



Rebecca Brock, Administrative Hearing Officer

Families and Children
Administrative Hearings Branch

CERTIFICATE OF SERVICE

It is hereby certified that a copy of this order was mailed, along with the copy of Notice of the hearing date in this case, to the following person at the address listed below this 22nd day of September 2010.

Bobbie Chitwood
P O Box 1374
Pine Knot, KY 42635

Kim W. Murphy, Paralegal
108 College Street
Somerset, KY 42501-1308

It is hereby certified that a copy hereof was electronically mailed to the persons listed below this 22nd day of September 2010:

Linda Lingle, Division of Child Care
Bradley Stevenson, Director, Child Care Council of KY
Pam Burns, CCAP Director

Angela M. Cronin

Angela M. Cronin, Admin Spec III
Families and Children
Administrative Hearings Branch