

BEFORE THE BOARD OF PUBLIC ASSISTANCE
OF THE STATE OF MONTANA

In the matter of the Fair Hearing of) Fair Hearing No. 03-801
CLAIMANT)
) FAIR HEARING DECISION
)
)
)

Claimant appeals from suspension of her Legally Unregistered Provider (LUP) payment number by the Human and Community Services Division (HCSD) of the Department of Public Health and Human Services (Department). The undersigned Hearing Officer conducted an in-person hearing at the Office of Fair Hearings in Helena, Montana, on August 27, 2003. From the record, the Hearing Officer now makes the following disposition of the case.

REPRESENTATION

Claimant (hereinafter Claimant) represented herself. Patti Russ, Child Care Supervisor, Early Childhood Services Bureau (ECSB), HCSD, represented the Department. Sworn testimony on behalf of the Department was provided by: Dee Dee Heitz, LUP Supervisor, ECSB, HCSD; Cheryl Fleury, Case Manager, Child Care Partnerships (CCP); and Valerie Hainline, Case Manager Supervisor, CCP.

IDENTIFYING INFORMATION

The Department suspended Claimant's LUP payment number effective June 1, 2003, because Claimant had not attended new provider orientation training within the mandatory six-month period. The Claimant contends that due to various reasons she either would not or could not attend training on the various dates offered.

EVIDENTIARY RULING

The Department's exhibits 1 through 13 were admitted into the record.

1 **FINDINGS OF FACT**

2 1. On November 20, 2002, the Claimant submitted a signed application to
3 CCP, the local Child Care Resource and Referral (CCR&R) agency, to become
4 registered as a LUP. On the application form, the Claimant checked the "True"
5 column adjacent to the statement "I agree to attend a mandatory orientation training,
6 which includes health and safety issues, immunizations and fire safety concerns
7 within six (6) months of application."

8 2. On November 20, 2002, CCP LUP Specialist Connie Manning sent the
9 Claimant a letter indicating the next New Provider Orientation class, "a mandatory
10 requirement that must be met within the first six months of being approved" would be
11 held on January 10, 2003 from 8:00 a.m. to 4:00 p.m. She also indicated the
12 registration fee of \$25 should be sent in as soon as possible as the fee would
13 become \$30 on the day of the training.

14 3. On November 21, 2002, Ms. Manning sent Claimant a letter advising
15 state regulations require the application process be completed within 30 days from
16 receipt of the application. The letter also stated, "I am also sending you an
17 Orientation Registration Form. Our next Orientation class for New Providers will take
18 place in January (you will receive notification approximately two weeks before)."

19 4. On December 11, 2002, the Department issued a letter advising the
20 Claimant she had been approved as a LUP, indicated her provider payment number
21 and stated the approval would be effective from November 20, 2002 to
22 May 31, 2003. It also stated, "You may renew your payment number if you have
23 attended orientation and continue to meet the other requirements as noted on the
24 application."

25 5. The Claimant did not attend the January 10, 2003, new provider
orientation training. She testified that she refused to take it because "Why would I
want to sit 8 hours in a class, pay \$30 to do it, and when I don't even have the \$30 to
do it because I didn't receive no paycheck; I don't know if I'm going to receive a
paycheck." She received her first payment for November and December in mid-
January. She testified she did not attend the March 14, 2003, training because she
was not aware of it.

1 6. On April 16, 2003, LUP Specialist Cheryl Fleury telephoned the Claimant
2 and reminded her that she must take orientation on May 16, 2003, or her license
3 would be closed. Ms. Fleury followed up the phone call on April 17, 2003, with a
4 letter in which she wrote the following:

5 "It is time for a 6-month review on your Application to be a Legally Unregistered
6 Provider in the Sate of Montana. As stated in the Welcome Letter you received after your
7 initial application was submitted, dated November 20, 2002, you were sent a registration
8 form for the next New Provider Orientation class. You were advised at that time that the 8-
9 hour Orientation class was a Mandatory Requirement, which had to be met within the first
10 six months of being approved. My records indicate that you have not yet taken orientation.
11 In order for me to extend you [*sic*] license for another six months you must take orientation.

12 "The next Orientation class will be held May 16, 2003. I am enclosing another
13 registration form. The \$25.00 fee must be received prior to the class. The fee becomes
14 \$30.00 on the day of the training. If you do not attend this class, your license will be
15 terminated as of that date without further notice."

16 (Underlines in original.)

17 7. CCP notified the Claimant by telephone on May 19, 2003, that due to her
18 not having completed orientation her LUP license application would be closed the
19 end of the month.

20 8. The Claimant sent an e-mail to CCP on May 21, 2003, stating,

21 "I am inquiring about rescheduling for that class I have to take. I am so sorry I
22 missed it but I had some really important things to do that day. Not that, that wasn't, but
23 there were other priorities. I had to see my daughter off on the bus at 9:00. I had a
24 doctors appointment for some test, then I had a funeral at 1:00. Plus we had to meet with
25 a loan officer. There was just no way I could make that class. I need to reschedule, put in
for hardship, what ever it takes. . . . There should be some leadway somewhere. Heck my
age, and the fact I raised 3 kids already ought to granfather me through that class don't
you think? Let me know what I can do please. Please find an exception to the rule, I know
there has to be a way around this without being closed. . . ."

(Sic) She testified that she put her daughter on a bus to State to undergo drug
rehabilitation; the funeral was for an uncle; the visit with the loan officer was related
to threatened foreclosure on her home; and she missed the medical appointment.
She offered no explanation for having made a medical appointment on that particular
day.

 9. CCP forwarded a copy of Claimant's May 21, 2003, e-mail message to
Dee Dee Heitz, LUP Supervisor for the Department's ECSB, who responded to the
Claimant by e-mail on May 23, 2003, advising her that since she did not complete the

1 LUP orientation within six months her license would be closed at the end of May and
2 she must reapply, but that completion of the orientation would be required to gain
3 approval of the application. The Claimant replied the same day asking if she could
4 request a hearing. Ms. Heitz replied on May 27, 2003, reiterating the license would
5 be closed at the end of May and that a notice containing information on the hearing
6 process would be sent.

7 10. All CCR&R agencies enter into a contract with the Department to provide
8 services to LUPs. As part of its contract, CCP agreed to: "Include an invitation to the
9 new provider orientation in the LUP information packet; issue orientation reminder for
10 new LUPs if they do not attend orientation within 4 months; and terminate LUP status
11 if they do not attend orientation within 6 months following initial approval." The
12 contract further provides that the Department requires LUPs "attend a basic training
13 on health and safety issues within six months of application. The orientation
14 sessions must be 8 hours in duration."

15 11. When they receive an LUP application, CCP procedure requires that the
16 case managers notify CCP's Executive Director of the applicant's name and address
17 for inclusion on a mailing list. Address labels are printed from the list and the
18 applicants are mailed copies of calendar pages containing all the upcoming
19 scheduled events, including the dates and times for the new provider orientation
20 training. The Claimant denies receiving the calendar. CCP also posts schedules of
21 upcoming classes on its web site (www.childcarepartnerships.org). The Claimant
22 denies that she ever visited the web site.

23 12. CCP only notified the Claimant of new provider orientation classes
24 available through its office. A LUP applicant could also have fulfilled their training
25 obligation by attending an orientation class in another city. An orientation class was
available in City on May 29, 2003. The Claimant first learned of this from Patti Russ,
Child Care Supervisor, HCSD, after May 31, 2003. The Claimant testified she would
have attended the City training.

CONCLUSIONS OF LAW

1. Administrative Rules of Montana (ARM) 37.80.101 *et seq.* provides for
the payment of child care to LUPs. ARM 37.80.101(6) states, "Eligibility of parents

1 and providers for child care assistance is contingent on meeting all applicable
2 requirements under this chapter.” Subparagraph (9) states, “Child care assistance
3 payments are not available unless both the parent and the provider meet all eligibility
4 requirements specified in this chapter.”

5 2. ARM 37.80.305 states, in pertinent part, “legally unregistered providers
6 must be properly certified under this chapter to receive payment for child care
7 services.

8 3. ARM 37.80.306(6) states, in pertinent part, “Legally unregistered
9 providers must also meet the following requirements to be registered under this
10 chapter: . . . (b) within six months of application, attend a training or orientation
11 session provided or approved by the department which includes health and safety
12 issues; . . . ; and (e) . . . The department may deny eligibility based upon . . . failure to
13 fulfill the [] requirements of this rule.”

14 4. ARM 37.80.501(1)(e) provides that, “Child care assistance will be
15 terminated if any of the following occurs: . . . the child care provider no longer meets
16 licensing standards or loses certification for payment.”

17 5. The Claimant contends that she should be given special consideration
18 because of her inability to attend the new provider orientation session on May 16.
19 She had opportunities to attend in January and March. She stubbornly refused to
20 attend in January because she had not yet been paid and then claims to have not
21 been informed of the March training date. The testimony of the Department’s
22 witnesses from CCP established that in the due course of their business they
23 routinely mailed to all LUP applicants copies of calendars containing the dates and
24 times of the training sessions. According to §26-1-602, MCA, it is a disputable
25 presumption that “a letter duly directed and mailed was received in the regular course
of the mail.” Simply denying she received notification of the training sessions via mail
does not overcome the presumption that it was mailed and received, though possibly
not read and then discarded. This seems the most likely scenario. Also, CCP posted
the schedule on its web site, so would have been available to the Claimant had she
the inclination to investigate to be sure she was aware of all the information needed.
The Claimant has demonstrated through her actions, through her testimony and in

1 her May 21, 2003, e-mail to CCP an attitude of disrespect for the Department rule
2 requirements necessary to sustain her LUP license. She received adequate notice of
3 all the training sessions and was given numerous warnings about the consequences.
4 While she may have had good cause for missing the May 16 training, she did not
5 bother to preregister, which would have saved her \$5 on the fee (after complaining
6 bitterly in her testimony about lack of money), she had made a medical appointment
7 for that day, she did not contact the CCR&R provider when she realized she would
8 not be able to make the class, she only made contact after being telephoned three
9 days later by CCP to advise that because she missed the class her license would not
10 be renewed, and she stated in her May 21 e-mail that they should grandfather her
11 through the class because of her age and experience raising 3 children. All this
12 indicates she had no intention of attending any training.

13 6. The use of mandatory language in the above-cited rules, such as the
14 words “must” (ARM 37.80.305 and .306(6)) and “will” (ARM 37.80.501(1)(e)), clearly
15 communicate provider orientation training is required during the first six months of
16 certification. ARM 37.80.306(6)(e) provides that the Department “may” deny eligibility
17 based upon failure to fulfill all requirements. As such, other arrangements might
18 have been worked out had the Claimant made any effort at contact when it became
19 evident to her she could not attend; however, that did not occur. She might have
20 attended the City session had she known about it, but likely only because she
21 suddenly realized they were serious about suspending her license. It is troubling that
22 no one informed the Claimant of the availability of training out of the area, but does
23 not damage the Department’s case because of the Claimant’s failure to act in a
24 timely good faith manner to mitigate the damage. The Department correctly
25 terminated the license, at its discretion, as provided in its rules. After examining the
facts of this case, the Hearing Officer cannot detect a good cause exception to find in
Claimant’s favor.

1 **ORDER**

2 Based on the above Findings of Fact and Conclusions of Law, the Department
3 of Public Health and Human Services properly denied renewal of Claimant's
4 Licensed Unregistered Provider certification effective June 1, 2003. The appeal of
5 Claimant is hereby DENIED.

6 **NOTICE:** Pursuant to ARM 37.5.331, this Fair Hearing Decision is the final agency
7 decision unless a request for review is received by the Director of the Department of
8 Public Health and Human Services, 111 North Sanders, P.O. Box 4210, Helena,
9 Montana 59604, within fifteen (15) days of the mailing of this decision.

10 **DATED** this ____ day of September, 2003.

11 _____
12 James L Keil
13 Hearing Officer

14 **CERTIFICATE OF MAILING**

15 I certify that I have mailed a true and correct copy of the above FAIR HEARING
16 DECISION by depositing same in the U.S. Mail postage prepaid on the ____ day of
17 September, 2003, at Helena, Montana, as follows:

18 CLAIMANT
19 Address
20 City, ST Zip

21 _____
22 Cj Johnson
23 Office of Fair Hearings

24
25 c: Patti Russ, HCSD, Cogswell