

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],

Respondent

Reg. No: 2008-20957

Issue No: 6052

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 15, 2009

Emmet County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services (department) request for a disqualification hearing. After due notice, a hearing was held on April 15, 2009. The respondent failed to appear for the hearing and it was held in her absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3187(5).

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) of the Child Development and Care (CDC) program and whether respondent received an overissuance of benefits that the department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. The department's Office of Inspector General (OIG) filed a hearing request to

establish an overissuance of benefits received by respondent as a result of respondent having committed an Intentional Program Violation (IPV).

2. Respondent was a recipient of CDC benefits during the period of October 2001 through April, 2002. (Department Exhibit 10, pages 26 - 30)

3. Respondent signed the Child Development and Care Application (DHS-4583) on June 23, 2001 and January 3, 2002, acknowledging that she understood her failure to give timely, truthful, complete and accurate information about her circumstances could result in a civil or criminal action or an administrative claim against her. (Department Exhibit 2, pages 6 – 9; Department Exhibit 7, pages 18 - 21)

4. Respondent was aware of her responsibility to report truthful circumstances and any changes in circumstances to the department.

5. Respondent has no apparent mental or physical impairment that would limit the understanding or ability to fulfill the reporting responsibilities.

6. Respondent reported to the department that she would be working 32 hours each week at work. (Department Exhibit 5)

7. The respondent's employer, [REDACTED], completed a Verification Checklist (DS-38) on October 1, 2001 and indicated that claimant worked five days a week from 3:00 pm – 11:00 pm (40 hours). (Department Exhibit 4, pages 14 – 15)

8. On November 28, 2001, the respondent was mailed a CDC Client Notice (DHS-4690) that indicated she was approved for CDC services, but that the care is only authorized for work, to attend school/training and for activities approved by the specialist. (Department Exhibit 5, page 16)

9. On September 12, 2007, the department received payroll information from Super Eight Motel that listed the respondent's hours/gross pay from October 7, 2001 through August 11, 2002. (Department Exhibit 9, pages 24 – 25)

10. When the department compared the respondent's billed hours with the actual hours she worked, the claimant was billing for more hours than she was working. (Department Exhibit 10, pages 26 – 30)

11. The respondent was the co-payee on each of the checks for CDC services and signed to endorse each check. (Department Exhibit 11, pages 36 – 45)

12. The respondent's CDC provider was paid a total of \$5449.77 during the fraud period. If the respondent/provider had accurately billed hours, the provider would only have been eligible to receive \$3810.48, which results in an overissuance of \$1639.29. (Department Exhibit 12, pages 46 – 49)

13. As a result of the failure to report all required correct day care provider information, respondent committed an IPV and received an overissuance of benefits.

14. Respondent has not committed any previous intentional CDC program violations

15. A Notice of Disqualification Hearing was mailed to respondent at the last known address and was not returned by the U.S. Post Office as undeliverable. Respondent's last known address is: [REDACTED]

CONCLUSIONS OF LAW

The Child Development and Care program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (DHS or department) provides services to adults and

children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In this case, the department has requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV. The department's manuals provide the following relevant policy statements and instructions for department caseworkers:

BENEFIT OVERISSUANCES

DEPARTMENT POLICY

All Programs

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). PAM, Item 700, p. 1.

Definitions

The **Automated Recoupment System (ARS)** is the part of CIMS that tracks all FIP, SDA and FAP OIs and payments, issues automated collection notices and triggers automated benefit reductions for active programs.

A **claim** is the resulting debt created by an overissuance of benefits.

The **Discovery Date** is determined by the Recoupment Specialist (RS) for a client or department error. This is the date the OI is known to exist and there is evidence available to determine the OI type. For an Intentional Program Violation (IPV), the Office of Inspector General (OIG) determines the discovery date. This is the date the referral was sent to the prosecutor or the date the OIG requested an administrative disqualification hearing.

The **Establishment Date** for an OI is the date the DHS-4358A-D, Repay Agreement, is sent to the client and for an IPV, the date the DHS-4357 is sent notifying the client when the disqualification and recoupment will start. In CIMS the "establishment date" has been renamed "notice sent date."

An **overissuance (OI)** is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold).

Overissuance Type identifies the cause of an overissuance.

Recoupment is a DHS action to identify and recover a benefit OI. PAM 700, p. 1.

PREVENTION OF OVERISSUANCES

All Programs

DHS must inform clients of their reporting responsibilities and act on the information reported within the Standard of Promptness (SOP).

During eligibility determination and while the case is active, clients are repeatedly reminded of reporting responsibilities, including:

- . Acknowledgments on the application form, **and**
- . Explanation at application/redetermination interviews, **and**
- . Client notices and program pamphlets.

DHS must prevent OIs by following PAM 105 requirements and by informing the client or authorized representative of the following:

- . Applicants and recipients are required by law to give complete and accurate information about their circumstances.
- . Applicants and recipients are required by law to promptly notify DHS of all changes in circumstances within 10 days. FAP Simplified Reporting (SR) groups are required to report only when the group's actual gross monthly income exceeds the SR income limit for their group size.
- . Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.
- . A timely hearing request can delete a proposed benefit reduction.

INTENTIONAL PROGRAM VIOLATION

DEFINITIONS

All Programs

Suspected IPV

Suspected IPV means an OI exists for which all three of the following conditions exist:

- . The client **intentionally** failed to report information **or intentionally** gave incomplete or inaccurate information needed to make a correct benefit determination, **and**
- . The client was clearly and correctly instructed regarding his or her reporting responsibilities, **and**
- . The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

Intentional Program Violation (IPV) is suspected when there is clear and convincing evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. PAM, Item 720, p. 1.

MA and CDC Only

IPV exists when the client/AR or CDC provider:

- . is found guilty of fraud by a court, **or**
- . signs a DHS-4630 **and** the prosecutor or Office of Inspector General (OIG) authorizes recoupment in lieu of prosecution. PAM, Item 720, p. 2.
- . is found responsible for the IPV by an administrative law judge conducting an IPV or Debt Establishment Hearing. PAM, Item 720, p. 2.

OVERISSUANCE AMOUNT

FIP, SDA, CDC and FAP Only

The amount of the OI is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. PAM 720, p. 6.

IPV Hearings

FIP, SDA, CDC, MA and FAP Only

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings for cases when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**
 - . The total OI amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1,000 or more, **or**
 - . The total OI amount is less than \$1,000, **and**
 - .. The group has a previous IPV, **or**
 - .. The alleged IPV involves FAP trafficking, **or**
 - .. The alleged fraud involves concurrent receipt of assistance (see PEM 222), **or**
 - .. The alleged fraud is committed by a state/government employee.

Excluding FAP, OIG will send the OI to the RS to process as a client error when the DHS-826 or DHS-830 is returned as undeliverable and no new address is obtained. PEM, Item 720, p. 10.

DECISION AND ORDER

In this case, the department has established that respondent was aware of the responsibility to report her circumstances accurately to the department. Department policy

requires clients to report any change in circumstances that will affect eligibility or benefit amount within ten days. PAM, item 105, p. 7. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities.

The respondent signed the CDC application, which acknowledges that she is responsible for any child care costs not paid by the Agency, including benefits which may have been authorized but for which she did not qualify, based on a change in circumstances. Respondent also signed acknowledging that she must repay any benefits that she received in excess of what she was entitled to receive. Further, the respondent also signed each check as a co-payee, so she clearly was aware of the hours the provider was billing.

The review of CDC benefits paid to the respondent/provider shows that the respondent/provider billed for more hours than the respondent was working (including allowed travel time) from October 21, 2001 through April 6, 2002. The respondent/provider should only have been eligible to receive 1237 hours in CDC services for each of the three children. The respondent/provider actually billed for 1847 hours for each of the three children, which amounts to 610 hours overbilled per child. This amounts to an overissuance of \$1639.29.

This Administrative Law Judge therefore concludes that the department has shown, by clear and convincing evidence, that respondent committed a first intentional violation of the CDC program, resulting in a \$1939.29 overissuance from October, 2001 through April, 2002. Consequently, the department's request for full CDC restitution must be granted.

/s/ _____
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

2008-20957/SLK

Date Signed: June 1, 2010

Date Mailed: June 3, 2010

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the respondent may appeal it to the circuit court for the county in which he/she lives.

SLK 

cc: 