

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.: 200931049

Issue No.: 6052

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

January 6, 2010

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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' request for a disqualification hearing. After due notice, a telephone hearing was held on January 6, 2010. Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3187(5).

ISSUE

Did the respondent commit an Intentional Program Violation (IPV) and did the Respondent receive 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) Respondent was a recipient of CDC benefits during the period of September 7, 2003 through October 15, 2005.
- 2) Respondent was employed as a direct care provider during this time.
- 3) Respondent has provided several employment verifications, payroll records and check stubs in support of this.
- 4) OIG testified that none of Respondent's listed employers could be located.
- 5) OIG testified that [REDACTED] is the same person as [REDACTED], father of Respondent's son, [REDACTED].
- 6) OIG provided no evidence in support of this allegation.
- 7) On July 9, 2009, 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); the OIG also requested that respondent be disqualified from receiving program benefits.
- 8) 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.
- 9) OIG Agent [REDACTED] represented the Department at the hearing; Respondent did not appear.
- 10) This is Respondent's first alleged IPV.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 and the Department has asked that Respondent be disqualified from receiving benefits. The Department's manuals provide the following relevant policy statements and instructions for Department caseworkers:

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. BAM, Item 720, p. 1.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the respondent intentionally made a false or misleading statement, or intentionally

withheld information with the intention to commit an IPV. Thus, the Department must not only prove that the respondent committed an act, but that there was intent to commit the act.

In this case, the Department has proven neither, and in fact, has only provided sparse evidence that is almost completely reliant upon unsupported speculation.

The main piece of evidence, as testified to by the Department, appears to be the allegation that the man for whom the Respondent is taking care of as a direct care worker is also the father of one of her children. The Department contended that this was prima facie evidence of a vast conspiracy to defraud the Department of almost thirty thousand dollars of CDC grant money over the course of two years. Of course, heavy allegations such as this must be taken very seriously and should certainly be examined closely and with great scrutiny; however, they also must meet the same burden of proof as any other allegation levied by the Department—whether there is clear and convincing evidence that an IPV was committed. The mere allegation of an act is not enough, nor is speculation that implies nefarious acts, no matter the seriousness or likelihood of the speculation.

In this case, the Department seems to be under the mistaken impression that the nature of their allegations regarding the relationship between the Respondent and her charge is proof of the veracity of their claims and of IPV; however, clear and convincing evidence of intent to commit an IPV must be required to show the type of fraud that the Department alleges. No such evidence was presented.

The Department presented no evidence that [REDACTED], the Respondent's charge, was the same person as [REDACTED], the father of Respondent's child. More importantly, even assuming that the Department's claims regarding the identities of these gentlemen are true, and the two gentlemen above are the same man, no evidence of IPV or fraud exists.

The basis of the Department's charge of IPV is that the employment that the Respondent lists in her CDC applications did not exist. A relationship between Respondent and her charge, if true, does not establish in any manner that Respondent was actually unemployed when she received a CDC grant—the relationship is only sufficient to prove that there was a relationship. This may be unethical, or even unlawful, but it does not prove that Respondent was never employed. The allegation that Respondent was unemployed is only speculation arising from the fact that her charge was the father of her children, and is not proven in any way by the relationship itself. This is of course, assuming that the two listed men are the same person, a fact that the Department has not proven through clear and convincing evidence.

The Department also contended that none of her alleged employers could be found as proof that the Respondent was never employed at the job in question. While this may be true, it serves as evidence for nothing more than the fact that Respondent's employers did not respond to interview requests. It is not, as the Department suggests, evidence that her employers do not exist. The Department declined to present further evidence disputing their existence, however, so this allegation will remain that—an allegation.


The Department's case is countered by large amounts of actual evidence—business records, pay stubs, and employment verifications. Curiously, the Department argued that all this evidence was not evidence of the simplest explanation—that Respondent worked at the business in question—but rather, evidence of a vast conspiracy encompassing several people in a two year long effort to defraud the Department of thirty thousand dollars.

This allegation is not consistent with the evidence, and therefore, the Administrative Law Judge rules that the Department has not met its burden of proof in showing that the Respondent committed an IPV or was in anyway not entitled to the benefits in question.

DECISION AND ORDER

The Administrative Law Judge decides the Department has not established that Respondent committed an Intentional Program Violation of the FAP program. Respondent received no CDC benefits that she was ineligible for.

Recoupment is DENIED.

/s/ 

Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 13, 2010

Date Mailed: July 13, 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.

RJC/hw

cc:

