

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: 2009-5208
Issue No: 6052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 4, 2009
Saginaw 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 March 4, 2009. The respondent personally appeared and provided testimony by and through her attorney, [REDACTED].

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. Department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of CDC benefits received by respondent as a result of respondent having committed an Intentional Program Violation (IPV).

2. Respondent submitted an unsigned CDC Application (DHS-4583) on August 14, 2003; a signed a CDC Application on May 8, 2004; and an Assistance Application (DHS-1171) on May 10, 2004. On these applications the respondent requested CDC assistance for two of her children, [REDACTED] and [REDACTED] (Department Exhibit 1, pages 10 - 27).

3. Respondent indicated on these applications that the CDC provider, [REDACTED], was an aunt, thereby qualified for relative care provider status. (Department Exhibit 1, pages 10 - 27)

4. During a June 8, 2006, telephone conversation, the respondent indicated that [REDACTED], the provider, was not an aunt, but a friend of a co-worker.

5. The department is requesting recoupment of all the CDC benefits paid on behalf of the respondent to her provider. The department lists CDC benefits paid on behalf of [REDACTED] (\$4821), who was never included as a child needing care on the applications. The department also lists care provided on behalf of [REDACTED] that [REDACTED] billed for (\$4802 and \$4868, respectively). (Department Exhibit 5, pages 28 –29)

6. The department alleged the OI period is from August 10, 2003 through June 12, 2004.

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

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. 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 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. The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:
 - (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).

The federal Food Stamp regulations read in part:

(6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

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 \$500 or more, **or**

. The total OI amount is less than \$500, **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.

DISQUALIFICATION

FIP, SDA and FAP Only

Disqualify an active **or** inactive recipient who:

- . is found by a court or hearing decision to have committed IPV, **or**
- . has signed a DHS-826 or DHS-830, **or**
- . is convicted of concurrent receipt of assistance by a court, **or**
- . for FAP, is found by SOAHR or a court to have trafficked FAP benefits.

A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. PAM 720, pp. 12-13.

Standard Disqualification Periods

FIP, SDA and FAP Only

The standard disqualification period is used in all instances except when a **court** orders a different period (see **Non-Standard Disqualification Periods**, in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:

- . One year for the first IPV
- . Two years for the second IPV
- . Lifetime for the third IPV

FIP and FAP Only

- . Ten years for concurrent receipt of benefits (see PEM 203). PAM 720, p. 13.

In this case, the department is alleging that the respondent was overissued CDC benefits by indicating her provider was a relative care provider (who can bill at a higher rate than a day care aide provider). The department's documentation also indicates that the provider billed for a child that was not ever included in the CDC application and that the provider billed for more hours than the respondent actually worked.

The department initially requested recoupment of all the CDC benefits paid to [REDACTED]. This would be \$4802 for Deweldon; \$4868 for Mackenzie; and \$4821 for [REDACTED]. However, this Administrative Law Judge pointed out to the Office of Inspector General agent that department policy indicates the OI amount is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. PAM 720. The respondent was working and was approved for CDC services, thus, it would appear that the respondent was eligible to receive CDC benefits for her provider for the actual number of hours she worked at the day care aide provider rate.

In light of this discussion, the OIG agent agreed to provide a new recoupment amount and the record was left open until March 11, 2009 to allow the agent to do so. The new information received on March 5, 2009, shows the same amount of billable hours, but is multiplied by the day care aide rate, instead of the relative care provider rate. However, this is still not correct. The OI amount is the amount of CDC benefits that the provider was issued in error. In other words, the total amount the provider received for [REDACTED] minus the amount the provider should have received (which is equal to the authorized number of hours actually provided each week multiplied by the day care aide rate). The department has failed their burden of proving the OI amount.

Thus, while it appears that the provider was overissued benefits, the OIG has not proven the OI amount. It is noted that with proper evidence of the OI amount, the department can refile this claim.

This Administrative Law Judge therefore concludes that the department has failed to show, by clear and convincing evidence, that respondent committed a first intentional violation of the CDC program. Consequently, the department's request for full restitution must be denied.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, finds that the department has failed to meet their burden of proof that the respondent committed an IPV and failed to show that the department is entitled to recoup any amount from the respondent.

/s/

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

Date Signed: July 30, 2010

Date Mailed: August 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: 