

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: 2009-13577

Issue No: 6052

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 29, 2009

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 29, 2009. Respondent did not appear.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) 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) On March 22, 2006, respondent began employment.

(2) On April 14, 2006, respondent submitted an application for benefits including Child Development and Care (CDC) benefits. The application was marked indicating respondent worked at [REDACTED] an average of 11-32 hours per week.

(3) On May 1, 2006, claimant was fired from her employment.

(4) On May 15, 2006, the department received a Verification of Employment (DHS Form 38) from [REDACTED]. The form indicated that respondent began employment there on 3/22/06, was expected to work 40 hours per week, and was fired on 5/1/06. The form was accompanied by a pay history from [REDACTED].

(5) On May 25, 2006, respondent began employment with [REDACTED]. Respondent worked there until September 15, 2006.

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 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:

PAM 720 INTENTIONAL PROGRAM VIOLATION

DEPARTMENT POLICY

All Programs

Recoupment policies and procedures vary by program and overissuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment. [PAM 700](#) explains OI discovery, OI types and standards of promptness. [PAM 705](#) explains agency error and [PAM 715](#) explains client error.

DEFINITIONS

All Programs

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.

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.

FAP Only

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

IPV

FIP, SDA and FAP

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

Clear and convincing evidence is evidence that “produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).

In this case, the department has charged that respondent committed an IPV by not reporting the end of her employment at [REDACTED] and because the CDC hours billed during the alleged IPV period were greater than the actual CDC need.

Evidence in the record shows respondent’s last pay check from [REDACTED] was May 5, 2006. The same evidence shows the department requested and received verification of respondent’s termination from [REDACTED] on May 15, 2006 (Department Exhibit #14). This evidence shows the department had knowledge of the termination within the required reporting period of ten days.

The department has submitted an over issuance budget for respondent’s Child Development and Care (CDC) benefits during the period April 2, 2006 and July 8, 2006. The department submitted evidence of the number of hours respondent worked during this period (Department Exhibit #16 & 18). The department submitted sign in/out sheets for respondent’s three children (Department Exhibit # 0- 24). The exhibits are illegible in large part. One is for the week beginning 5/8/06, one for week beginning 5/15/06, two for the week beginning 5/22/06, and for one the dates cannot be seen. After review of the evidence in the record, the evidence is insufficient to convince this Administrative Law Judge that the calculated over issuance amounts are accurate.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides the following:

(1) The Department of Human Services has not presented sufficient evidence to show that respondent committed an intentional program violation in order to receive Child Development and Care (CDC) benefits she was not eligible for.

(2) The Department of Human Services has not presented sufficient evidence to show what if any over-issuance of Child Development and Care (CDC) benefits occurred during the alleged period.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 3, 2009

Date Mailed: June 6, 2009

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.

GFH 

cc:

