

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: 2009-17605
Issue No: 6052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 1, 2009
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 July 1, 2009. Respondent appeared at the hearing.

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 October 1, 2001 through July 21, 2004.
- 2) Respondent was employed at [REDACTED] during this time.

- 3) Respondent and [REDACTED] had provided several employment verifications, payroll records, and check stubs in support of this.
- 4) Respondent has signed an affidavit that she worked at [REDACTED].
- 5) Requests sent to [REDACTED] for payroll records were returned as undeliverable.
- 6) These requests were not sent to the correct address.
- 7) OIG testified that respondent had indicated no wages on her tax forms from the time period in question.
- 8) OIG provided no evidence in support of this allegation.
- 9) One of respondent's managers who signed an employment verification, which was provided by respondent, is also the father of one of her children.
- 10) OIG received an affidavit from a landlord, who was not employed at [REDACTED], that respondent did not work there.
- 11) On March 21, 2008, 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.
- 12) 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.
- 13) OIG Agent Wadiya Nyala represented the Department at the hearing; respondent appeared and represented herself.
- 14) 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 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:

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.

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 provided evidence so sparse and reliant upon innuendo and speculation as to border on the ridiculous.

The main piece of evidence, as testified to by the Department, was the fact that the man who signed some employment verifications for the respondent was 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 fifty thousand dollars of CDC grant money over the course of three years. This is, of course, not the case. This is evidence that the father of one of the respondent's children was also a professional colleague, which is not only not a crime, but quite common in today's society.

The Department also contended that respondent had not listed this income on her tax returns from this period. The Department declined to present evidence of this, however, so this allegation will remain that—an allegation.

The Department next presented a letter from a man who claimed that respondent never worked at the location. This man was the landlord of the building where the business resided for a time. The undersigned would note that this letter came from a person had been involved in a legal dispute with the business in question, and thus is not of unimpeachable credentials. It is also debatable as to whether the man in this letter worked for the business, or had any real first

hand knowledge of whether respondent worked there. Furthermore, the Department did not have this man testify, nor is the letter witnessed or notarized in any way, and as such, is also of extremely low evidentiary weight, in that it is unknown as to whether this man had any real first hand knowledge of the matter at hand. This letter could have come from anybody; its provenance remains unknown.

The Department's next piece of evidence is an employment verification that was allegedly forged, bearing the signature of the supposed landlord. The Department has provided no evidence that this verification is a forgery, other than a statement in the letter that was addressed by the undersigned that it was forged. As stated, there is no proof that the letter above is from the person whom the writer claims to be; therefore, the letter has no bearing as to whether this verification was a forgery. As the Department has no proof that the verification in question was a forgery, the undersigned will once again take this allegation for what it truly is—an unsubstantiated allegation.

The Department's final piece of evidence is that requests for payroll records sent to the business in question were returned as undeliverable. The Department testified that this meant that the business in question may not have existed. This is true—of course, the far simpler explanation is that the business moved, as businesses are known to do on occasion. This was verified by the respondent, who provided the correct address of the business, which was then verified by the Administrative Law Judge using a simple internet search during the hearing. Regardless, returned mail is not evidence of IPV—it is evidence of returned mail.

The Department's case is countered by large amounts of actual evidence—business records, payroll records, signed and witnessed affidavits by the respondent, interviews by actual witnesses, pay stubs, and employment verifications. Curiously, the Department argued that all

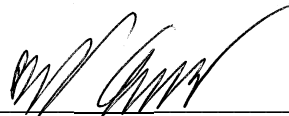
this evidence was not evidence of the simplest explanation—that respondent worked at the business in question—but rather, evidence of a vast conspiracy encompassing several people in a three year long effort to defraud the Department of fifty thousand dollars.

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.



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

Date Signed: 04/27/10

Date Mailed: 04/27/10

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/dj

cc:

