

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: 2009-25781
Issue No: 6052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 28, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 October 28, 2009. Respondent fail to appear.

ISSUE

Whether respondent committed an IPV on 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 applied for CDC benefits listing [REDACTED], an alleged aunt to her children, as her day care provided. CDC benefits were approved and issued for the respondent to [REDACTED].

3. A subsequent complaint to DHS established that [REDACTED] was not respondent children's aunt, and that she was not related either to the respondent or her children in any way.

4. Department determined that as a result of respondent's false report of her non-existent family relationship with [REDACTED], CDC benefits in the amount of \$24,755.10 were issued on her behalf from August 22, 2004 thru April 15, 2006.

5. Respondent was informed of the CDC overissuance and interviewed by OIG on October 10, 2008. Respondent stated that [REDACTED] is not related to her or her children, but she considered and called this person her aunt. Respondent also stated she was unaware of what DHS was billed for her day care needs, but did sign a Intentional Program Violation Repayment Agreement on this date.

6. On May 5, 2009 Kent Co. DHS received a letter from the respondent signed by her on April 27, 2009 requesting a hearing. Respondent stated she believed the amount of the overpayment was incorrect, that she was told she would be responsible for half of the figured out amount when she signed the repayment agreement and that [REDACTED] would be responsible for the other half, and that she feels she was tricked into signing the agreement.

7. On August 12, 2009 respondent was found guilty of welfare fraud by Kent Co. Circuit Court after pleading nolo contendere to the charge. Order of Probation however reserved restitution of CDC overissuance due to pending administrative hearing.

8. A notice of the hearing was mailed to the respondent at [REDACTED], same address as on the Order of Probation. Claimant did not show or call for the hearing, and no mail has been returned for her.

9. Respondent was clearly instructed and fully aware of her responsibility to report all household income to the department.

10. Respondent was physically and mentally capable of performing her reporting responsibilities.

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

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. 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).

IPV

FIP, SDA AND FAP

IPV exists when the client/AR is determined to have committed an Intentional Program Violation by:

- . A court decision.
- . An administrative hearing decision.
- . The client signing a DHS-826, Request for Waiver of Disqualification or DHS-83, Disqualification Consent Agreement, or other recoupment and disqualification agreement forms. PAM, Item 720, p. 1.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. PAM 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.

In this case, the department has established that respondent was aware of the responsibility to report all of her circumstances accurately to the department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. Respondent falsely reported that her day care provider, [REDACTED], was her children's aunt, resulting in CDC payments being issued she was not eligible for. Respondent failed to show for the hearing and provide any testimony and evidence to dispute department's claim that she committed an IPV while receiving CDC benefits. Respondent was found guilty of welfare fraud by Kent Co. Circuit Court for the CDC issue. Respondent has stated in her hearing request that she should not be held liable for the repayment of the entire CDC overissuance, and

that her day care provider should pay back some of the amount owed. Respondent also stated that she was in need of child care services which were performed, so she does not feel she is responsible for payment the money back, she did not do anything wrong. Departmental policy states:

ELIGIBLE PROVIDERS

In order for DHS to pay, care must be provided by an eligible provider. Eligible providers are those regulated by the DHS Office of Children and Adult Licensing, or enrolled by DHS. Those regulated by Office of Children and Adult Licensing are:

- . Day care centers
- . Family day care homes
- . Group day care homes

Certain facilities and day care homes which provide child care do not require licensure under P.A. 116. (See “Centers and Homes Exempt From Licensure.”)

The Department also recognizes two other types of providers, not required to be regulated, but are enrolled by the DHS to provide Child Development and Care services. They are:

- . Day care aides
- . Relative care providers PEM, Item, 704, pp. 1-2.

Child Care Centers

A **child care center** (See PRG) must be **licensed** by Office of Children and Adult Licensing for the age group(s) of the children to be served to be eligible to receive payment from the department. PEM, Item 704, p. 2.

Family and Group Homes

A **family child care home** (See PRG) must be **registered** by Office of Children and Adult Licensing to be eligible to receive department payment.

A **group child care home** (See PRG) must be **licensed** by Office of Children and Adult Licensing to be eligible to receive department payment. PEM, Item 704, p. 2.

Day Care Aides/Relative Care Providers

A **day care aide** (See PRG) is an individual (including a relative) who provides care in the home where the child lives, (see Definition for “In-Home Child Care”). PEM, Item 704, p. 3.

A **relative care provider** is related to the child needing care by blood, marriage or adoption as a:

- . grandparent/step-grandparent,
- . great grandparent/step-great grandparent,
- . aunt/step-aunt,
- . uncle/step-uncle, or
- . sibling/step-sibling

A relative provider provides care in the relative's home and must **not** live in the same home as the child. Relative status must be verified if questionable. A divorce severs/terminates a relationship gained through marriage. PEM, Item 704, p. 3.

It is clear from the quoted policy that different day care providers must meet different criteria in order to be eligible for payments from DHS. CDC payment amounts are also different based on the type of provider a client uses. Respondent's failure to accurately report her day care provider's relationship to her and/or her children and to continue to do so for almost 2 years resulted in department's CDC eligibility determination to be based on false circumstances, and in the CDC overissuance. Respondent's contention that, if she did not provide false information to the department, she may have been possibly eligible for CDC payments anyway, is not valid and cannot be entertained.

Furthermore, CDC payments were issued on respondent's behalf and she is therefore responsible for repayment of the same. Respondent is free to negotiate with [REDACTED], whom she describes as someone so close to her she felt she was her aunt, to get some of the CDC overissuance from her.

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 in the amount of \$24,755.10 from August 22, 2004 thru April 15, 2006. Consequently, the department's request for full restitution for the CDC overissuance must be granted for this period of time.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides respondent committed a first intentional CDC program violation for the period of time from August 22, 2004 thru April 15, 2006.

Therefore it is ORDERED that the respondent is responsible for full restitution of the \$24,755.10 overissuance caused by her Intentional Program Violation (IPV).

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 19, 2010

Date Mailed: April 19, 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.

IR/tg

2009-25781/IR

cc:

