

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: 2009-5986

Issue No: 6052

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 18, 2008

Wayne 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 March 18, 2009. Respondent and [REDACTED] appeared and testified.

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) [REDACTED] AKA [REDACTED] was an ongoing recipient of Child Development and Care (CDC) benefits. [REDACTED] benefit group consisted of herself, [REDACTED], and [REDACTED]s three children.

(2) On April 13, 2005, [REDACTED] and [REDACTED] signed an application for assistance. The application: listed a group of five; indicated that [REDACTED] was caring for [REDACTED] as a disabled

spouse; showed that [REDACTED] was working 18 hours per week; requested Child Development and Care (CDC) benefits for the three children due to work; and indicated that the children were being cared for in the home where they live.

(3) On May 4, 2005, [REDACTED] was referred to Work First. [REDACTED] did not attend or participate in the Work First program.

(4) Between November 13, 2005 and October 14, 2006, the department was billed for all three children, for 100 hours of child care every two week period, for each of the three children.

(5) On April 10, 2006, [REDACTED] only signed an annual application for assistance. The application: listed the same group of five; showed that [REDACTED] was working 32 hours per week; requested Child Development and Care (CDC) benefits for the three children due to work; and indicated that the children were not being cared for in the home where they live.

(6) On September 21, 2006, [REDACTED] was referred to Work First. [REDACTED] began participation in the Work First program on September 25, 2006.

(7) The department alleges that between November 13, 2005 and October 14, 2006, [REDACTED] was in the home and available to care for the children while [REDACTED] worked. The Department has requested a disqualification hearing against both [REDACTED] and [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 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).

Both, [REDACTED] and [REDACTED] assert that [REDACTED] was shot in July, 2004 and was disabled and incapable of caring for the children during the period in question. No medical evidence was submitted to support that assertion. [REDACTED] testified that by July of 2005 he was able to walk short distances.

The evidence submitted by the department shows that [REDACTED] was listed as a member of the household during the alleged IPV period. The evidence shows that [REDACTED] was not attending the Work First program during the period. The evidence shows that the department was billed for child care during the period. However, there is no evidence from the department showing that [REDACTED] was capable of caring for the children.

In an Intentional Program Violation Hearing the Department of Human Services is charging that the respondent has committed an intentional act for the purpose of receiving assistance benefits which they are not eligible for. The department has the initial burden of proof to make their case. Department policy does not provide much guidance on the sufficiency of evidence required to meet the initial burden of proof. Nothing in department policy prohibits a worker from charging an IPV based on what they believe the facts were. The legal standards of sufficient evidence are more stringent.

In this case, the department has stopped at the point where they have only proven that the department did not have information showing that ██████ could not care for the children. Apparently the department worker believes that the only explanation for this set of circumstances is that ██████ WAS capable of caring for the children. The explanation believed by the department worker is not an exclusive explanation for the set of circumstances proven. Therefore, the proofs presented by the department do not constitute sufficient evidence to meet their initial burden of proof.

It is true, that neither ██████ nor ██████ have provided proof that ██████ was not capable of caring for the children. However, the burden of proof does not shift until the party with the initial burden, meets that initial burden.

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 shown that ██████ was capable of caring for his children during the period of November 13, 2005 through October 14, 2006. Therefore the department has not shown that ██████ committed an

intentional program violation by failing to report that [REDACTED] was available to care for the children.

(2) The Department of Human Services has not shown that all Child Development and Care (CDC) benefits issued during the period of November 13, 2005 through October 14, 2006, were an over-issuance due to there being no need for care. Neither has the department shown that any of the billed child care services were not valid based on [REDACTED] work hours. The department has not established any valid over-issuance of Child Development and Care (CDC) benefits during the period of November 13, 2005 through October 14, 2006.

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

Date Signed: June 1, 2009

Date Mailed: June 2, 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 [REDACTED]

cc: [REDACTED]