

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-36052
Issue No.: 6052
Case No.: [REDACTED]
Hearing Date: December 15, 2010
DHS County: Wayne (82-76)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37, and the Department of Human Services' (DHS) request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan, on December 15, 2010. Respondent [REDACTED] did not appear. [REDACTED], appeared and testified on behalf of DHS.

ISSUE

Has DHS established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) of the Child Development and Care (CDC) Program?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material and substantial evidence in the record and on the entire record as a whole, finds as fact:

1. From January 12, 2003, to December 27, 2003, Respondent received CDC benefits in the amount of \$9,526.
2. On February 10, 2010, DHS sent Respondent an Intentional Program Violation Repayment Agreement, Form DHS-4350. DHS asked Respondent to repay an alleged overissuance of \$9,526. Respondent did not sign the Agreement.
3. On November 15, 2010, DHS issued a Notice of Disqualification Hearing/Request for Waiver of Disqualification Hearing, Form DHS-827, and sent it to Respondent with accompanying documentation.

4. This is a first-time IPV allegation against Respondent.

CONCLUSIONS OF LAW

CDC was established by Titles IVA, IVE and XX of the U.S. Social Security Act, the U.S. Child Care and Development Block Grant of 1990, and the U.S. 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. DHS provides CDC benefits to adults and children pursuant to MCL Section 400.14(1) and Michigan Administrative Code Rules 400.5001-400.5015. DHS' CDC policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT). These manuals can be found online at www.michigan.gov/dhs-manuals.

In this case, DHS requests a finding of a first-time Intentional Program Violation. The applicable manual section in this case, Program Administrative Manual (PAM) 720, "Intentional Program Violation," is no longer in effect and is not available online. PAM 720 contains essentially the same IPV definition as BAM 720, but I will present the exact language of PAM 720 herein.

IPV is defined on page 1:

INTENTIONAL PROGRAM VIOLATION

All Programs

Suspected IPV

Suspected IPV means an OI [overissuance] 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 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. There must be clear and convincing evidence that the client acted intentionally for this purpose. PAM 720, p. 1 (bold print and underlining in original).

I have examined all of the documents and testimony presented and considered all of the evidence in this case as a whole. DHS did not submit Respondent's application or other written materials at the hearing. Accordingly, there is nothing in the record to show what information Respondent provided to DHS. Without such documentation, I cannot make a determination as to the accuracy of such information. Also, I cannot determine if Respondent was ever advised of her responsibility to provide accurate information.

I find and determine that DHS has failed to produce clear and convincing evidence of the first IPV element, i.e., that Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination. I also determine and conclude that DHS failed to produce clear and convincing evidence that the second IPV element is fulfilled, i.e., that Respondent was clearly and correctly instructed regarding her reporting responsibilities.

I conclude that there is insufficient evidence to establish that Respondent committed a CDC IPV. I determine there is no clear and convincing evidence to establish that she intentionally provided incorrect information in order to obtain CDC benefits. Accordingly, DHS' request for a finding of IPV is DENIED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that DHS has failed to establish by clear and convincing evidence that a CDC IPV occurred. DHS' request for a finding of IPV of the CDC program is DENIED. IT IS FURTHER ORDERED that DHS' request to recoup CDC benefits from Respondent is DENIED.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 21, 2010

2010-36052/JL

Date Mailed: December 22, 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.

JL/pf

cc:

