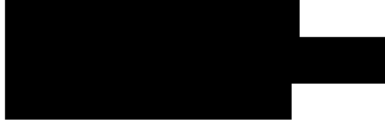

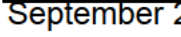


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES


IN THE MATTER OF:



Reg. No.	2010-43130
Issue No.	6052
Case No.	
Load No.	
Hearing Date:	September 29, 2010
Office:	Wayne County DHS (73)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon a request by DHS for an administrative hearing. After due notice, a telephone hearing was held on September 29, 2010. On behalf of Department of Human Services (DHS), , Regulation Agent, appeared and testified. Respondent failed to appear and testify.

ISSUE

1. Whether DHS established by clear and convincing evidence that Respondent committed an intentional program violation concerning Child Development and Care (CDC) benefits.
2. Whether DHS is entitled to recoup an alleged over-issuance of CDC benefits.

FINDINGS OF FACT

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

1. Respondent was an ongoing CDC recipient for at least the period of 11/2003-8/2005.
2. Respondent was employed as home help provider beginning the fourth quarter (October-December) of 2003.
3. Respondent's gross employment income per quarter as a home help provider was: \$465.05 in 2003 (4th quarter), \$837.09 in 2004 (1st Quarter),

\$837.09 in 2004 (2nd Quarter), \$837.09 in 2004 (3rd Quarter), \$775.08 in 2004 (4th Quarter), \$651.06 in 2005 (1st Quarter) and \$651.06 in 2005 (2nd Quarter). Exhibit 1.

4. Respondent was employed at [REDACTED] ([REDACTED]) beginning the second quarter (April-June) of 2004.
5. Respondent's gross employment income per quarter with [REDACTED] was: \$2633.71 in 2004 (2nd Quarter), \$2324.97 in 2004 (3rd Quarter), \$90.60 in 2004 (4th Quarter), \$231.14 in 2005 (1st Quarter) and \$308.56 in 2005 (2nd Quarter). Exhibit 1.
6. Respondent's CDC provider billed DHS a total of \$7238 from 11/2003-3/2004.
7. Respondent's CDC provider should have billed DHS a total of \$2688.40 from 11/2003-3/2004.
8. DHS requested an IPV hearing on an unspecified date alleging that Respondent failed to report stopped employment with [REDACTED] and over-billing for CDC benefits occurred from 11/1/03 through 8/19/05 for a total over-issuance of \$20,795 in CDC benefits.

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 (formerly known as the Family Independence Agency) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. DHS policies are currently found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). At the time of the alleged IPV, DHS policies were found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Intentional Program Violation (IPV) is suspected when a client 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 at 1.

A clear and convincing threshold to establish IPV is a higher standard than preponderance of evidence and less than beyond any reasonable doubt. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

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. PAM 720 at 1.

The Code of Federal Regulations also defines an IPV. Intentional Program violations 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. 7 CFR 273.16(c).

In the present case, DHS alleged that Respondent failed to report stopped employment with [REDACTED] as proof of Respondent's alleged fraud. DHS was not able to furnish any written statements from Respondent which claimed employment with [REDACTED] during a period of non-employment. Such a statement would be persuasive evidence of an intentional misreporting of information. Without such a statement, the undersigned is skeptical that DHS can clearly and convincingly establish that Respondent intentionally misreported information to DHS.

The mere over-billing of CDC hours is insufficient proof of IPV by Respondent. Assuming CDC benefit over-billing occurred, the cause of the over-billing could have been caused by Respondent's CDC provider as much as Respondent. No evidence was submitted to indicate that Respondent was aware or should have been aware of the hours billed by the CDC provider. It is found that DHS failed to establish an IPV by Respondent.

A finding that an IPV did not occur has no effect on whether benefits were over-issuance (OI) of benefits. When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance. PAM 700 at 1. An OI

is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

DHS distinguishes between an OI of benefits that is client-error and agency-error. An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or agency processes. *Id.* at 3. A client error OI occurs when the customer received more benefits than they were entitled to because the customer gave incorrect or incomplete information to the Agency. *Id.* For the CDC program, agency-error over-issuances are not pursued. *Id.* DHS is to pursue CDC benefit OI caused by client-error. *Id.* at 6. There is no monetary minimum required before DHS pursues an OI caused by client-error.

The correct amount of authorized CDC hours is based on a “best estimate” of the Parent/Substitute Parent’s work or approved activity schedule. DHS Staff are expected to work in a cooperative relationship with the customer to establish this best estimate. The word of the customer is accepted unless inconsistent with known facts. PEM 710 at 1.

DHS staff are expected to determine the valid need hours for each Parent/Substitute Parent (P/SP) over the two week CDC billing period. *Id.* Add a five hour per week travel time allotment to the weekly work or approved activity hours of the P/SP. *Id.* More than five hours per week of travel time may be approved if necessary; however, travel beyond the five hours per week standard may not exceed two hours per day. *Id.* Multiply the weekly amount of hours by two to convert to biweekly valid need hours. *Id.*

In the present case, CDC benefits were billed for five children. No evidence was submitted to indicate that CDC billing occurred for any basis other than employment. DHS contended that between 11/2003 through 8/2005, Respondent’s CDC provider should have billed DHS for \$3378/child and that DHS was actually billed \$7537/child. Multiplying the difference between what Respondent’s CDC received and should have received results in \$4159 in OI for each of Respondent’s five children. DHS did not specifically explain how it was calculated what DHS should have been billed.

The undersigned is inclined to believe that Respondent was entitled to 100 CDC hours for the two week CDC benefit pay periods from 4/2004-6/2004 and 7/2004-9/2004. In those quarters, Respondent worked two different jobs and grossed over \$3,000 in employment income for each quarter. Between the hours that Respondent worked, the time spent traveling to each job, lunches and breaks, it is very reasonable that Respondent was in need of 100 CDC benefit hours during this period. It is found that no OI occurred from 4/2004-9/2004.

The CDC pay periods from 11/2003-3/3004 are less clear. During this period, Respondent’s CDC provider billed DHS for 70 hours/2 weeks of CDC benefits. Exhibit 2. Respondent’s only income during this period was from home help care. Respondent

only grossed \$465.05 in the fourth quarter of 2003 and \$837.09 in the first quarter of 2004 from this employment. Based on Respondent's lack of income, the undersigned is skeptical that Respondent truly needed 70 hours/ 2 weeks in CDC benefits over a six month period for an employment income which grossed Respondent a total of \$1302.14. Though home help care is a DHS funded program in which helpers are paid monthly, Respondent's average 2 week pay period from 11/2003-3/2004 would have been a paltry \$118.

Determine valid need hours for each Parent/Substitute Parent (P/SP). Add a five hour per week travel time allotment to the weekly work or approved activity hours of the P/SP. Multiply the result by two to convert to biweekly valid need hours. PEM 710 at 1.

DHS credibly testified that Respondent's home help care was based on a 30 hours/month work expectation. Dividing the hour expectation by four would create an approximate weekly obligation of 7.5 hours. The undersigned is inclined to round up to create an 8 hours/week obligation. Adding five hours of travel time creates a 13/week obligation. Multiplying the weekly total by two creates a 26 hour/two week CDC need. Thus, DHS should have been billed for a maximum of 26 hours/two weeks. DHS was billed for more than double this amount for each of Respondent's five children. The over-issuance in CDC benefits is found to be \$537.68/child over the period of 11/2003-3/2004. The total amount over-issued for Respondent's five children from 11/2003-3/2004 is \$4549.60.

Nothing in the record would indicate that DHS caused the overbilling. The undersigned cannot foresee a scenario where DHS could have caused the over-billing of CDC hours. It is found that the CDC over-billing was caused by client error.

The CDC pay periods from 10/2004-8/2005 are also questionable. During this period of time, Respondent grossed a similarly small income from home help care (\$2077.20 in nine months) though Respondent retained her employment with [REDACTED]. However, Respondent's [REDACTED] employment was virtually non-existent. From 10/2004-8/2005, Respondent grossed a total of \$630.30 from her TEC Foods employment. During the bulk of this timeframe, Respondent's CDC provider billed DHS for 100 hours/2 weeks in CDC hours; though it should be noted that DHS limited some of these pay periods to 30 or 75 hours of billing.

Based on Respondent's verified gross employment earnings, it is highly probable that DHS was over-billed CDC hours during the period of 10/2004-8/2005. DHS was not able to verify Respondent's hours with [REDACTED] during the period of 10/2004-8/2005. Due to the obvious over-billing, the undersigned is tempted to make a finding of Respondent's employment hours with [REDACTED] based on the gross income. Fortunately for Respondent, the undersigned should not make findings without evidentiary support. Though the undersigned is highly skeptical that DHS was accurately billed for Respondent's CDC

201045908/CG

hours from 10/2004-8/2005, there is not a sufficient basis to calculate the amount of the over-issuance. The undersigned cannot determine an OI without knowing the correct amount of hours that DHS should have been billed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Respondent did not commit an IPV but that an over-issuance of \$4549.60 in CDC benefits occurred due to client error. It is ordered that DHS may not assess an IPV on Respondent's disqualification history but that DHS may pursue recoupment of \$4549.60 in over-issued CDC benefits.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 11/03/2010

Date Mailed: 11/03/2010

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.

CG/jlg

cc:

