

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

IN THE MATTER OF:

[REDACTED]

[REDACTED]

ADMINISTRATIVE LAW JUDGE: [REDACTED]

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services (department) request for a disqualification hearing. After due notice, a telephone hearing was held on [REDACTED]. The Respondent did not appear at the hearing.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) of the Child Development 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. The department's [REDACTED] filed a hearing request to establish an overissuance of [REDACTED] benefits received by Respondent as a result of Respondent having committed an Intentional Program Violation (IPV).
2. On [REDACTED] Respondent completed and signed an Assistance Application (DHS-1171) for cash, medical, and food assistance. In doing so, she acknowledged that she understood her failure to give timely, truthful, complete and accurate information about his circumstances could result in a civil or criminal action or an administrative claim against her. (Department Exhibits 14-19).
3. [REDACTED], Respondent completed and signed a [REDACTED]

[REDACTED] (FIA 220) and a [REDACTED] 4583), seeking CDC benefits. In each application, Respondent acknowledged her obligation to give truthful, complete and accurate information and to repay any overpayment of benefits. Respondent further acknowledged her understanding that if her intentional misrepresentation or omission of information caused an overpayment of benefits, she could be prosecuted for fraud. (Department Exhibits 22-25, 30-32).

4. Respondent was subsequently approved for the receipt of CDC benefits.
5. On [REDACTED], the department received verification from [REDACTED] that Respondent was employed there from [REDACTED]. (Department Exhibits 26-28).
6. Certified copies of cashed [REDACTED] warrants issued to Respondent at her address and signed by Respondent indicate that she received CDC payments from [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Department Exhibits 54-62).
7. Respondent failed to report that she was unemployed from [REDACTED] [REDACTED], resulting in an overissuance of CDC benefits in the amount of [REDACTED] for this time period. (Department Exhibits 109-112).
8. On [REDACTED], Respondent completed and signed a Child [REDACTED] (FIA 4583), seeking CDC benefits. In the application, Respondent acknowledged her obligation to give truthful, complete and accurate information and to repay any overpayment of benefits. Respondent further acknowledged her understanding that if her intentional misrepresentation or omission of information caused an overpayment of benefits, she could be prosecuted for fraud and/or required to repay the amount wrongfully received. (Department Exhibits 45-47).
9. On [REDACTED], the department received verification from [REDACTED] there from [REDACTED]. (Department Exhibits 49-52).
10. Certified copies of cashed [REDACTED] warrants issued to Respondent at her address and signed by Respondent indicate that she received CDC payments from [REDACTED]. (Department Exhibits 63-83).

11. Respondent failed to report that she was unemployed as of [REDACTED] resulting in an overissuance of CDC benefits in the amount of [REDACTED] for the time period of [REDACTED] (Department Exhibits 109-118).
12. On [REDACTED] x completed and signed a [REDACTED] (FIA 220) and indicated she was applying to be a relative care provider and was related as a grandmother. (Department Exhibits 84-85).
13. On [REDACTED] Respondent completed and signed an Assistance Application/Redetermination (DHS-1171) for food, medical, and CDC assistance. In doing so, Respondent indicated that she began employment with [REDACTED] week. Respondent also acknowledged that the information she provided was true and that she understood if her intentional misrepresentation or omission of information caused an overpayment of benefits, she could be prosecuted for fraud and/or required to repay the amount wrongfully received. (Department Exhibits 87-93).
14. The department received three Verifications of Employment (FIA 38) from Shop Talk dated [REDACTED] with each form indicating that Respondent began employment there either on [REDACTED], and with each form containing different signatures by [REDACTED] identifying him/her as either the [REDACTED]. (Department Exhibits 94-99).
15. On [REDACTED], Respondent completed and signed an Assistance Application/Redetermination (DHS-1171) for cash, food, medical, and CDC assistance. In doing so, Respondent indicated that she began employment with [REDACTED] per week. Respondent also acknowledged that the information she provided was true and that she understood if her intentional misrepresentation or omission of information caused an overpayment of benefits, she could be prosecuted for fraud and/or required to repay the amount wrongfully received. (Department Exhibits 100-106).
16. Respondent failed to report that she was unemployed [REDACTED] resulting in an overissuance of CDC benefits in the amount of [REDACTED] for the time period of [REDACTED] through [REDACTED] (Department Exhibits 109-132).
17. The total overissuance of CDC benefits received by Respondent is [REDACTED]. (Department Hearing Summary).

18. Respondent was clearly instructed and fully aware of the responsibility to report accurate information to the department regarding her circumstances and any changes to her circumstances.
19. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill her income reporting responsibilities.

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 found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

In this case, the department has requested a disqualification hearing to establish an overissuance of CDC 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). BAM, 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. BAM 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 BAM 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. BAM, 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. BAM, Item 720, p. 1.

FIP Only

The Aid to Families with Dependent Children (ADC) program was succeeded by the Family Independence Program (FIP). Treat these programs as interchangeable when applying IPV disqualification policy.

Example: Clients who committed an IPV while receiving ADC are to be disqualified under the FIP program. BAM, Item 720, p. 2.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 720, p. 2.

MA and CDC Only

IPV exists when the client/AR or CDC provider:

- . is found guilty of fraud by a court, **or**
- . signs a DHS-4630 **and** the prosecutor or Office of Inspector General (OIG) authorizes recoupment in lieu of prosecution. BAM, Item 720, p. 2.
- . is found responsible for the IPV by an administrative law judge conducting an IPV or Debt Establishment Hearing. BAM, Item 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. BAM 720, p. 6.

FAP Only

When the OI involves two or more FAP groups which should have received benefits as one group, determine the OI amount by:

- . Adding together all benefits received by the groups that must be combined, **and**

- . Subtracting the correct benefits for the one combined group. BAM 720, pp. 6-7.

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 \$500 or more, **or**
 - . The total OI amount is less than \$500, **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. BEM, Item 720, p. 10.

DISQUALIFICATION

FIP, SDA and FAP Only

Disqualify an active **or** inactive recipient who:

- . is found by a court or hearing decision to have committed IPV, **or**
- . has signed a DHS-826 or DHS-830, **or**
- . is convicted of concurrent receipt of assistance by a court, **or**
- . for FAP, is found by SOAHR or a court to have trafficked FAP benefits.

A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720, pp. 12-13.

Standard Disqualification Periods

FIP, SDA and FAP Only

The standard disqualification period is used in all instances except when a **court** orders a different period (see **Non-Standard Disqualification Periods**, in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:

- . One year for the first IPV
- . Two years for the second IPV
- . Lifetime for the third IPV

In this case, the department has established that Respondent acknowledged on no less than five separate occasions her understanding of her responsibility to provide truthful and accurate information to the department and that if her intentional misrepresentation or omission of information caused an overpayment of benefits, she could be prosecuted for fraud and/or required to repay the amount wrongfully received. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. Respondent completed applications for [REDACTED] benefits and/or other assistance on [REDACTED]

Respondent failed to report that her employment with [REDACTED] ended. She also failed to report accurate start and end dates of her employment with [REDACTED]

[REDACTED] Respondent's omissions and misrepresentations show that she intended to and did receive [REDACTED] benefits when she was not employed. The verification of employment from [REDACTED] that she was employed from [REDACTED]. However, documentation shows the respondent continued to receive [REDACTED] payments after this employment ended.

The verification of employment from [REDACTED] es that the respondent was employed there from [REDACTED]. However, again, the respondent continued to collect CDC payments well after this employment ended.

Further, while the respondent claimed that she was working for [REDACTED], owned by [REDACTED], the evidence supports that this was fraudulently reported to the department. The department received three different Verifications of Employment (FIA 38) from [REDACTED] each form indicating that Respondent began employment there either on [REDACTED], [REDACTED] and with each form containing completely different signatures purportedly by [REDACTED] and identifying him/her as either the owner, manager, or partner. While it is not definitive proof of any fraud, it is also interesting to note that the last name of the purported [REDACTED] is also the last name of the woman who was allegedly providing care for the children [REDACTED]. Further, the [REDACTED] personally delivered a subpoena to the co-owner of the salon for employment records. The salon failed to respond to the subpoena and provide any required records. Further, a check by the [REDACTED] of the respondent's tax records showed no income reported from employment with the nail salon. Thus, it is apparent that the respondent fraudulently reported false information to obtain [REDACTED] benefits that she was not entitled to receive.

This Administrative Law Judge therefore concludes that the department has shown, by clear and convincing evidence, that Respondent's omissions and misrepresentations were intentional and resulted in an overissuance of CDC benefits in the following amounts: (i) [REDACTED]

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Respondent committed an Intentional Program Violation by failing to report a change in her employment status and by falsifying employment documentation

[REDACTED]

Therefore, it is ordered that the department is entitled to recoup the overissuance of [REDACTED] the department for the [REDACTED] overissuance caused by her intentional program violation.

It is SO ORDERED.

/s/

[REDACTED]

Date Signed: 4/11/11

Date Mailed: 4/11/11

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 she lives.

[REDACTED]

[REDACTED]