

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.: 2010-8598
Issue No.: 6052
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 19, 2010
Wayne County DHS (57)

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 May 19, 2010. Respondent did not appear. [REDACTED]

[REDACTED], appeared and testified for DHS.

ISSUE

Has DHS established by clear and convincing evidence that Respondent overstated her hours of work, thereby committing 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:

SECTION 1: DECEMBER 16, 2001-MAY 4, 2002

1. On October 22, 2001, Respondent was hired as a painter at [REDACTED]. She worked thirty (30) hours per week, earned \$6.00 per hour, and her hours of work were Monday-Friday, 6:00 p.m.-12:00 a.m. A Verification of Employment Form DHS-38, signed by [REDACTED], Owner, was filed with DHS on October 31, 2001. Exhibit #1, Item 1.
2. On December 16, 2001, Respondent signed an application for CDC benefits, stating she needed childcare for her two children, [REDACTED] and [REDACTED]. The hours requested were Monday-Friday, 6:00 p.m.-12:00 a.m. Exhibit #1, Item 6.
3. On December 16, 2001, [REDACTED], the childcare provider for Respondent, signed a CDC Provider application stating he would provide childcare services to Respondent Monday-Friday, 6:00 p.m.-12:00 a.m. Exhibit #1, Item 8.
4. From December 16, 2001-May 4, 2002, approximately five months, Respondent received twenty CDC payments of \$212.80. Exhibit #1, Item 21, pp. 1-2.

SECTION 2: SEPTEMBER 22, 2002-NOVEMBER 1, 2003

5. On September 29, 2002, Respondent's father, [REDACTED], submitted a Verification of Employment Form FIA-38 stating that Respondent was employed by him as a home help care provider as of August, 2002. Her wages were \$514 per month, and her hours of work varied from day to day. Exhibit #1, Item 4.
6. On October 1, 2002, Respondent signed a CDC application requesting childcare benefits in order for her to work as a caregiver for her father, [REDACTED], on a permanent basis. She indicated she needed childcare six days a week,

Wednesday-Monday, and the provider was to be [REDACTED]. Exhibit #1, Item 9.

7. Respondent received CDC benefits for childcare for her two children for fourteen months, from September 22, 2002, to November 1, 2003. Respondent received twenty-three biweekly payments of \$152 per child, and six biweekly payments of \$106 per child. Exhibit #1, Item 21.

SECTION 3: HISTORY OF THE CASE

8. On October 7, 2009, DHS sent Respondent an Intentional Program Violation Repayment Agreement, Form DHS-4350, without a Disqualification Consent Agreement Form DHS-830. DHS asked Respondent to repay an alleged overissuance of \$9,738. Respondent did not sign the Agreement.
9. On April 12, 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.
10. This is a first-time IPV allegation against Respondent.

CONCLUSIONS OF LAW

CDC was 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. DHS provides CDC benefits to adults and children pursuant to MCL Section 400.14(1) and Michigan Administrative Code Rules 400.5001-5015. DHS' CDC policies are contained in the Bridges Administrative Manual (BAM), the Bridges

Eligibility Manual (BEM) and the Reference Tables Manual (RFT). These manuals can be found online at www.michigan.gov/dhs-manuals.

In this case, DHS requests a finding of a first-time IPV. The applicable manual section in this case is BAM 720, "Intentional Program Violation." IPV is defined on page 1:

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 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 720, p. 1.

I have examined all of the documents and the testimony presented in this case, and considered all of the evidence in this case as a whole. I determine that DHS has failed to produce clear and convincing evidence that Respondent intentionally overstated her hours of work with either [REDACTED] or [REDACTED].

I will first examine the evidence submitted with regard to Respondent's employer, [REDACTED], in the five months of December 16, 2001-May 4, 2002. The DHS allegation is that Respondent overstated her hours of work. The three relevant documents here are Items 1, 6 and 8 of DHS Exhibit #1, and they are referenced above in my Findings of Fact Items 1-4.

I note first that the DHS Hearing Summary alleges an earlier initial date of the IPV, December 1, 2001. I determine that Respondent did not receive CDC benefits from December 1-

15, 2001, and I will use December 16, 2001, as the correct start date of the alleged 2001-2002 IPV. Exhibit #1, Item 20.

Item 1 of Exhibit 1 is a Verification of Employment form signed by [REDACTED], owner of [REDACTED]. This document indicates that Respondent worked thirty hours per week. I find no document in this case that indicates that Respondent's number of hours of work were different from this. On the contrary, Items 6 and 8 of Exhibit #1, which are Respondent's CDC application and Respondent's provider's application, are consistent with Item 1. Indeed, DHS produced no evidence whatsoever, such as wage records, attendance records, personnel records, or otherwise, to establish that Respondent worked a different amount of hours per week during this time.

DHS may wish the Administrative Law Judge to conclude that the Verification of Employment is a complete fabrication, and Respondent worked zero hours for [REDACTED] [REDACTED]. However, DHS produced no evidence to show that Respondent was not employed at [REDACTED] during this time. Such evidence might consist of a termination notice, Unemployment Insurance benefits records, school enrollment materials, unpaid/volunteer employment records, tax records, or wage match records showing other employment.

DHS next argues that this Administrative Law Judge should consider the evidence that, in 2005, the DHS investigator contacted [REDACTED]. DHS' report states that, "When contacted, the owner of [REDACTED] stated that subject worked for him for a short while. She only worked 10-20 hours per week – never later than 5:00 P.M." Exhibit #1, p. 5. I decline to find the agent's summarization of an out-of-court statement about employment four years before to have sufficient reliability to refute Respondent's contemporaneous statement in 2001 regarding her work hours. I also note in this context that [REDACTED] paid his employees in cash and

apparently kept no time, attendance and pay records for the business. As he did not testify at the hearing, I have no way of evaluating his credibility. Considering all of these factors, I decline to find that DHS has established that its investigative report adequately rebuts the information Respondent wrote on her application. Exhibit #1, Item 19, p. 74.

DHS next argues that these three documents, taken in light of other documents from the same time, indicate that Respondent colluded with her partner, [REDACTED], to receive more CDC benefits than they were entitled to. DHS argues that a frequent pattern is that one person will state their work hours to be daytime hours, the other states their work hours to be evening hours, and they both request to be providers for the other partner at the times they are not working. However, this did not occur in this time period in this case, because Respondent's childcare provider from December, 2001-May, 2002 was not her partner but another individual, [REDACTED]. Thus I find DHS has failed to establish that its collusion theory is applicable here.

BAM 720 requires that a finding of IPV must be based on either (1) an intentional failure to report information or (2) the intentional reporting of incomplete or inaccurate information. I cannot find that either has occurred in this case. In addition, this evidence must be "clear and convincing." BAM 720, p. 1. I conclude that the application and verification of employment forms contain nothing that amounts to clear and convincing evidence of an intentional overstatement.

I find that DHS failed to meet the requirements of BAM 720. The Department failed to present clear and convincing evidence to prove that Respondent overstated the amount of childcare needed for the first alleged period of December, 2001-May, 2002. DHS' request for a finding of IPV is denied for this five-month period.

Looking next at DHS' second allegation, IPV for the fourteen-month period of September 22, 2002-November 1, 2003, I determine that the relevant documents are Items 4 and 9 of Exhibit #1. I have referenced these in my Findings of Fact Items 5-7 above.

██████████ verified that the hours his daughter, the Respondent in this case, worked for him beginning August, 2002, "vary day to day." Respondent's CDC application indicates she will need childcare six days per week, Wednesday-Monday. DHS presented no evidence detailing Respondent's hours of employment. I cannot conclude from the two documents that Respondent overstated her hours, because neither the father's nor Respondent's statements indicate any number of hours at all. DHS failed to present evidence of Respondent's work hours, attendance records, tax records, paystubs, or any documentation underlying its conclusory assertion that an overstatement was made. I determine that the two most relevant documents concerning this issue do not support such a conclusion.

Also, during this time period there are new CDC and CDC provider applications filed February 25 and 24, 2003, respectively. Item 11 of Exhibit #1 is Respondent's CDC application form on which she indicates that the hours she needs childcare "varys (sic)." The CDC provider application filed by the new provider, ██████████, indicates that Respondent's hours of childcare "vary." Exhibit #1, Item 12. Here again, I see no inconsistency on which to base an inference that Respondent overstated her work hours.

DHS next argues that accompanying documents support a conclusion of IPV in this case because they show collusion between Respondent and ██████████ to overstate their hours of work. I cannot conclude that that is what happened in this case. Neither partner is the childcare provider for the other in this time period, and, on the evidence presented, it would be a leap of

logic to infer that the two providers, [REDACTED] and [REDACTED], also colluded in this arrangement or scam.

DHS further argues that Respondent's partner, [REDACTED], misrepresented his employment with [REDACTED] in 2002 and 2003, and that this somehow establishes that Respondent overstated her hours of work in 2002-2003. DHS' assertion encompasses both time periods of alleged IPV in this case and I will deal with them separately.

DHS' assertion is based on an unsigned post-it note on Item 1, p. 12, in Exhibit #1, which states, "10-26-05 – Per conversation with [REDACTED], stated [REDACTED] stop (sic) work in 1/02 not 03 (sic)." At the hearing, [REDACTED] testified that he wrote the note, and that it proves that [REDACTED] overstated his hours of employment at [REDACTED]. If this is correct, then [REDACTED] did not need childcare for his children in 2002 and 2003.

First, with regard to this item of evidence, I do not find I can make the leap of logic required to conclude that [REDACTED] alleged overstatement should be attributed to another person. However, even if that leap of logic were appropriate, I decline to accept an out-of-court summarization of a statement of a business owner who may have his own reasons for understating the numbers of his workforce. And, as this telephone conversation occurred on or about August 26, 2006, approximately three to four years *after* the employment in question, I find that the passage of time makes the statement far less reliable than that of [REDACTED] himself, made at the time of his employment.

As I stated on page 6 above in reference to the first alleged IPV time period, I similarly do not find that the BAM 720 requirements have been met. I find there is no evidence to show that Respondent intentionally failed to report information, or reported incomplete or inaccurate

information in this time period. I find that the evidence presented does not persuade me clearly and convincingly that an IPV occurred in 2002-2003.

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 overstated her work hours in order to obtain extra childcare monies. Accordingly, DHS' request for a finding of IPV is denied and this case is DISMISSED.

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 Intentional Program Violation occurred. DHS' allegation is DISMISSED.



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

Date Signed: June 1, 2010

Date Mailed: June 3, 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:

