

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.: 201011123
Issue No.: 6052
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 21, 2010
Marquette County DHS

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on July 21, 2010. The Respondent did not appear at the hearing and it was held in respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3187(5). [REDACTED], OIG representative appeared on behalf of the Department.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) and whether the respondent received an over-issuance of benefits that the Department is entitled to recoup?

FINDINGS OF FACT

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

1. The Department's Office of Inspector General (OIG) filed a hearing request to establish an over-issuance of benefits received by respondent as a result of respondent having committed an IPV. The OIG also requested that respondent be disqualified from receiving program benefits.
2. Respondent was a recipient of CDC (Child Day Care) benefits during the periods 10-2-05 to 10-29-05 and 3-5-06 to 4-1-06.
3. The Department alleged that the Respondent received CDC during these periods when she was not employed and not attending the Work First program.

4. The Department alleged that the Claimant received an over issuance of CDC benefits in the amount of \$1,015.20 for the period in question.
5. The Claimant filed a DHS 1171 application signed by the Claimant on several dates, including 10/6/05 and 10/27/05 indicating she might begin work and then later in the month reporting that she did begin work on 10/27/05. The Claimant did not falsely report to the Department on form 1171. Item 8 pages 61 – 67. In this application, the Claimant reports that she is working for [REDACTED].
6. The Notes attached to the application signed 10/6/05 indicates that the Claimant reported to the caseworker throughout the month and advised her of her employment earnings and status. The caseworker did not testify at the hearing and the notes are confusing and contradictory with regard to the respondent's work status.
7. Respondent did not completely clarify her work during the period for the month of October 2005 but this miscommunication is found to be client error and not intentional misconduct resulting in an intentional program violation for a lack of reporting of her employment status.
8. As a result of the finding of client error, no intentional program violation was established for the period October 2, 2005 through October 29, 2005 for failure to report that she was not employed and not attending Work First.
9. The department did not establish an over issuance for the period October 2, 2005 through October 29, 2005 based on the evidence offered at the hearing because the evidence presented did not establish the periods the respondent was working and or not working.
10. The evidence submitted by the Department indicated that the Respondent had a series of different jobs and in between attended Work First.
11. The Department documents indicate that the Claimant received gross pay on March 3, 2006 of \$466 and her job ended on 2/25/06. No other records were provided by the department with regard to the Claimant's attendance or lack of attendance at Work First or of subsequent employment.
12. The Claimant's ending of employment as of 2/25/05 and any failure to report same was client error and did not establish an intentional program

violation for the period March 5, 2006 through April 1, 2006. The documents submitted by the Department further support that the Claimant began Work First participation again by attending orientation on April 20, 2006. During the interim the Claimant's non-reporting to the Department was client error and not an IPV.

13. The Department did establish an over issuance of benefits for the period March 5, 2006 through April 1, 2006 in the amount of \$676.80.
14. Respondent was aware of the responsibility to report a change in income and employment.
15. A notice of disqualification hearing was mailed to respondent at the last known address and was not returned by the Post Office as undeliverable.

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. Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Program Reference Manual (PRM).

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over issuance (OI). BAM 700, p. 1. DHS must inform clients of their reporting responsibilities and prevent OIs by following BAM 105 requirements informing the client of the requirement to promptly notify DHS of all changes in circumstances within 10 days. BAM 700, BAM 105. Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.

An Intentional Program Violation (IPV) is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. PAM 720, p. 1. 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)

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committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

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. PAM 720, p. 6.

In the present case, the Department has established that respondent was aware of the responsibility to report change in employment income and had no apparent limitations to fulfilling this requirement. The Claimant worked intermittently during the period and also attended Work First intermittently during the period.

The respondent is charged with an IPV and over issuance of CDC benefits for two periods of time, October 2, 2005 through October 29, 2005 (period 1) and March 5, 2006 through April 1, 2006, (period 2). As regards period 1, the evidence submitted by the Department consisted of hearsay and was confusing. The case notes of the case worker were submitted but were contradictory and confusing as to the period the claimant was working. Item 8 page 68. Because it is unclear the period the Claimant was working, and the notes are in themselves hearsay and contradictory, the amount of the over issuance of CDC benefits was not established. Additionally, the Department did not establish an IPV as the Claimant communicated with the caseworker throughout the month as she was changing her address and updating her work status. Under these circumstances, the department has not proven by clear and convincing evidence that the respondent committed an IPV and the over issuance was not established.

As regards period 2, while the respondent failed to report her change in circumstances, ie. change in employment status, the short period of time this occurred during the period March 5, 2007 through April 1, 2005, is more likely client error and not an intentional reporting violation. The Department did not prove by clear and convincing evidence that her failure to report was intentional. However, the Claimant did receive benefits during the period she was not otherwise entitled to receive, and thus must reimburse the over issuance of CDC benefits received in the amount of \$676.00 because the Claimant received CDC benefits during periods she was not working and not attending Work First.

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 with regard to the CDC program for the periods October 2, 2005 through October 29, 2005, and the period March 5, 2006 through April 1, 2006.

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The respondent did receive an over-issuances in program benefits for the period March 5, 2006 through April 1, 2006 in the amount of \$6 76.80.

It is ORDERED that the department's request that the respondent be disqualified from the CDC programs for a period of 12 months is hereby DENIED.

It is further ORDERED that the Department is not entitled to recoup for over-issuances of CDC benefits for the period October 2, 2005 through October 29, 2005.

It is ORDERED that the Department's request that the respondent be required to repay the over issuance of CDC benefits for the period March 5, 2006 through April 1, 2006 is granted and the Department is entitled to a recoupment of benefits in the amount of \$676.80.



Lynn M. Ferris
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 8/13/2010

Date Mailed: 8/13/2010

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.

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