

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.: 2010-36051
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. On June 11, 2004, Respondent signed an application for CDC benefits.
2. Claimant's application stated she was employed at [REDACTED], beginning June 10, 2004.
3. Claimant submitted a Verification of Employment, Form DHS-38, dated June 9, 2010, from [REDACTED] to DHS.
4. On December 7, 2004, Respondent signed an application for CDC benefits.
5. Claimant's application stated she was employed at [REDACTED].

6. Claimant submitted a Verification of Employment, Form DHS-38, dated November 28, 2004, from [REDACTED].
7. From June 13, 2004 to May 14, 2005, Respondent received CDC benefits in the amount of \$18,289.
8. 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 \$18,289. Respondent did not sign the Agreement.
9. 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.
10. 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 PAM 720, 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 I have considered all of the evidence in this case as a whole. DHS submitted three items which are part of its Exhibit 1. DHS believes these three items of evidence constitute clear and convincing evidence that Respondent committed an IPV in this case. I will examine each of the Items, which are Items 1, 2 and 5 of Exhibit 1, to determine if any or all of these items constitute clear and convincing evidence that Respondent committed an IPV. Department Exhibit 1, pp. 10, 11-12, and 28-33.

PAM 720 requires first that the client must have failed to report information, or else reported inaccurate or incomplete information. Thus, I determine that the first question I must ask is which of these three events may have occurred in this case. I think the second of these, that Claimant reported inaccurate information, is essentially what DHS alleges in this case. I determine that DHS is saying not just that Claimant failed to report, or that she reported incomplete information, but also that Claimant gave inaccurate information to DHS, i.e., that she was employed at [REDACTED] and at [REDACTED].

Accordingly, I will first examine the evidence DHS presents to see if it establishes that Claimant gave inaccurate information. That is, I must inquire whether DHS submitted clear and convincing evidence to prove that Claimant was *not employed* at [REDACTED] and [REDACTED].

DHS' first piece of evidence is a DHS (formerly Family Independence Agency) chart, "IG-005 Active Day Care Grantee with Low/No Wages by County." It is undated, although it does state in the upper left-hand corner, "Refreshed 1/27/2005." It is for the period of July-September 2004, which is the third quarter of 2004. At the bottom of the chart appears the statement, "Note: If no employer data is reported above, there were

no earnings reported to Treasury (sic) for this quarter.” I have studied this chart to determine what weight I should ascribe to it. I determine that DHS presented it to establish that no employer, possibly as of January 27, 2005, reported that it paid wages to Claimant for the third quarter of 2004.

However, I do not find that this chart establishes Claimant had no income because, first, the creator of this document is the DHS Office of the Inspector General, indeed, the very DHS Office charged with investigating this case. This document is not a record from [REDACTED] or [REDACTED]. It is not a document created in the ordinary course of business of either of Claimant’s employers. It is unsigned and undated, and there is no testimony in the record as to the sources or veracity of this document.

Second, I ascribe this document only nominal significance because I question the accuracy of the document itself. I have no testimony in the record as to how this chart was created, how accurate and up-to-date it is, and whether the “Treasury” in the note is a federal, state or municipal treasury. I do not know what the term “refreshed” means in reference to a document’s date. If January 27, 2005, the “refreshed” date, is the date the document was created, I believe it is entirely possible that Claimant’s employers had not yet reported all wages paid in 2004 and that even if they had, it is also entirely possible that Claimant’s income data was not yet entered into the system. A third possibility is computer error, i.e., Claimant’s wages were erroneously inputted and the data does not appear.

Accordingly, I find and conclude that Item 1 is a DHS internal working document that may show that an investigation is advisable, but that does not in and of itself establish any fact in this case. I do not conclude that Item 1 constitutes clear and convincing evidence that Claimant received no wages in the third quarter of 2004, and I certainly do not believe that this document addresses the additional IPV requirements of PAM 720 such as Claimant’s knowledge and intent.

I summarize my evaluation of Item 1 as follows: I do not find that it establishes by clear and convincing evidence that Claimant had no wages in the alleged time period.

I turn next to Item 2 of the Department’s Exhibit 1. This Item is also a DHS chart, “IG-001 Employee Wage History by SSN.” It is undated, but it has in the upper left-hand corner, “Refreshed December 27, 2005, 8:29 a.m.” It contains wage data for Claimant for one quarter of 2002 and one quarter of 2003. I believe that DHS wishes me to infer from this chart that Claimant must have been unemployed in 2004 and 2005 because if she were employed in those years, the wages would appear on this chart.

I consider that, as with the first DHS chart, this chart is of nominal value in verifying Claimant’s actual wages. It is a DHS internal document created for DHS purposes and

it was not created in the course of Claimant's employment. As with the first chart, I can only conclude that DHS failed to obtain employer documentation of the facts they seek to prove in this case and are using internal charts in lieu of actual wage records. I also note that this chart was "refreshed" eleven months after the first chart, causing me to understand that there was ample time for DHS to collect evidence from the two employers, from government sources, and from the Claimant herself, yet DHS failed to do so.

However, Item 5 reflects that DHS made some efforts to locate HomeCare. Item 5 consists of the HomeCare Verification of Employment and computer printouts showing that the DHS Inspector General could not verify the [REDACTED] phone number or address through WhitePages.com, maps.yahoo.com, and the eDetroit webpage. Using a "Reverse Search" feature on the WhitePages website, someone received the following information on the phone number listed on the Verification form:

We're sorry. We did not find a listing for the phone number you entered. The phone number [REDACTED] is a Detroit, MI based phone number and the registered carrier is [REDACTED] - MI. However, due to number portability, some numbers have been transferred to a new service provider other than the registered carrier. Department Exhibit 1, p. 30.

The printout also provides two additional searches that can be made, one in the form of a search suggestion of a search term that could be used, and the second, an advertisement for Advanced Reverse Phone Search.

The next page of Item 5 is a printout from Yahoo maps stating that the address for [REDACTED] "cannot be found." The last two pages of the Item are from the City of Detroit website and indicate that the address is not in the database but states, "If you were searching for a condominium, that information is not yet available on this system."

I consider these World Wide Web inquiries as indications that there are issues with the whereabouts of the [REDACTED] company. However, I do not see these reports as reaching the question of falsification of wage information. The fact that a phone number cannot be located on a reverse search feature tells me nothing about wages, and the fact that an address may or may not exist is insufficient and inconclusive as to a person's wages.

I think that if DHS had acted on the leads they obtained from the web, they might have uncovered information that is more pertinent and would be dispositive of this case. However, DHS failed to conduct such an investigation, either at the local office or the Inspector General's Office.

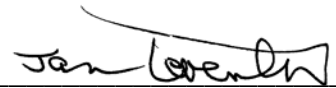
Finally, although I have identified Items 1, 2, and 5 as DHS' sole evidence in support of IPV, I would also like to discuss here the discrepancy DHS notes between the [REDACTED] Verification of Employment and Claimant's statement on her December 7, 2004, application. DHS points out that while Claimant submitted verification from HomeCare, she lists [REDACTED] as her employer on her application. On the record before me, I cannot tell if she made a mistake in naming the previous employer, whether she was employed at two jobs at the same time, whether she assumed that the previous information about [REDACTED] from her earlier application was sufficient to identify that employer, or that this occurred for some other reason. I agree that it is a discrepancy, but I do not find that it is substantial enough to constitute clear and convincing evidence on which to base a conclusion that an IPV occurred.

I find and determine that DHS has not presented clear and convincing evidence to establish that the information Claimant gave DHS was false. As DHS cannot establish that the information is false or inaccurate, DHS cannot establish the first part of the first element of the violation, i.e., that Claimant gave inaccurate information.

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 monies is DENIED.



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

Date Signed: December 21, 2010

Date Mailed: December 22, 2010

2010-36051/JL

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:

