

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. 2010-43133
Issue No. 6052
Case No. [REDACTED]
Load No. [REDACTED]
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), [REDACTED], Regulation Agent, appeared and testified. Respondent appeared and testified.

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.
2. During the second quarter of 2006 (4/06-6/06) Respondent had employment with [REDACTED] in which she grossed \$955.20 in employment income.
3. Respondent failed to report to DHS that she stopped employment with [REDACTED].

4. Respondent's CDC provider continued to bill CDC during a period from 7/9/06-9/16/06 in which she had no need for CDC benefits.
5. Respondent began to attend Work First during the CDC pay period which began 9/17/06.
6. Respondent was not disqualified from Work First attendance until 12/21/06.
7. DHS requested a hearing that Respondent committed an IPV by failing to report stopped employment with [REDACTED] and by failing to attend Work First; DHS seeks recoupment of \$7146 in CDC benefits issued to Respondent's CDC provider for the period of 7/1/06-12/31/06.

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 to DHS that she stopped employment with [REDACTED] or [REDACTED] as proof of Respondent's alleged fraud. DHS was not able to furnish any written statements from Respondent which claimed employment 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 clearly and convincingly established that Respondent intentionally misreported information to DHS. Respondent's testimony was absent of any statements that would lead one to conclude that she purposely failed to report stopped employment to DHS.

The mere over-billing of CDC hours is insufficient proof of an 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, DHS alleged that Respondent was not employed or attending Work First from 7/1/2006-12/31/2006. DHS established that based on an IG-001 (Exhibit 2) which contains Respondent’s employment history as reported by her employers that Respondent had no employment income from 7/2006-12/2006. Respondent did not offer any evidence to refute this information. DHS also submitted Respondent’s WorkFirst history. Exhibit 3.

The WorkFirst history indicated that Respondent attended WorkFirst on 9/21/2006 and was terminated from WorkFirst on 12/21/2006. This history would indicate that Respondent had a basis to receive CDC benefits from 9/21/06-12/21/06. Thus, no over-issuance could have occurred during this period.

The undersigned is not inclined to consider the pay period from 6/25/06-7/8/06 because employment was established for the second quarter of 2006 and DHS did not establish that the employment occurred outside of this pay period. The undersigned is also not inclined to consider the pay periods which would include 12/22/06-12/31/06 as DHS did not provide any history of the CDC billing hours for these dates.

What remains are the pay periods from 7/9/06-9/16/06. There was no basis to believe that Respondent was employed or attending Work First during this period. Respondent’s CDC provider billed DHS for \$178.60 for the five pay periods encompassing the above dates for each of Respondent’s four children. The total amount of billing for this period is \$3572.

If Respondent was neither working nor attending JET from 7/9/06-9/16/06 Respondent’s CDC benefits should have been terminated for a lack of need. No evidence was submitted indicating that the error was agency caused. Whether Respondent did or did not report the employment stoppage to DHS, CDC billing should have stopped.

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Because the CDC billing did not stop, the over-billing was probably caused by client-error. It is found that DHS over-issued CDC benefits from 7/9/06-9/16/06 and that the OI was caused by client-error.

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 \$3572 in CDC benefits occurred. It is ordered that DHS may not assess an IPV on Respondent's disqualification history but that DHS may pursue recoupment of \$3572 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.

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