

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No. 2010-48307
Issue No. 6052
Case No. [REDACTED]
Hearing Date: June 29, 2011
Macomb (20)

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) Office of the Inspector General's (OIG) request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan, on June 29, 2011. [REDACTED] [REDACTED] OIG Regulation Agent, appeared and testified on behalf of DHS. Respondent [REDACTED] did not appear.

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. In 2009, Respondent was a DHS client in the CDC program, the Food Assistance Program (FAP) and the Medical Assistance (MA or Medicaid) programs.
2. On August 19, 2009, DHS sent Respondent a Redetermination application for FAP and MA only. The FAP- MA Redetermination requested that Respondent submit current income and expenses by September 14, 2009.
3. On September 14, 2009, Respondent submitted her Redetermination application to DHS, stating she was paid \$900-\$1,000, that she was paid bi weekly, and that she worked forty hours "per pay period."

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4. Respondent gave inaccurate information about the number of expected hours of work per pay period on her FAP-MA Redetermination application.
5. Respondent did not intentionally misrepresent the number of hours she worked per week on her FAP-MA Redetermination application.
6. Respondent's statement on her FAP-MA Redetermination application about the number of hours she worked per week was not made for the purpose of establishing, maintaining, increasing or preventing reduction of CDC program benefits or eligibility.
7. On February 17, 2010, DHS sent Respondent an Intentional Program Violation Repayment Agreement. DHS asked Respondent to repay an alleged overissuance (OI) of \$1,333.80. Respondent did not sign the Agreement.
8. On May 23, 2011, DHS sent Respondent a Notice of Disqualification Hearing/Request for Waiver of Disqualification Hearing.
9. This is a first-time IPV allegation against Respondent.
10. DHS seeks recoupment of CDC benefits of \$1,333.80, for the period of September 13-October 10, 2009, a twenty-seven-day period.

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, and an order permitting recoupment of CDC benefits of \$1,333.80. BAM 720, "Intentional Program Violation," is the applicable DHS manual item governing the decision in this case.

BAM 720 defines IPV as follows:

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 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 (boldface in original).

Before the three IPV elements are considered, I will consider the last paragraph of BAM 720. This paragraph requires that not only must there be some type of erroneous information, but there must also be the purpose of obtaining unlawful benefits. In this case the benefits at issue are CDC benefits.

However, the Redetermination application that DHS submitted in evidence is not for the purpose of applying for CDC benefits. Indeed, it is for two other stated purposes, which are stated on page 1 of the Redetermination form: FAP and MA. Accordingly I must conclude that this evidence is not clear and convincing evidence that Respondent created the document with the purpose of obtaining unlawful CDC benefits, as this document is not prepared for use at all in the CDC program. Based on the record before me I must find and determine that IPV has not occurred. DHS' request for a finding of IPV is DENIED in this case.

Furthermore, although the determination I have just made disposes of this case, I continue on to an analysis of the three IPV elements. I do this in the event it should become necessary at a future date for my decision to address these elements.

BAM 720 requires that all three elements must be present in order for IPV to exist. If any element, or any part of an element, does not exist in this case, then the Department's request for IPV must be denied.

Looking at the first IPV element, BAM 720 requires first that the client must have failed to report information, or that she gave inaccurate or incomplete information. I determine the first question I must ask, with regard to this first IPV element, is which of these three events may have occurred in this case. I conclude that DHS is alleging that the third situation, i.e., that Respondent gave inaccurate information, is what occurred in this case.

I determine that DHS is alleging Respondent gave inaccurate income information, and that as a result of underreporting her income to DHS, Respondent received more CDC benefits than she was entitled to receive. The first IPV element also contains the requirement of intent, but if no misrepresentation ever occurred there will be no need to

consider intent. Therefore, I first consider whether any erroneous actions occurred, and I leave the question of intent to consider as a secondary inquiry.

In reaching my decision I reviewed all of the evidence in this case as a whole. I find and conclude that the Respondent gave inaccurate information to DHS in that she stated inaccurately that the number of expected hours of work per pay period was forty hours per week, when it was more than that, and second, that she reported \$900-\$1,000 gross income per pay period, when in fact her gross income was higher than that.

Having found that Respondent made two errors in reporting her employment information, the first IPV element then requires a decision as to whether the error was an intentional one. Having reviewed all of the evidence in this case as a whole, I find and decide that Respondent's errors were made unintentionally. I base my decision on the fact that I think it is reasonable for a person filling out an application form to mistake net income for gross income, and to mistake the pay period to be weekly instead of biweekly. I find that Respondent did her best to provide accurate information, because she added the number "2" before the word "weeks" and after the numbers \$900-\$1,000. Second, I find that Respondent's errors were unintentional because she made four other corrections on the redetermination, and because she answered five questions on the application in greater detail than was required of her.

I also consider in determining this question of fact, that Respondent's pay checks are deposited directly into her bank account and she does not in all likelihood receive and review her earnings statements regularly. I determine that when she filled out the Redetermination she was recalling her net income. As it turns out, Respondent's net income for the two pay periods in question was \$1,108.82 and \$1,196. While these figures are somewhat higher than the \$900-\$1,000 Respondent wrote on the application, I do not consider them to be so grossly higher than what she wrote on the application, as to constitute evidence of intentional underreporting per se.

Therefore, as I can find no intent to give inaccurate information, I find and determine that the first IPV element has not been established and an IPV cannot be my conclusion in this case. As a result, it is not necessary to consider the second and third IPV elements, because the failure to prove the first element precludes a finding of IPV in any event.

In conclusion, based on the findings of fact and conclusions of law above, I decide and determine that DHS failed to submit clear and convincing evidence that IPV occurred in this case. DHS' request for a finding of IPV of the CDC program is DENIED.

With regard to DHS' request for a recoupment order in this case, I find and determine that this is inappropriate and is DENIED. DHS did not submit in evidence the budget calculation of the CDC benefit Respondent was actually entitled to in the alleged OI time


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period. DHS merely requested recoupment of all CDC monies paid to Respondent in this period. Looking at the record before me, I cannot say with any degree of certainty whether Respondent is entitled to part or all of the CDC benefits she received. As the Department has failed to state with accuracy an accurate recoupment figure I find and determine that the recoupment amount has not been determined and it would be improper to order recoupment without knowing how much it is for.

In conclusion, based on the findings of fact and conclusions of law above, I decide and conclude that DHS' request for a ruling of IPV and a recoupment ruling are DENIED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that DHS failed to establish by clear and convincing evidence that a CDC Intentional Program Violation occurred. DHS' request for a finding of IPV of the CDC program is DENIED. IT IS FURTHER ORDERED that DHS' request to recoup the alleged OI of \$1,333.80 in this case is DENIED.



Jan Leventer
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: June 30, 2011

Date Mailed: June 30, 2011

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 lives.

JL/cl

cc:

