

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-55661

Issue No: 6052

[REDACTED]

Otsego County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services (department) request for a disqualification hearing. After due notice, a telephone hearing was held on June 7, 2011. Respondent personally appeared and provided testimony.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) of the Child Development and Care (CDC) program and whether Respondent received an overissuance of benefits that the department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing 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 overissuance of benefits received by Respondent as a result of Respondent having committed an Intentional Program Violation (IPV); the OIG also requested that Respondent be disqualified from receiving program benefits.
2. Respondent signed Assistance Applications (DHS-1171) on July 19, 2003; April 22, 2005; January 30, 2006; May 6, 2006, and June 12, 2007, acknowledging that she understood her failure to give timely, truthful, complete and accurate information about her circumstances could result in a civil or criminal action or an administrative claim against her. (Department Exhibits 12-35, 44-52, 72-88, 96-106, 500-511).

3. Based on Respondent's application, a Child Development and Care (CDC) Client Notice was mailed to Respondent on May 27, 2005, informing her she was eligible for CDC based on a case review and she was to report changes in her circumstances to her Family Independence Specialist within 10 days and that if benefits were overpaid, the responsible party may be prosecuted for fraud. (Department Exhibit 36).
4. Respondent's address on her primary checking account from her July 18, 2005 through August 15, 2005 statement was [REDACTED] 49735-9308. (Department Exhibit 116).
5. On August 11, 2005, Respondent's husband submitted an address change to the Secretary of State showing he was residing with Respondent at her address on [REDACTED].
6. The department received verification of employment from the Work Number on January 14, 2006 and March 6, 2007, showing that Respondent's husband was employed at [REDACTED] and had been since October 11, 2005. A review of the checks deposited into Respondent's primary checking account shows her husband's pay checks were deposited in her account beginning January 2006 through April 20, 2007. This income was not reported to the department. (Department Exhibits 53-54, 262-371, 383-384).
7. The department received Respondent's husband's earning history from [REDACTED] on June 13, 2007, showing his income from October 11, 2005 through June 9, 2007. (Department Exhibits 387-401).
8. On December 20, 2006, Respondent and her husband received a check from Wells Fargo in both their names at their address on [REDACTED]. Each party endorsed the check and it was deposited in Respondent's primary account. (Department Exhibit 353).
9. Respondent's husband completed an application for employment on December 22, 2006, and used Respondent's current address as his address. (Department Exhibit 439).
10. On February 23, 2007, the department received employment verification from [REDACTED] showing Respondent's husband was employed from April 21, 2006 until he was laid off on October 6, 2007. A review of the checks deposited into Respondent's primary checking account shows her husband's pay checks were deposited in her account beginning April 21, 2006 through October 30, 2006. This income was not reported to the department. (Department Exhibits 291-341, 402-431).

11. On February 23, 2007, the department received employment verification from the [REDACTED] showing Respondent's husband was employed from August 14, 2005 through October 14, 2005. This income was not reported to the department. (Department Exhibits 107-110).
12. On February 23, 2007, the department received employment verification from the [REDACTED] showing Respondent's husband was employed from August 14, 2005 through October 9, 2005. This income was not reported to the department. (Department Exhibits 111-114).
13. On March 8, 2007, the department received information from the Unemployment Insurance Agency showing Respondent's husband was receiving unemployment compensation benefits from October 15, 2006 through December 4, 2006. This income was not reported to the department. (Department Exhibits 374-381).
14. On May 23, 2007, the department received verification of employment from [REDACTED] showing Respondent was working and had been employed since May 3, 2003. The documents included payroll verification from her date of employment and explained that Respondent received [REDACTED] an hour plus tips. (Department Exhibits 461-483).
15. On May 24, 2007, the department received employment verification from Financial Services showing Respondent's husband was employed from January 5, 2007 through May 11, 2007. A review of the checks deposited into Respondent's primary checking account shows her husband's pay checks were deposited in her account beginning January 8, 2007 through May 14, 2007. This income was not reported to the department. (Department Exhibits 355-373, 436-438).
16. On June 15, 2007, the department received employment verification from the [REDACTED] showing Respondent's husband was employed from April 22, 2007 to May 19, 2007. This income was not reported to the department. (Department Exhibits 433-435).
17. On July 19, 2007, the department received employment verification from [REDACTED] showing Respondent was employed and began working at the center on September 11, 2006. This income was not reported to the department. (Department Exhibits 485-495).
18. On May 7, 2009, the department received a [REDACTED] of an Order on a Motion of [REDACTED] dismissing the criminal case against Respondent without prejudice based on a stipulation of the parties to work on a payment arrangement. (Department Exhibit 521).

19. Respondent received [REDACTED] in CDC benefits during the alleged fraud period of August 7, 2005 through May 26, 2007. If Respondent had reported her husband was living with her and his income had been properly reported and budgeted by the department, Respondent would only have been eligible to receive [REDACTED] in CDC benefits. (Department Exhibits 442-450, 526-540).
20. Respondent failed to report her husband was living in her home or report his or her entire employment income in a timely manner, resulting in a CDC overissuance for the time period of August 7, 2005 through May 26, 2007, in the amount of [REDACTED]. (Department Exhibits 442-450, 526-540).
21. Respondent was clearly instructed and fully aware of the responsibility to report all employment and income to the department.
22. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.
23. Respondent had not committed any previous intentional program violations of the FAP program. (Department Hearing Request).

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 (DHS or Department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

In this case, the department has requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV. The department's manuals provide the following relevant policy statements and instructions for department caseworkers.

When a customer client group receives more benefits than they are entitled to receive, the department must attempt to recoup the overissuance. BAM 700. A suspected intentional program violation means an overissuance where:

- 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.

The department suspects an intentional program violation when the 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. BAM 720.

The department's Office of Inspector General processes intentional program hearings for overissuances referred to them for investigation. The Office of Inspector General represents the department during the hearing process. The Office of Inspector General requests intentional program hearings for cases when:

- benefit overissuances are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
 - the total overissuance amount is \$1000 or more, or
 - the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed an intentional program violation disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720.

Clients that commit an intentional program violation are disqualified for a standard disqualification period except when a court orders a different period. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a concurrent receipt of benefits. BAM 720. This is the respondent's first intentional program violation.

As an initial matter, Respondent contacted the offices of the Michigan Administrative Hearing System at 8:45 A.M. requesting an adjournment of her 9:30 A.M. hearing because it was the last day of school and she had a lot to do. The adjournment was denied.

During the hearing, Respondent testified that she did not want to proceed without her attorney. The department had no information regarding an attorney or an appearance filed from an attorney. When Respondent was questioned regarding whether she had completed the documentation assigning her attorney as her authorized representative, Respondent said no, but that he had been with her since the criminal proceedings. Respondent stated that this whole issue had been dismissed a year and a half ago. The department submitted a copy of the Order of Nolle Prosequi dated February 5, 2009.

The Administrative Law Judge reviewed the Order of [REDACTED] on the record, which read that the motion for Nolle Prosequi is granted and the case is dismissed without prejudice based on a stipulation of the parties to work on payment arrangements. Respondent denied that there was an agreement to make payment arrangements and reiterated it had been dismissed. When Respondent was questioned further about her attorney she stated she had called his office this morning and was informed that he had another hearing and could not attend, which is why she called requesting an adjournment.

Respondent was informed that no request for an adjournment had been received regarding her case. Respondent stated that she had asked for the adjournment because it was the last day of school and she had a lot to do. Once again, the adjournment was denied as there is no documentation of an attorney involved in this IPV hearing and the [REDACTED] clearly indicated the matter was dismissed from circuit court based on a stipulation of the parties to work on a payment arrangement.

After the presentation of evidence by the department, Respondent was asked if she wanted to add anything, and Respondent said she refused to answer any questions without her attorney present. No questions were asked of Respondent. The Administrative Law Judge questioned the departmental representative as to how the department became aware of this IPV. The department stated that it was through an anonymous complaint. Respondent interrupted and stated it was her ex-husband who made the complaint. The department verified that her ex-husband was one source of the complaint leading to the investigation, but they had also received additional anonymous complaints. Respondent again interrupted and stated those complaints

were from her ex-husband's family. At no time did Respondent deny that her husband was living with her while she received CDC benefits.

In this case, the department has established that Respondent was aware of the responsibility to accurately report all group members and employment of all group members to the department. Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within ten days. BAM 105. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities.

Respondent completed applications for assistance on July 19, 2003; April 22, 2005; January 30, 2006; May 6, 2006, and June 12, 2007. According to the Secretary of State, Respondent's husband changed his address to her address on August 11, 2005. However, Respondent did not list her husband as being a group member on her assistance applications. The department received verification of employment from [REDACTED] and [REDACTED] showing Respondent's husband was employed while living with Respondent. Respondent did not report her husband's income.

Respondent's signature on the Assistance Applications from July 19, 2003; April 22, 2005; January 30, 2006; May 6, 2006, and June 12, 2007, certifies that she was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. This Administrative Law Judge therefore concludes that the department has shown, by clear and convincing evidence, that Respondent committed a first intentional violation of the CDC program, resulting in a \$38,528.17 overissuance from August 7, 2005 through May 26, 2007. Consequently, the department's request for full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Respondent committed an Intentional Program Violation by failing to report her husband was residing with her and failing to report her husband's income. Therefore, it is ordered the department is entitled to recoup the overissuance of benefits Respondent ineligibly received.

Accordingly, Respondent is ORDERED to reimburse the department [REDACTED] for the CDC overissuance caused by her intentional program violation.

