

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-4281
Issue No.: 6052
Case No.: [REDACTED]
Hearing Date: May 4, 2011
DHS County: Saginaw

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 May 4, 2011. Respondent [REDACTED] did not appear. [REDACTED], appeared and testified on behalf of DHS.

ISSUE

Whether 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 17, 2007, Respondent signed an application for CDC benefits.
2. Respondent's application states she is employed and earning \$800 per month. The application states that changes must be reported within ten days.
3. From January 6, 2008-April 26, 2008, Respondent received CDC benefits of \$2,216.16.

4. On September 20, 2010, DHS learned through an Employee Wage History by Social Security Number Report that Respondent was unemployed from October 2007-December 2008.
5. On October 12, 2010, DHS sent Respondent an Intentional Program Violation Repayment Agreement. DHS asked Respondent to repay an alleged overissuance of \$1,477.44. Respondent did not sign the Agreement.
6. On March 31, 2011, DHS sent Respondent a Notice of Disqualification Hearing/Request for Waiver of Disqualification Hearing with accompanying documentation.
7. 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 and a partial recoupment of the benefits paid, approximately two-thirds of the full amount. The applicable manual section in this case, Program Administrative Manual (PAM) 720, is no longer in effect, but the current BAM definition of IPV is the same.

BAM 720 defines IPV as follows:

INTENTIONAL PROGRAM VIOLATION

DEFINITIONS

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).

BAM 720 requires first that the client must have failed to report information, or reported inaccurate or incomplete information. I determine the first question I must ask is which of these events occurred in this case. I believe that the first of these, that Respondent failed to report information, is what DHS alleges in this case. I determine that DHS is alleging Respondent failed to report loss of employment in January 2008 or earlier.

In reaching my decision, I have reviewed all of the evidence in this case as a whole. I find and conclude that Respondent failed to report loss of employment in January 2008 or earlier. I now must consider whether Respondent's failure to report information was intentional and for the purpose of receiving benefits to which Respondent was not entitled.

For this issue, I turn to the second IPV element, which is whether Respondent was clearly and correctly instructed as to her responsibilities. If she knew her responsibilities, then it is possible that she intentionally failed to perform them. However, if she did not know of her responsibility to report, then it cannot be said that she knowingly failed to do so. If the latter is true, then DHS has failed to prove the first IPV element and DHS' request must be denied.

Upon review of the June 17, 2007, application, I find that page 1 of the application states that a recipient of benefits must report changes within ten days. This instruction is repeated on page 3. As Respondent signed this application, I find and conclude that she was clearly and correctly instructed as to her responsibility.

Now, going back to the first element, I find and conclude that in January 2008 or before then, Respondent lost her employment but intentionally failed to report it to DHS. I find and decide that Claimant violated her responsibility to report change of employment circumstances.

To summarize my findings up to this point, I find that DHS has presented clear and convincing evidence to establish that the first two elements of IPV are met. I now turn to the third element, mental or physical impairment, to see if DHS has established this element as well. Again, having reviewed all of the testimony and evidence in this case as a whole, I find nothing in the record to indicate that Respondent has a mental or physical impairment that limited her understanding or ability to fulfill the reporting responsibilities. Therefore, I find and conclude that the third IPV element also has been satisfied by DHS by clear and convincing evidence.

Based on the findings of fact and conclusions of law above, as all three of the elements of IPV have been established by clear and convincing evidence, I find and decide that an IPV of the CDC program has occurred. DHS' request for an Administrative Hearing decision of IPV of the CDC program is GRANTED.

I next turn to the penalty DHS has requested in this case, which is a first-time penalty for IPV. I find that the record does establish that a first-time penalty is appropriate, as there is no allegation that Respondent committed previous IPV's.

In conclusion, DHS is also entitled to an order permitting recoupment of the full amount of overissuance, \$1,477.44, as I find and determine that all of the requested money is proved to be overissued to Claimant.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, GRANTS DHS' request for a finding of IPV of CDC. IT IS ORDERED that the penalty for the FAP IPV shall be the penalty for a first-time offense.

IT IS FURTHER ORDERED that DHS is entitled to recoup the CDC overissuance to Respondent of \$1,477.44. DHS shall proceed in accordance with all DHS policies and procedures.



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

Date Signed: May 9, 2011

2011-4281/JL

Date Mailed: May 10, 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/she lives.

JL/pf

cc:

