

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

IN THE MATTER OF:

██████████
██
██

Reg. No: 20111234
Issue No: 6052
Case No: ██████████
Hearing Date:
June 1, 2011
Grand Traverse County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37 upon a request from the Department of Human Services (Department) to schedule a hearing for an alleged intentional program (IPV). The Respondent was represented by her attorney, and testified during the hearing.

ISSUE

Did the Respondent commit a Child Development and Care (CDC) intentional program violation (IPV)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. The Respondent received Child Development and Care (CDC) benefits from October 1, 2004, through May 31, 2007.
2. Respondent was aware of the responsibility to report all household employment and income to the Department and had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
3. Respondent was employed and worked a total of 2,610 hours from October 1, 2004, through May 31, 2007.
4. Respondent's childcare provider billed for 5,317 hours of childcare for ██████, and another 5,242 hours of childcare for ██████ during the same period.
5. Respondent reported her earned income to the Department as required by policy.

6. The Department's Office of Inspector General charged the Respondent with an Intentional Program Violation of the Child Development and Care (CDC) program.
7. A notice of the disqualification hearing was mailed to the Respondents at the last known address, and it was not returned as undeliverable.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp program, is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or Department), administers the FAP program pursuant to MCL 400.10, et seq., and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

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.

An overissuance is the amount of benefits issued to the client group in excess of what they were eligible to receive. BAM 705. The amount of the overissuance is the amount of benefits the group actually received minus the amount the group was eligible to receive. BAM 720. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700.

Department errors are caused by incorrect actions by the Department. BAM 705. Department error overissuances are not pursued if the estimated overissuance is less than \$125 per program. BAM 700. Client errors occur when the customer gave incorrect or incomplete information to the Department. Client errors are not established if the overissuance is less than \$125 unless the client group is active for the overissuance program, or the overissuance is a result of a quality control audit finding. BAM 700.

An agency error OI is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) or the Department of Information and Technology staff or department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.

- Information was not shared between department divisions (services staff, Work First! agencies, etc.).
- Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.).

The Department determined Child Development and Care (CDC) benefits based on the valid need hours for each parent/substitute parent (P/SP) at application, redetermination, and when a change in work or activity hours is reported. Bridges will determine the authorization based on the actual need hours entered. Actual need hours are determined by considering:

- Time spent in the activity. See BEM 703 to determine if a particular activity may be approved.
- Meal periods during the work day.
- Study and required lab time.
- Travel time from the child care provider to and from the place of employment, education or family preservation activity. Travel time may be allowed for each need reason.

Clients participating in the following activities are considered to meet the need criteria based on employment including:

- Jury duty.
- Residency/internship for which wages are received.
- Required to be on call.
- Required strike duty.
- Sleep periods (up to eight hours) for the employed parent/substitute parent when:
 - This person is the only parent/substitute parent available to provide care during the time period for which CDC is being requested.
 - This person works during the child's normal sleep time.
 - This person must sleep when the child is awake.
 - Job seeking activities for migrants.
 - The paid employment portion of a co-op, or work study program. BEM 703.

The Respondent was an ongoing Child Development and Care (CDC) recipient from October 1, 2004, through May 31, 2007. During this time, the Respondent was aware of the responsibility to report all household employment and income to the Department and had no apparent physical or mental impairment that would limit her understanding or ability to fulfill this requirement. The Respondent was employed and worked a total of 2,610 hours from October 1, 2004, through May 31, 2007. Respondent's childcare provider billed 5,317 hours of childcare for [REDACTED], and another 5,242 hours of child care for [REDACTED] during the same period.

The Department's Office of Inspector General charged the Respondent with an Intentional Program Violation of the Child Development and Care (CDC) program. The Office of Inspector General requested a program disqualification and recoupment of Child Development and Care (CDC) benefits that she was not authorized to receive.

The Office of Inspector General's agent testified that the Respondent benefited from her childcare provider billing the Department for hours of childcare provided where there was no need. The agent testified that this was done with the intent of receiving benefits that the Respondent was not eligible to receive.

The Respondent testified that since her income fluctuated based on the amount of work her employer could provide her, that she had submitted verification of her earned income on a regular basis. The Office of Inspector General's agent stipulated that the Respondent submitted verification of her earned income as required by policy.

The Office of Inspector General's agent testified that the overissuance of Child Development and Care (CDC) benefits was determined by subtracting the number of hours that the Respondent worked from the number of hours the childcare provider billed for childcare services. The Office of Inspector General's agent testified that the Respondent was only entitled to receive Child Development and Care (CDC) benefits during the time she was working.

The Respondent testified that there was significant travel time to get to and from her employment site, and that she relied on others to drive her to and from work. The Respondent testified that on occasion this travel time was extended because of the weather. The Respondent testified that it was common for employer to require her to stay at the job site overnight, and during periods when her children were sleeping.

This Administrative Law Judge finds that the Department had information at its disposal that would have revealed a discrepancy between the number of hours the Respondent spent earning wages at her job and the number of hours her childcare provider billed for. The Respondent submitted verification of her employment due to the irregular nature of her income and the Department failed to use this information to verify her need for Child Development and Care (CDC) benefits.

This Administrative Law Judge finds that the Department failed to establish that the Respondent intentionally failed to provide the Department with information necessary to determine her eligibility to receive Child Development and Care (CDC) benefits for the purposes of receiving benefits that she was not entitled to receive. The Respondent worked an irregular number of hours, and the hours of childcare billed to the Department vary as her work schedule changed. No evidence was available during the hearing to show that the Claimant or her childcare provider intentionally submitted fraudulent information to the Department.

This Administrative Law Judge finds that the Department failed to establish that the only hours the Respondent was eligible to receive childcare were the hours that she received earned income. No evidence was available during the hearing to show that the Claimant was not eligible to bill for childcare during time spent on breaks at work, during travel to and from work, time spend on call at work, and times when her children were sleeping with no other person available to care for them.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, decides that the Department has not established that respondent committed an Intentional Program Violation of the Child Development and Care (CDC) program.

Accordingly, the Department's Intentional Program Violation is **NOT UPHeld**. It is further **ORDERED** that the Department shall:

1. Initiate a determination in accordance with Bridges Administration Manuel Item 705 into whether the Respondent received a Department error overissuance of Child Development and Care (CDC) benefits.
2. Permit the Respondent and her Authorized Hearings Representative (AHR) the opportunity to clarify whether time billed by her childcare provider included unpaid time including meal periods, travel time, her children's sleep periods, or other unpaid activities permitted by policy.
3. Provide the Respondent and her Authorized Hearings Representative (AHR) with written notification of the Department's revised eligibility determination.



Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 17, 2011

Date Mailed: June 20, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Respondent may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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