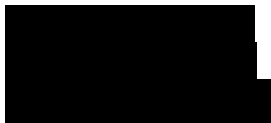


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2011-13681
Issue No: 6052



Wexford 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 September 6, 2011. Respondent personally appeared and provided testimony.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) of the Child Development and Care Program (CDC) 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).
2. Respondent signed Assistance Application (DHS-1171) on March 10, 2008 and March 31, 2009, 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 11-18, 19-34).
3. On the Assistance Application dated March 31, 2009, Respondent listed herself and her husband as employed, but did not list their hours. (Department Exhibit 28).

4. On April 6, 2009, the department received Verification of Employment (DHS-38) showing Respondent's husband had been employed at Cadillac Casting since September 10, 2007, and was working Monday through Friday from 2:00 P.M. to 10:30 P.M. (Department Exhibits 36-37).
5. On April 23, 2009, the department received Verification of Employment (DHS-38) from House of Hunan showing Respondent had been employed since August 18, 2003, working from 11 A.M. to 2 P.M. (Department Exhibits 38-39).
6. Respondent received [REDACTED] in CDC benefits during the alleged fraud period of October 26, 2008 through April 11, 2009. If Respondent had properly reported her and her husband's scheduled hours to the department, Respondent would not have been eligible to receive CDC benefits. (Department Exhibits 2, 44-45).
7. Respondent was clearly instructed and fully aware of the responsibility to report all employment and income to the department.
8. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.
9. Respondent had not committed any previous intentional program violations of the CDC 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.

In this case, the department has established that Respondent was aware of the responsibility to report all income and employment 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 an application for assistance on March 31, 2009. On this application, Respondent indicated that she and her husband were employed, but did not list their hours. The Verification of Employment received from Cadillac Casting showed Respondent's husband was working Monday through Friday from 2:00 P.M. to 10:30 P.M. and the Verification of Employment received from House of Hunan showed Respondent was working from 11 A.M. to 2 P.M. The departmental representative testified that if the department had been informed that Respondent and her husband worked different shifts, Respondent would not have been eligible to receive CDC benefits.

Respondent testified that she had informed the department of her and her husband's hours at the time she submitted her marriage certificate. However, the only record the department had that both parties were employed was Respondent's application dated March 31, 2009 which did not list the hours. Respondent stated that she was forced to take a "full-time" slot with her CDC provider because there were no "part-time" slots available. Respondent testified that she dropped her child off at 10:30 A.M., and picked her up at the end of the shift, which varied, and was usually 3:00 or 3:30 P.M. There was dispute that Respondent's husband did not begin his shift until 2:00 P.M.

Respondent's signature on the Assistance Application from March 31, 2009, certifies that she was aware that fraudulent participation in CDC could result in criminal or civil or administrative claims. If Respondent had reported that she and her husband worked opposite shifts, Respondent would not have received CDC benefits.

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 [REDACTED] overissuance from October 26, 2008 through April 11, 2009. Consequently, the department's request for full restitution for the CDC program 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 that she and her husband were working alternate shifts while receiving CDC benefits for the period of time from October 26, 2008 through April 11, 2009.

Therefore, it is ordered the department is entitled to recoup the overissuance of benefits Respondent ineligibly received. Respondent is ORDERED to reimburse the department [REDACTED] overissuance caused by her intentional program violation.

It is SO ORDERED.

/s/ _____

Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 9/8/11

Date Mailed: 9/8/11

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.

VLA/ds

[REDACTED]