

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201114204
Issue No.: 1030, 3055, 6052
Case No.: [REDACTED]
Hearing Date: September 14, 2011
Wayne County DHS (84)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon a Department of Human Services (DHS) request for a hearing. After due notice, a telephone hearing was held on September 14, 2011. [REDACTED], Regulation Agent, appeared and testified on behalf of DHS. Respondent appeared and testified.

ISSUE

1. The first issue is whether DHS properly established that Respondent committed an intentional program violation (IPV) concerning Food Assistance Program (FAP) benefits and Family Independence Program (FIP).
2. A secondary issue is whether DHS established a basis to collect a debt based on an alleged overissuance of FAP, FIP and Child Development and Care (CDC) benefits given to Respondent.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an ongoing FAP and FIP benefit recipient.
2. Respondent began employment with [REDACTED] (see Exhibit 10) on 6/12/07 and received a first pay check on 6/19/07 (see Exhibits 10 and 11).
3. Respondent reported the employment to DHS but the employment was not factored into Respondent's ongoing FIP and FAP benefit eligibility until 12/2007.

4. DHS contended that Respondent was over-issued \$1220 in FIP benefits and \$765 in FAP benefits over the period of 8/2007-11/2007 due to the failure to timely budget Respondent's employment income.
5. On approximately 10/18/07, Respondent applied for CDC benefits.
6. Respondent was subsequently approved for CDC benefits through at least 11/22/08.
7. DHS contended that Respondent's CDC provider over-billed for CDC benefits by \$1076 over the period of 10/14/07-11/22/08.
8. On 12/15/10, DHS requested a hearing to establish that Respondent committed an intentional program violation by failing to timely report employment and attempted to establish an over-issuance of benefits as follows: \$1220 in FIP benefits, \$765 in FAP benefits and \$1076 in CDC benefits.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* DHS administers the FIP pursuant to MCL 400.10, *et seq.* and MAC R 400.3101-3131. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The Food Assistance Program (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). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

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 (formerly known as the Family Independence Agency) 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).

Concerning IPV and debt collection procedures, the DHS regulations in effect as of the DHS hearing request month (12/2010) shall be considered. In determining whether an IPV or over-issuance occurred, DHS procedures in effect as of the time of the alleged IPV and over-issuance shall be considered. It should be noted that DHS regulations in effect at the time of the alleged IPV and over-issuance were referred to as PAM (Program Administration Manual) and PEM (Program Eligibility Manual). Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

This hearing was requested by DHS, in part, to establish that Respondent committed an IPV. DHS may request a hearing to establish an IPV and disqualification. BAM 600 at 3.

Suspected IPV means an OI 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. BAM 720 at 1.

IPV is suspected when there is **clear and convincing** (emphasis added) 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 at 1.

A clear and convincing threshold to establish IPV is a higher standard than a preponderance of evidence standard and less than a beyond any reasonable doubt standard. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

The Code of Federal Regulations also defines an IPV. Intentional program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16(c).

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.

- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms. *Id.*

In the present case, DHS alleged that Respondent committed an IPV by failing to timely report employment to DHS. Specifically, DHS contended that Respondent began employment in 7/2007 but did not report the employment until 10/18/2007. Clients have 10 days to report increase in income (see PAM 105 at 7).

However, a clear and convincing standard typically demands a production of a written statement by Respondent which conflicts with facts. For example, an application that fails to list employment when it is later revealed that the client had employment income at the time the application was made is persuasive evidence that an IPV occurred. In the present case, DHS could not produce any written documentation from Respondent that failed to list employment during a time when Respondent was employed. DHS only established that DHS failed to timely budget employment income. This circumstance could reasonably be explained by a failure by Respondent's DHS specialist to timely budget the employment income after it was reported by Respondent. In such a case, the error would be the fault of DHS, not Respondent. It is found that DHS failed to establish that Respondent committed an IPV concerning the alleged failure to timely report employment.

DHS did not allege that Respondent committed an IPV based on the alleged CDC over-billing. Accordingly, it is found that Respondent did not commit an IPV. However, it still must be considered whether an over-issuance of FIP, FAP and CDC benefits occurred and whether a debt may be established so that DHS may pursue debt collection actions.

DHS requests a "Debt Collection Hearing" when the grantee of an inactive program requests a hearing after receiving the DHS-4358B, Agency and Client Error Information and Repayment Agreement. PAM 725 at 17. Active recipients are afforded their hearing rights automatically, but DHS must request hearings when the program is inactive. *Id.* Though the client must request a hearing to trigger a "Debt Collection Hearing", the hearing is considered to be DHS requested. The hearing decision determines the existence and collectability of a debt to DHS. *Id.*

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). PAM 700 at 1. An OI is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

DHS may pursue an OI whether it is a client caused error or DHS error. *Id.* at 5. An over-issuance caused by DHS error is not pursued if the estimated OI amount is less than \$125 per program. BAM 705 at 1. In the present case, DHS is alleging an OI exceeding \$125 for FIP, FAP and CDC benefits. Thus, DHS is allowed to pursue a debt collection action. If improper budgeting of income caused the OI, DHS is to use actual income for the past OI month for that income source. BAM 705 at 6.

DHS is to request a debt collection hearing only when there is enough evidence to prove the existence and the outstanding balance of the selected OIs. PAM 725 at 19. Existence of an OI is shown by:

- A signed repay agreement, or
- A hearing decision that establishes the OI, or
- If a repay, court/hearing decision cannot be located: copies of the budgets used to calculate the OI, copies of the evidence used to establish the OI, and copies of the client notice explaining the OI. PAM 725 at 15.

OI balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.

Based on Claimant's employment first pay date (6/19/11), if Claimant's employment was reported and budgeted timely, the appropriate effective benefit month would have been 8/2011. DHS provided budgets establish that there was an over-issuance of FIP and FAP benefits from 8/2007 through 11/2007, the last month when the employment income was not budgeted. The budgets established an over-issuance of \$765 in FAP benefits and \$1220 in FIP benefits. It is found that DHS established a basis for collection concerning these amounts.

Concerning the alleged over-issuance of CDC benefits, DHS determined that Respondent was over-issued \$1076 in CDC benefits over the period of 10/14/07-11/22/08. DHS determined the alleged over-issuance by taking Claimant's actual biweekly employment hours, giving Claimant credit for 10 hours/two weeks in travel time and comparing those hours to those that were billed by Claimant's CDC provider. The CDC hourly wage was multiplied by the difference between hours billed and actual hours to determine the \$1076 total.

When a CDC overissuance is discovered, DHS must determine whether the error is client, DHS or provider caused. PAM 715 at 2. DHS collection action policy outlines different procedures when an OI is due to client error or CDC provider error (see PAM 725 at 2). For CDC provider errors, DHS contacts the provider, not the client, for

possible repayment of the debt. This policy tends to show that DHS does not hold clients responsible for CDC provider errors.

In the present case, DHS presumed client error on the CDC alleged over-billing. DHS based this conclusion on Claimant using her children's aunt as a CDC provider. Though it is tempting to hold Claimant responsible for the alleged over-billing, there could have been more efforts made by DHS to establish Claimant's responsibility for the error. It is known that CDC providers, not clients, bill for CDC hours (see PEM 706). It is found there was an insufficient basis to establish an over-billing of CDC benefits due to Claimant's error. Accordingly, the OI concerning CDC benefits is dismissed.


DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established that Respondent was over-issued \$1220 in FIP benefits and \$765 in FAP benefits. It is further found that DHS may pursue debt collection actions against Respondent to recoup the over-issued benefits. The actions taken by DHS are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS failed to establish a basis for IPV and debt collection concerning CDC benefits. It is ordered that DHS:

- (1) cease and/or reverse any IPV actions taken against Respondent concerning the issues in the present case;
- (2) cease any debt collection actions against Claimant concerning the alleged CDC benefit overissuance; and
- (3) supplement Respondent for any loss of benefits related to related IPV penalties or CDC debt establishment that occurred.

The actions taken by DHS are PARTIALLY REVERSED.



Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 26, 2011

Date Mailed: September 26, 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.

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