

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No:

[REDACTED]

ADMINISTRATIVE LAW JUDGE: [REDACTED]

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 [REDACTED]. The respondent appeared and provided testimony.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) of the Child Care and Development (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).
2. Respondent signed Assistance Application (DHS-1171) on [REDACTED] and [REDACTED] 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 Exhibit 19-26).
3. Day Care Aide/Relative Care Provider Applications were signed on [REDACTED] [REDACTED] purportedly by [REDACTED] (Department Exhibit 27 – 33)

4. [REDACTED] stated that he did not provide care for the grantee's children. [REDACTED] obtain CDC benefits for [REDACTED]. [REDACTED] indicated that he had been contacted and coached to say he was the provider, but that he didn't want to get into trouble because he wanted a career in law enforcement. It is also noted that [REDACTED] was employed during the time period the claimant claimed he was her CDC provider. (Department Exhibit 53, 55 - 57)
5. Respondent received [REDACTED] in CDC benefits during the alleged fraud period of [REDACTED]. The claimant fraudulently obtained these benefits as her alleged provider did not provide the CDC services or receive the CDC monies. (Department Exhibit 3).
6. Respondent was clearly instructed and fully aware of the responsibility to report all circumstances accurately to the department.
7. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.
8. Respondent has 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), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

The department has requested a disqualification hearing to establish an overissuance of CDC and FAP benefits as a result of an IPV and the department has asked that the respondent be disqualified from receiving FAP benefits. 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, Item 105, p. 7. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. Respondent provided information indicating that [REDACTED] when contacted [REDACTED] indicated that he had never provided daycare for the respondent's two children and that he was pressured to state he was the provider for the children, but that he wanted to go into law enforcement and didn't want to get into trouble. [REDACTED] indicated that his brother had dated the respondent and had used his identification to obtain the CDC benefits.

The respondent testified that [REDACTED] is upset with her because she stopped dating him and is trying to get back at her by lying to get her in trouble. The respondent admitted completing the applications listing [REDACTED] as her provider, but states that [REDACTED] usually watched the children or arranged for them to be somewhere. [REDACTED] denies cashing the checks or receiving the CDC monies. However, as [REDACTED] clearly completed several applications listing [REDACTED] as her provider and clearly knew or should have known that he was not providing the CDC services for her two children, it is not credible that she did not know about and participate in the fraud committed.

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 [REDACTED]. Consequently, the department's request for full restitution of the CDC overissuance must be granted.

It is noted that the OIG agent is requesting program disqualification and restitution for a FAP overissuance. However, the FAP overissuance was calculated by including the money the respondent ineligibly received for CDC services as income. However, this is the same money that the department is requesting restitution for in this instant case. The undersigned is unable to find any departmental policy that allows the OIG to include ineligible CDC payments to be included as income in respondent's FAP program. In fact, this is completely counterintuitive as the respondent would be penalized twice for the fraud then (once in the CDC restitution and again when included as income for the FAP benefits). Thus, the undersigned is unable to find any basis to find an IPV of the FAP program. The department's request for program disqualification and restitution of FAP benefits is denied.

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 of the CDC Program in the amount of [REDACTED] during the period of [REDACTED], through [REDACTED]

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

The department's request for program disqualification and restitution of FAP benefits is DENIED.

It is So ORDERED.

/s/ _____
[REDACTED]

Date Signed: [REDACTED] _____

Date Mailed: [REDACTED] _____

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.

[REDACTED]

[REDACTED]

[REDACTED]