

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

IN THE MATTER OF:



Reg No.: 2012-47574
Issue No.: 3000, 6052
Case No.: [REDACTED]
Hearing Date: January 7, 2013
Wayne County DHS (41)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, Mich Admin Code, Rules 400.3130 and 400.3178 upon the Department of Human Services' request for a disqualification hearing. After due notice, a hearing was held in Detroit, Michigan on Monday, January 7, 2013. nesday, April 18, 2012. The Respondent appear and testified. The Respondent was represented by [REDACTED]. Participating on behalf of the Department (Petitioner) was [REDACTED] and [REDACTED] from the Office of Inspector General. Representing the Department/Petitioner was [REDACTED], Assistant Attorney General.

ISSUE

Whether the Respondent committed Child Development & Care (CDC") Intentional Program Violation ("IPV") for the period from March 30, 2008 through October 11, 2008 in the amount of \$4,154.00?

FINDINGS OF FACT

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

1. In November 2007, the Department received the Respondent's CDC application seeking child care assistance for her two children. (Exhibit 1, pp. 21 – 24)
2. On November 27, 2007, the Department sent the Respondent a Notice of CDC approval. (Exhibit 1, p. 25)

3. For the period of March 30, 2008 through October 11, 2008, the Department issued \$4,154.00 (rounded) in CDC benefits. (Exhibit 1, pp. 26 – 28)
4. In or around June 2008, the Department received a Verification of Employment which provided that the Claimant's employment ended on March 18, 2008. (Exhibit 1, pp. 10 – 12)
5. On December 29, 2011, the Department determined that an intentional program violation had occurred based on the Respondent's failure to report her employment had ended. (Exhibit 1, pp. 3 – 7)
6. On April 11, 2012, the Department sent Respondent a written notice of the intentional program violation over-issuance and repayment agreement which the Respondent did not sign. (Exhibit 1, pp. 8, 9)
7. This is Respondent's first alleged intentional program violation.

CONCLUSIONS OF LAW

As a preliminary matter, the OIG sought a FAP over-issuance in the amount of \$2,556.00 due to an alleged Intentional Program Violation ("IPV") for the period of April 1, 2008 through September 30, 2009. During the hearing the Department/Petitioner conceded that there was not an over-issuance of FAP benefits. As such, the Petitioner's Request for Disqualification Hearing on this issue is DISMISSED.

During the period at issue, Department policies were found in the Policy Administrative Manual ("PAM"), the Policy Eligibility Manual ("PEM"), and the Policy Reference Tables ("RFT").

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 provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, Rules 400.5001 through R 400.5015.

In this case, the Department requested a disqualification hearing to establish an over-issuance of benefits as a result of an IPV. The Department requests that the Respondent be disqualified from benefits and seeks recoupment of the over-issuance. An over-issuance ("OI") occurs when a client group receives more benefits than they are entitled to receive. PAM 700 (October 2007), p. 1. A claim is the resulting debt created by the over-issuance of benefits. PAM 700, p. 1. Recoupment is an action to

identify and recover a benefit OI. PAM 700, p. 1. During the eligibility determination and while the case is active, clients are repeatedly reminded of reporting responsibilities through explanation at application/determination interviews, notices and pamphlets, as well as acknowledgments on the application. PAM 700, p. 2. Applicants and recipients are required to provide complete and accurate information and to notify the Department of any changes in circumstances that may affect eligibility or benefit amount within 10 days. PAM 105 (April 2007), p. 7. Incorrect or omitted information causing an OI can result in cash repayment or benefit reduction. PAM 700, p. 2.

A suspected IPV means an OI exists for which all three of the following conditions exist:

- The customer **intentionally** failed to report **or intentionally** gave incomplete or inaccurate information needed to make a correct benefit determination, **and**
- The customer was clearly and correctly instructed regarding his or her reporting responsibilities, **and**
- The customer has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities. PAM 720 (October 2007), p. 1.

IPV is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. PAM 720, p. 1.

Child care payments may be approved when a client needs child care to participate in an employment preparation and/or training activity or a post-secondary education program. PEM 703 (October 2007), p. 8. The activity or education program must be approved by the Department, Michigan Works!, Refugee Services contractor, Tribal Employment Preparation program, or Michigan Rehabilitation Services. BEM 703, p. 8.

In the record presented, the Department [Office of Inspector General] seeks disqualification based on an alleged \$4,154.00 CDC over-issuance based on the Respondent's failure to report stopped employment, thus negating the need for continued CDC benefits for the period of March 30, 2008 through October 11, 2008.

During this time period, the evidence establishes that after her employment ended on March 18, 2008, the Respondent was employed as a Certified Nurse Aide ("CNA") from April 18th to May 16, 2008. The Respondent testified credibly that she was required to go through a 2-week training program/orientation prior to this employment. From June 16th through October 16, 2008, the Respondent was enrolled in a Medical Assistance Program. Further, credible testimony established that during the period at issue, the Department had approved the Respondent to participate in the Medical Assistance

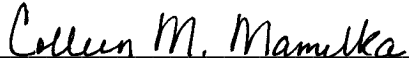
Program as provided for in PEM 703. The Respondent was not receiving FIP benefits, as such, was not required to report and/or get approval through the JET program.

The evidence confirmed that for the majority of the period at issue, the Respondent was working and/or attending school and that these activities were reported to the Respondent's case worker at that time, who did not participate in the hearing process. Ultimately, in consideration of the evidence presented, to include sworn testimony, it is found that the Department failed to establish by clear and convincing evidence that the Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of CDC benefits for period from March 30, 2008 through October 11, 2008 in the amount of \$4,154.00.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds:

1. the Petitioner's Request for Disqualification Hearing regarding an alleged FAP IPV in the amount of \$2,556.00 for the period of April 1, 2008 through September 30, 2008 is DISMISSED.
2. the Department failed to establish through clear and convincing evidence that the Respondent committed a CDC Intentional Program Violation in the amount of \$4,154.00 for the period of March 30, 2008 through October 11, 2008.



Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: January 24, 2013

Date Mailed: January 24, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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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Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/tm

cc:

