

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

IN THE MATTER OF:



Reg. No.: 201214579
Issue No.: 6052
Case No.:
Hearing Date: March 14, 2012
County: Wayne DHS (17)

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; MCL 400.43 (a); Mich Admin Code, R 400.941 and MCL 24.201, et seq., upon a hearing request by the Department of Human Services (Department) to establish an over issuance (OI) of benefits to Respondent. After due notice, a hearing was held on March 14, 2012.

Respondent did not appear. This matter having been initiated by the Department and due notice having been provided to Respondent, the hearing was held in Respondent's absence in accordance with Bridges Administrative Manual (BAM), Item 725. Other participants included Barbette Cole, Office of Inspector General Agent.

Respondent appeared and testified.

ISSUE

Did Respondent receive an OI of FIP FAP SDA CDC benefits?

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 a recipient of FIP FAP SDA CDC during the period 1/14/01 - 4/2/05.
2. Respondent received a FIP FAP SDA CDC OI during the period 1/14/01 through 4/2/05, due to Department's Respondent's error.

3. \$45,146 of the OI is still due and owing to the Department.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

☒ The Child Development and Care (CDC) 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 1999 AC, Rule 400.5001 through Rule 400.5015.

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.*

Overissuances on active programs are repaid by either lump sum cash payments, monthly cash payments (when court ordered) or administrative recoupment (benefit reduction). PAM 725 at 4. Administrative recoupment takes a percentage of the client's benefits to repay DHS for over-issued benefits.

For over-issued benefits to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. PAM 725 at 13. 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. Active recipients are afforded their hearing rights automatically, but DHS must request hearings when the program is inactive. *Id.*

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. *Id.* at 15. Existence of an OI is shown by:

- A court order that establishes the OI, or
- 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, and
- 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.

A timely hearing request can delete a proposed benefit reduction. PAM 700 at 2. The client must repay the OI if the hearing decision upholds the department's actions. *Id.*

DHS seeks to establish a \$45,146 debt against Respondent for an alleged OI of CDC benefits from 1/14/01-4/2/05. DHS contends that Respondent fabricated two jobs solely so she could have received CDC benefits.

Typically, a client has no motive to report non-existent income to DHS because, generally, the more income that is reported, the fewer the benefits that are authorized. For CDC benefits, the opposite may be true. Employment is a basis to receive CDC benefits and any reduction in Food Assistance Program, or other program benefits, could be greatly offset by CDC benefit issuances.

DHS presented numerous documents that established that Respondent claimed to work for a restaurant and for an automotive business (see Exhibits 29-71). The submitted documents verify the Respondent claimed to have held both jobs from 2000-2005.

DHS presented an affidavit (Exhibit 80) purportedly signed by the owner of the automotive business dated 9/10/07. The affidavit stated that Respondent "did not work" for the employer "for the time of "2000-2005". The statement was pure hearsay. DHS attempted to prove Respondent's lack of employment based on a statement made outside of the hearing. The testifying specialist also stated that Claimant's reported employer advised her that Claimant worked for him no more than two days and only because Respondent's boyfriend was an employee. A hearsay statement is not necessarily inadmissible evidence in an administrative hearing, but it raises questions of authenticity and accuracy because the statement maker is not available to testify to the accuracy or authenticity of the statement.

DHS also noted that the owner of the business told DHS that his business is closed after 6:00 p.m. and that he never employed any persons after 6:00 p.m. Respondent reported that she worked many hours after 6:00 p.m. (see Exhibits 29-34). Though the DHS evidence was not ideal, it was sufficient to establish the burden of proof that Respondent fabricated employment with the automotive business. Respondent failed to attend the hearing to refute any of the DHS evidence. It is found that Respondent fabricated employment with an automotive business for the purpose of collecting CDC benefits.

DHS also alleged that Respondent fabricated employment with a restaurant. The testifying OIG agent conceded that she was unable to make contact with the former restaurant owner that may or may not have employed Respondent. Circumstantial evidence was instead provided.

DHS presented a tax form (Exhibit 26a) of a person who had the same name as Respondent's CDC provider. The employer on the tax form was also Respondent's restaurant employer. DHS noted that Respondent reported that the restaurant employment paid her in cash as evidenced by a handwritten statement "paid cash" on an Assistance Application signed by Respondent on 10/3/02. DHS concluded that if one employee had a tax form from a restaurant, then another employee would likely not be paid in cash. The DHS contention had some merit but was not sufficient to establish that Respondent was not entitled to CDC benefits

DHS also raised doubts about Respondent's reported employment simply because her CDC provider was verified to be a co-worker. It is not known why a client that selected a co-worker as a CDC provider would raise a question about whether the client actually held that job. This DHS contention was not persuasive.

Establishing that a client fabricated one job to fraudulently obtain CDC benefits, generally, makes it more likely that a client would do the same for a second job. However, even with this consideration, the evidence simply does not justify finding that Respondent fabricated her job with a restaurant. It is found that DHS failed to establish that Respondent fabricated employment with a second job with a restaurant.

The OI amount sought by DHS was based on the grand total of OI benefits issued for both reported jobs by Respondent. As only one of the jobs were established as fabricated by Respondent, DHS only established a basis for debt collection for the difference between total CDC benefits paid and CDC benefits issued for Respondent's restaurant employment. Though the hours varied with each job, Respondent consistently reported working more hours with the employment that was found to be fabricated. Although a more precise calculation is ideal, it would be seemingly fair to both Respondent and DHS to base the OI based on half of the total CDC benefits issued. This amount is \$22,573.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department

properly determined that Respondent received a \$22,573 OI of
 FIP FAP SDA CDC benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department

established a basis for debt collection of \$22,573 in CDC benefits based on Respondent's fraudulently reported employment with an automotive employer.

did not make the correct determination to establish a debt for Respondent's reported employment with a restaurant.

Accordingly, the Department is REVERSED IN PART with respect to the amount of sought for debt collection for the reasons stated on the record.

The Department is ORDERED to initiate collection procedures in accordance with Department policy.

Christian Gardocki

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

Date Signed: March 21, 2012

Date Mailed: March 21, 2012

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.

CG/hw

cc:

