

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

IN THE MATTER OF:



Reg. No: 201238469
Issue No: 6052, 3055
Case No: [REDACTED]
Hearing Date: May 30, 2012
Wayne County DHS #17

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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 May 30, 2012. Respondent appeared and testified at the hearing.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) of the Child Care and Development (CDC) program and the Food Assistance Program (FAP)?

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); the OIG also requested that Respondent be disqualified from receiving program benefits.
2. Respondent completed an application for public assistance on August 31, 2005 (DHS 1171), acknowledging her responsibility to report any changes in her income or resources, living arrangement, and household composition to the department within ten days of the change. (Department Exhibits 33-39).
3. Respondent submitted an application for CDC benefits on August 30, 2005. (Department Exhibits 40-43).

4. Respondent submitted another application/redetermination (DHS 1171) on May 15, 2006 in which she stated that she was receiving income as a CDC provider. (Department Exhibits 44-51).
5. The Respondent had not stated on her initial application that she was receiving income for services as a CDC provider.
6. The Respondent did not state on any of her applications/redeterminations that she was married.
7. The department contends that because the Respondent did not properly identify her earned income, she received an overissuance of FAP benefits for the time period of September 1, 2005 through February 28, 2007 in the amount of [REDACTED].
8. The department further contends that if the Respondent would have reported that she was married, her husband's income would have been included in her CDC budget and that she would not have been eligible for benefits.
9. The department therefore contends that the Respondent received an overissuance of CDC benefits in the amount of [REDACTED] for the time period of January 1, 2006 through September 30, 2006.
10. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.
11. Respondent had not committed any previous intentional program violations. (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 Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) 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). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-

3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

In this case, the department has requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV and the department has asked that the respondent be disqualified from receiving 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.

In the case at hand, the department contends that the Respondent received overissuances in both the FAP and the CDC programs as a result of her committing an intentional program violation in each program.

Regarding the FAP program, the department contends that the Respondent did not timely inform the department that she was receiving income from being a CDC provider and that as a result, she received an overissuance of FAP benefits. The Administrative Law Judge does find that the Respondent should have informed the department of her income received from being a CDC provider. However, in examining the overissuance budgets submitted by the department, the Administrative Law Judge cannot determine how the department arrived at the amount of the overissuance in question. For example, it is alleged that the Respondent received an overissuance of FAP benefits for the month of September 2005 as a result of not reporting [REDACTED] in earned income (see Department Exhibit 55). The OIG testified that to the best of her knowledge, the unreported earned income is from the Respondent's earnings as a CDC provider. Yet the figures showing the amount paid to the Respondent for being a CDC provider do not equal [REDACTED] (see Department Exhibits 23-26). Therefore, because the Administrative Law Judge cannot reconcile the calculations used to determine the overissuance amount, it cannot be found that there has been an overissuance as the proper amount thereof cannot be determined.

In relation to the CDC program, the department contends that the Respondent did not tell the department that she was married and therefore her husband's income was not included in her CDC benefit calculation. The department further contends that had the Respondent's husband's income been included, she would not have been eligible for CDC benefits. The Respondent testified that she did not list her husband as a member of her household because she was not sure if the marriage was going to last. She further testified that they were living together and that he was working and producing income. Again, the Administrative Law Judge finds that the Respondent should have informed the department that she was married, was living with her husband, and that he was producing income that should have been added when determining the claimant's eligibility for CDC benefits. However, the department failed to produce any CDC budgets that show what the Respondent's combined income would have been, if there were any deductions available to the Respondent or used, or what the income limit for the CDC program was at the time of the alleged overissuance. Accordingly, the Administrative Law Judge cannot determine if there has been an overissuance in the CDC program.

As cited above, an intentional program violation is an overissuance that has occurred as a result of intentional acts by the Respondent. If there has been no overissuance, then there can be no intentional program violation. In this case, the department has not shown clear and convincing that there was an overissuance of either program in question. Although the Respondent's conduct is clearly questionable at best, the department failed to show an overissuance that resulted from that conduct and, in turn, failed to show and intentional program violation of either program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the department has not established by clear and convincing evidence that the Respondent committed an Intentional Program Violation of the CDC program or of the FAP program.

Accordingly, this matter is hereby **DISMISSED** WITHOUT PREJUDICE. The department shall be allowed to re-file this matter if they can show that there has been an overissuance of benefits.

It is SO ORDERED.

/s/ _____
Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 26, 2012

Date Mailed: June 26, 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.

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