

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

IN THE MATTER OF:



Reg. No.: 201331453
Issue No.: 6052
Case No.: [REDACTED]
Hearing Date: May 8, 2013
County: Ingham

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

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 hearing. After due notice, a telephone hearing was held on May 8, 2013 from Lansing, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG). Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of Child Development and Care (CDC) benefits that the Department is entitled to recoup?
2. Did Respondent commit an Intentional Program Violation (IPV)?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on February 28, 2013 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of CDC benefits during the period of June 4, 2000 through December 15, 2001.

4. Respondent was aware of the responsibility to timely and accurately report to the Department that her CDC provider did not provide care for her three children in 2000 and 2001.
5. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period they are considering the fraud period is June 4, 2000 through December 15, 2001.
7. During the alleged fraud period, Respondent was issued \$20,178.00 in CDC benefits from the State of Michigan.
8. Respondent was entitled to \$0.00 in CDC during this time period.
9. Respondent did receive an OI of CDC benefits in the amount of \$20,178.00.
10. The Department has established that Respondent committed an IPV.
11. A notice of disqualification hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies in effect on December 1, 2001 were contained in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Tables (PRT).

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.

Group composition is the determination of which persons living together are included in the CDC program group. PEM 205. **The applicant/client is the person who signs the application and who serves as primary contact with DHS. PEM 205.** This person must live with the child(ren) for whom care is requested and be a parent, stepparent or foster parent of the child(ren). PEM 205.

Eligibility for CDC services exists when the Department has established **all** of the following: (1) there is a signed application requesting CDC services; (2) each parent/substitute parent is a member of a valid Eligibility Group; (3) each parent/substitute parent (P/SP) meets the need criteria as outlined in PEM 703; (4) an

eligible provider is providing the care; and (5) all eligibility requirements are met. PEM 703.

There are four valid CDC need reasons. Each parent/substitute parent of the child needing care must have a valid need reason during the time child care is requested. Each need reason must be verified and exists only when each parent/substitute parent is unavailable to provide the care because of: 1. Family preservation. 2. High school completion. 3. An approved activity. 4. Employment. PEM 703.

To be eligible for CDC payments, the client must: (1) apply for CDC; (2) meet the requirements of an eligibility group; (3) have a valid need reason; and (4) use an eligible provider. PEM 703. Each parent/substitute parent (P/SP) of the child needing care must have a valid need reason for the time period that child care is requested. PEM 703.

Eligibility for CDC for income-eligible ends the earliest of the following: (1) the requirements are no longer met; (2) the family has excess income; (3) the need no longer exists. PEM 703.

PAM 700 and PAM 720 govern Intentional Program Violations (IPVs). Generally speaking, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance (OI). PAM 700. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. PAM 720.

According to PAM 720, "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.

An 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.

For CDC cases, an IPV exists when the client/AR or CDC provider:

- Is found guilty by a court, **or**

- Signs a DHS-4350 **and** the prosecutor or the office of inspector general (OIG), authorizes recoupment in lieu of prosecution, **or**
- Is found responsible for the IPV by an administrative law judge conducting an IPV or debt establishment hearing. PAM 720.

The Department will disqualify an active **or** inactive CDC recipient who:

- Is found by a court or hearing decision to have committed IPV, **or**
- Has signed a Request for Waiver of Disqualification Hearing (DHS-826) or Disqualification Consent Agreement (DHS-830), **or**
- Is convicted of concurrent receipt of assistance by a court, **or**
- For FAP, is found by SOAHR or a court to have trafficked FAP benefits. PAM 720.

A disqualified recipient remains a member of an active group as long as he/she lives with them. PAM 720. Other eligible group members may continue to receive benefits. PAM 720.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. PAM 105. Clients are required to report changes within 10 (ten) days of receiving the first payment reflecting the change. PAM 105. Clients are required to report changes in circumstances within 10 (ten) days after the client is aware of them. PAM 105. These changes include, but are not limited to changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. PAM 105.

Clients must cooperate with the local office in determining initial and ongoing eligibility. PAM 105. This includes completion of necessary forms. PAM 105. Clients must completely and truthfully answer all questions on forms and in interviews. PAM 105. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. PAM 105.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

In the present case, the Department has established that Respondent applied for CDC benefits for her three children due to her employment in private nursing care. Respondent listed the children's aunt ([REDACTED]) to serve as the day care provider.

Respondent reported that Ms. [REDACTED]'s address was the same as Respondent's address on the application. In June of 2000, the Department began to receive billing invoices signed by Respondent and Ms. [REDACTED] who purportedly provided full-time childcare. Respondent reapplied for CDC in November of 2000 and again identified Ms. [REDACTED] as the provider. The Department continued to receive billing invoices signed by Respondent and Ms. [REDACTED] for CDC payments. In May 2001, Respondent, due to her private nursing employment, reapplied for CDC benefits and listed Ms. [REDACTED] as the childcare provider.

The hearing record contains Michigan driver's license documentation which shows that Ms. [REDACTED]'s address ([REDACTED], MI) from 1999 through early 2002 was not the same address listed by Respondent in her application for CDC assistance ([REDACTED], MI). In fact, Respondent and Ms. [REDACTED] lived 126.85 miles apart at this time. Ms. [REDACTED]'s employment records from [REDACTED] and [REDACTED] also confirmed that she lived and worked in the [REDACTED] area and did not live with Respondent during 2000 and 2001. The record also contains several billing invoices and CDC warrants issued to Ms. [REDACTED] for the purported care of Respondent's children. These warrants were endorsed by both Ms. [REDACTED] and Respondent.

Here, this Administrative Law Judge finds that Respondent was aware of the responsibility to timely and accurately report to the Department all changes in circumstances pertaining to her CDC benefits. Specifically, Respondent was aware that Ms. [REDACTED] was not, in fact, providing care for her three children during the time period in question. Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within ten days. PAM 105. Respondent's signature on the Assistance Application in this record certifies that she was aware that fraudulent participation in CDC could result in criminal, civil or administrative claims.

The record evidence shows that Respondent knowingly and intentionally, on multiple occasions, made false statements when she reported to the Department that Ms. [REDACTED] both lived with her during 2000 and 2001 and provided care for her children for purposes of CDC. Per policy, Respondent was the primary contact with the Department. But the evidence shows that, at the very least, both Respondent and Ms. [REDACTED] were complicit in their deceit. The record also shows that Respondent had no apparent physical or mental impairment that limited her understanding or ability to fulfill these reporting responsibilities.

This Administrative Law Judge therefore concludes that the Department has shown, by clear and convincing evidence, that Respondent committed an intentional violation of the CDC program resulting in a \$20,178.00 overissuance. Consequently, full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, concludes that:

1. Respondent **did** commit an IPV.
2. Respondent **did** receive a CDC overissuance in the amount of \$20,178.00.

The Department is ORDERED to initiate recoupment procedures for the amount of \$20,178.00 in accordance with Department policy.

IT IS SO ORDERED.

/s/
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 17, 2013

Date Mailed: May 20, 2013

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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