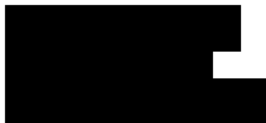



STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES


**IN THE MATTER OF:**



Registration No: 20137294  
Issue No: 6052  
Case No:   
Hearing Date: January 10, 2013  
Ingham County DHS

**Administrative Law Judge:** Suzanne D. Sonneborn

**HEARING DECISION**


This matter is before the undersigned Administrative Law Judge in accordance with 7 CFR 273.16, MCL 400.9, MCL 400.37, and Mich Admin Code, R 400.3130, on the Department of Human Services' (the Department's) request for hearing. After due notice, a hearing was held on January 10, 2013, at which Respondent failed to appear. The hearing was held in Respondent's absence in accordance with Bridges Administrative Manual (BAM) 720, pp 9-10. The Department was represented by , a regulation agent with the department's Office of Inspector General (OIG).

**ISSUE**

Whether Respondent committed an intentional program violation (IPV) involving the Child Development and Care (CDC) program and whether Respondent received an overissuance of CDC benefits that the Department is entitled to recoup?

**FINDINGS OF FACT**

Based on the clear and convincing evidence pertaining to the whole record, the Administrative Law Judge finds as material fact:

1. The Department's OIG filed a request for hearing to establish an overissuance of CDC benefits received as a result of a determination that Respondent committed a first IPV in this program.
2. Respondent was a recipient of CDC benefits at all times relevant to this hearing.
3. On July 8, 2003, Respondent's day care provider, Tamika Ellis, signed a Day Care Aide/Relative Care Provider application (FIA-220) and indicated therein that she was applying to be a relative care provider and that she was related to Respondent's children as their aunt.  also acknowledged her obligation to report changes in her circumstances and

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 A, pp. 1-2)

4. Respondent did not sign the July 8, 2003 Day Care Aide/Relative Care Provider application. (Department Exhibit A, pp. 1-2)
5. The OIG did not offer into evidence any testimony or documentation of an application signed by Respondent wherein she acknowledged her obligation to report changes in her circumstances and 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.
6. Pursuant to the Department's approval of [REDACTED] application as a relative care provider of Respondent's children, Respondent received CDC benefits in the amount of \$ [REDACTED] for the time period of June 15, 2003 through November 15, 2003. (Department Exhibit C)
7. On February 1, 2007, Respondent signed a handwritten statement in indicating that [REDACTED] is related to her children as an aunt through her children's father. (Department Exhibit E)
8. The OIG did not offer into evidence any testimony or documentation establishing that [REDACTED] was not a "relative care provider" to Respondent's children.
9. The OIG did not offer into evidence any testimony or documentation of the CDC benefits that Respondent should have received as the grantee of a day care aide versus what Respondent actually received as the grantee of a relative care provider.

### **CONCLUSIONS OF LAW**

The Child Development and Care program was 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).

Generally, a client is responsible for reporting any change in circumstances that may affect eligibility or benefit level within ten days of the change. BAM 105, p 7. When a client or group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1. A suspected IPV is defined as 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. [BAM 720, p 1.]

An IPV is suspected by the Department when a client intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing a reduction of, program eligibility or benefits. BAM 720, p 1. In bringing an IPV action, the agency carries the burden of establishing the violation with clear and convincing evidence. BAM 720, p 1.

An overissuance period begins the first month the benefit issuance exceeds the amount allowed by Department policy or six years before the date the overissuance was referred to an agency recoupment specialist, whichever is later. This period ends on the month before the benefit is corrected. BAM 720, p 6. The amount of overissuance is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p 6.

Suspected IPV matters are investigated by the OIG. This office: refers suspected IPV cases that meet criteria for prosecution to the appropriate prosecuting attorney; refers suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearings System (MAHS); and returns non-IPV cases back to the Department's recoupment specialist. BAM 720, p 9.

The OIG will request an IPV hearing when:

- Benefit overissuances are not forwarded to the prosecuting attorney's office;
- Prosecution of the matter is declined by the prosecuting attorney's office for a reason other than lack of evidence, and

- The total OI amount for the FAP is \$1000 or more, or
- The total OI amount is less than \$1000, and
  - The group has a previous IPV, or
  - The alleged IPV involves FAP trafficking, or
  - The alleged fraud involves concurrent receipt of assistance or
  - The alleged fraud is committed by a state/government employee. BAM 720, p 10.

The OIG represents the Department during the hearing process in IPV matters. BAM 720, p 9.

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).

Here, during the January 10, 2013 disqualification hearing, the OIG did not offer into evidence any testimony or documentation of an application signed by Respondent wherein she acknowledged her obligation to report changes in her circumstances and 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. Accordingly, the OIG failed to establish with clear and convincing evidence that Respondent was clearly and correctly instructed regarding her reporting responsibilities or that Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination.

Moreover, while the OIG asserts that Respondent's daycare provider is not the aunt of Respondent's children, the OIG did not offer into evidence any testimony or documentation showing that [REDACTED] [REDACTED] was not a "relative care provider" to Respondent's children. On the contrary, the OIG provided a handwritten statement signed by Respondent on February 1, 2007 which, at best, indicates that [REDACTED] [REDACTED] is related to Respondent's children as an aunt through the father of Respondent's children. (Department Exhibit E) Thus, in this regard as well, the OIG has failed to establish with clear and convincing evidence that Respondent's daycare provider does not meet the definition of a "relative care provider" under department policy.

Finally, even if the OIG had established with clear and convincing evidence that Respondent was clearly and correctly instructed regarding her reporting responsibilities and that Respondent intentionally failed to properly report that her daycare provider was

not a “relative care provider” to Respondent’s children, the OIG did not offer into evidence any testimony or documentation of the CDC benefits that Respondent should have received as the grantee of a day care aide versus what Respondent actually received as the grantee of a relative care provider. Indeed, the OIG representative, agent [REDACTED] [REDACTED] acknowledged at the January 10, 2013 hearing that she was unable to explain whether the over issuance budget provided by the OIG reflected this differential between the CDC benefits that Respondent should have received as the grantee of a day care aide versus what Respondent actually received as the grantee of a relative care provider.

Consequently, this Administrative Law Judge finds that the OIG has failed to establish with clear and convincing evidence that Respondent has committed an intentional program violation with respect to the CDC program or that Respondent has received an over issuance of CDC benefits in the amount of \$ [REDACTED]

**DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that the OIG has failed to establish with clear and convincing evidence that Respondent has committed an intentional program violation with respect to the CDC program or that Respondent has received an over issuance of CDC benefits in the amount of \$ [REDACTED]

It is therefore **ORDERED** that the department’s determination of an intentional program violation with respect to the CDC program and an over issuance of CDC benefits in the amount of \$ [REDACTED] is **REVERSED**.

**IT IS SO ORDERED.**

/s/ \_\_\_\_\_  
Suzanne D. Sonneborn  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: January 17, 2013

Date Mailed: January 18, 2013

20137294/SDS

**NOTICE:** Respondent may appeal this decision and order to the circuit court for the county in which she resides within 30 days of receipt of this decision and order.

SDS/cr

cc:

