

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

IN THE MATTER OF:

[REDACTED]

Registration No: 20137296
Issue No: 6052
Case No: [REDACTED]
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 [REDACTED], 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 over issuance 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 over issuance of CDC benefits received as a result of a determination that Respondent committed an IPV.
2. Respondent was a recipient of CDC benefits at all times relevant to this hearing.
3. On October 23, 2010 and December 14, 2010, respectively, Respondent signed a Child Development and Care Provider Verification (DHS-4025) and an application for CDC benefits (DHS-4583) and indicated in both forms that her child care provider would be [REDACTED] and [REDACTED] verified same with her signature on the DHS-4025. In signing the

DHS-4583, Respondent 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. And, in signing both forms, Respondent acknowledged her understanding that if her intentional misrepresentation caused an overpayment of benefits, she would be required to repay those benefits and may be prosecuted for fraud. (Department Exhibit A, pp. 1-5; Exhibit B, pp. 1-2))

4. On October 14, 2011, the Department received an unnotarized, unsworn statement signed by Respondent's child care provider, [REDACTED] [REDACTED] and dated October 14, 2011, wherein [REDACTED] [REDACTED] reported that she continued to provide day care services to Respondent's children but had not been paid by Respondent since June 2011. (Department Exhibit C, p. 1)
5. Respondent received CDC benefits in the amount of \$ [REDACTED] for the time period of July 5, 2011 through September 24, 2011. (Department Exhibit E, pp. 1-2; Exhibit F, pp. 1-5)
6. The OIG did not offer into evidence any testimony or documentation that Respondent received and cashed her CDC benefit payments without disbursing the payments to her provider, [REDACTED] [REDACTED]
7. The OIG did not at any time interview [REDACTED] [REDACTED] regarding her unnotarized, unsworn October 14, 2011 statement.
8. The OIG did not at any time interview Respondent regarding [REDACTED] [REDACTED] unnotarized, unsworn October 14, 2011 statement.

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, in support of the OIG's determination that Respondent committed an IPV and received an over issuance of CDC benefits, the OIG offered into evidence the following documentation: (i) a Care Provider Verification (DHS-4025) and an application for CDC benefits (DHS-4583) signed by Respondent on October 23, 2010 and December 14, 2010, respectively, wherein Respondent indicated in both forms that her child care provider would be [REDACTED] [REDACTED] (ii) an unnotarized, unsworn statement signed by Respondent's child care provider, Tamyka Coley, and dated October 14, 2011, wherein Ms. Coley reported that she continued to provide day care services to Respondent's children but had not been paid by Respondent since June 2011; and (iii) a CDC budget establishing that Respondent received CDC benefits in the amount of \$ [REDACTED] for the time period of July 5, 2011 through September 24, 2011.

The OIG did not offer into evidence any testimony or documentation that Respondent received and cashed her CDC benefit payments without disbursing the payments to her provider, [REDACTED] [REDACTED]. Moreover, the OIG's representative, agent [REDACTED] [REDACTED] acknowledged at the January 10, 2013 hearing that the OIG did not at any time interview Respondent or Respondent's provider, [REDACTED] [REDACTED] regarding [REDACTED] [REDACTED] unnotarized, unsworn October 14, 2011 statement.

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

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:

[REDACTED]