

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-12884
Issue No.: 6006
Case No.: [REDACTED]
Hearing Date: March 26, 2014
County: Macomb-12

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

Upon a hearing request by the Department of Human Services (Department) to establish an overissuance (OI) of benefits to Respondent, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 400.43a, and 24.201, *et seq.*, and Mich Admin Code, R 400.941, and in accordance with 7 CFR 273.15 to 273.18, 42 CFR 431.200 to 431.250, 45 CFR 99.1 to 99.33, and 45 CFR 205.10. After due notice, a three-way telephone hearing was held on March 26, 2014 from Lansing, Michigan. Participants on behalf of the Department included [REDACTED] (Recoupment Specialist). Respondent appeared via telephone and provided testimony.

ISSUE

Did Respondent receive an overissuance (OI) of Child Development and Care (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 CDC benefits from the Department.
2. The Department alleges Respondent received a CDC OI during the period of January 3, 2010 through August 28, 2010 due to Department's error.
3. The Department alleges that Respondent received a \$ [REDACTED] OI that is still due and owing to the Department.
4. The Department requested a hearing on November 8, 2013.

CONCLUSIONS OF LAW

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

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

The goal of the Child Development and Care (CDC) program is to preserve the family unit and to promote its economic independence and self-sufficiency by promoting safe, affordable, accessible, quality child care for qualified Michigan families. BEM 703, p 1 (12-1-2011).

The Department of Human Services (DHS) may provide a subsidy for child care services for qualifying families when the parent(s)/substitute parent(s) is **unavailable** to provide the child care because of employment, participation in an approved activity and/or because of a condition for which treatment is being received **and** care is provided by an eligible provider. BEM 703, p 1.

For all types of assistance, Child Support is money paid by an absent parent(s) for the living expenses of a child(ren). Medical, dental, child care and educational expenses may also be included. Court-ordered child support may be either certified or direct. Certified support is retained by the state due to the child's FIP activity. Direct support is paid to the client. BEM 503, p 5 (10-1-2011).

Child support is income to the child for whom the support is paid. BEM 503, p 5 (10-1-2011). *Exception:* FIP, RAP, SDA, CDC, FAP - Enter child support payments received by a custodial party for an adult child or a child no longer living in the home, as the other unearned income of the payee as long as the money is not forwarded to the adult/child. If forwarded to the adult/child, enter as the other unearned income of the adult/child.

Wages are defined as "the pay an employee receives from another individual or organization." BEM 501, p 5 (12-1-2011). Wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. BEM 501, p 5.

When a client group receives more benefits than it is entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM 700, p 1 (7-1-2013). An overissuance (OI) is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). BAM 700, p 1 (7-1-2013).

An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. BAM 700, p 4 (7-1-2013). If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p 4 (7-1-2013). A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. BAM 700, p 6 (7-1-2013).

Here, the Department contends that Respondent received an OI of CDC benefits due to an agency error after the Department reportedly failed to include Respondent's earned income from employment as well as child support income received by Respondent's two children. The Department further contends that the Department also incorrectly entered Respondent's earned income from employment at [REDACTED] [REDACTED] as "payment-in-kind" wages. Respondent does not challenge the Department's assertion that an error was made with regard to her CDC benefits, but she states that she provided the Department with all requested verifications. Respondent further argues that it was Respondent's CDC provider who received the CDC OI.

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). 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Here, the record evidence shows that Respondent received an OI of CDC benefits on behalf of her two children. The record shows that the Department erred when it approved Respondent's CDC case as she had earned income from employment along with child support income for her two children that was not properly budgeted. The records also indicate that Respondent's earned income from employment was not properly included in her CDC budget. The record shows that Respondent was not income eligible for CDC benefits. Respondent did not provide any contradictory evidence. She merely argued that she acted properly. However, Respondent's argument is not a sufficient defense to respond to the evidence that she received the benefit of CDC supplement payments on behalf of her children. The substantial, material and competent evidence, based on the whole record, indicates that Respondent received a CDC OI that the Department may recoup.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish a CDC benefit OI to Respondent totaling \$2,090.12.

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED**.

The Department is ORDERED to initiate collection procedures for a \$2,090.12 OI in accordance with Department policy.



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

Date Signed: April 3, 2014

Date Mailed: April 3, 2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

2014-12884/CAP

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CAP/las

cc:

