

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

IN THE MATTER OF:

██████████
██████████████████
██████████████████

Reg. No.: 2014-27549
Issue No(s): 3005; 6006
Case No.: ██████████
Hearing Date: June 2, 2014
County: Wayne (55)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on June 2, 2014 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent.

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (MA)
benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for
 Family Independence Program (FIP)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? Child Development and Care (CDC)?

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 20, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report changes in income and changes in CDC need.
5. Respondent had did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the FAP fraud period to be July 1, 2009 to February 28, 2010 and CDC OI period to be July 5, 2009 to March 13, 2010.
7. During the fraud period, Respondent was issued \$9,511 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$4,470 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$5,041.
9. This was Respondent's first second third alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was was not returned by the US Post Office as undeliverable.

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). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department

(formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

☒ 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 Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs 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 (see BEM 222), **or**
 - the alleged fraud is committed by a state/government employee.

BAM 720 (May 2014), pp. 12-13.

As a preliminary matter, the Department's OIG report indicated that this was Respondent's second alleged FAP IPV. See Exhibit 1, p. 2. However, the Department failed to present evidence that Respondent received a first FAP IPV. Thus, this hearing decision will address whether Respondent is disqualified from FAP benefits for only 12 months (1st IPV). Also, the Department's OIG testified that it is only seeking a disqualification for Respondent's FAP benefits and also seeking an OI amount for her CDC and FAP benefits.

Intentional Program Violation – FAP IPV and OI amount

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 reporting responsibilities.

BAM 700 (May 2014), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by 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. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (July 2009), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 7.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits from July 1, 2009 to February 28, 2010 because she failed to report a change in her wages to the Department, which caused an overissuance of FAP benefits. As such, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report changes in her income and that she intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

Moreover, the Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,205 during the alleged fraud period. See Exhibit 1, p. 2. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8. However, the Department did not present FAP OI budgets to establish how it calculated the OI amount. The Department only presented the FAP benefit issuance and a handwritten summary budget worksheet. See Exhibit 1, pp. 47-48 and 52. However, the Department failed to present the actual FAP budgets in order to show how the OI amount was calculated.

The local office and client or AHR will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (March 2014), p. 36. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, p. 36. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 39.

Based on the foregoing information, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to establish an OI amount for FAP benefits. BAM 600, pp. 36-39. The Department needs to establish how it calculated the OI amount. However, the Department failed to present evidence of how it calculated the OI amount, i.e, FAP budgets. Thus, the Department is unable to establish an OI of FAP benefits in this case. BAM 600, pp. 36-39; BAM 700, p. 1; and BAM 720, p. 8.

Furthermore, an IPV requires that an OI exists. Department policy states that suspected IPV means an OI exists for which all three of the following conditions exist as stated above. See BAM 700, p. 7; BAM 720, p. 1. Moreover, the Bridges Policy Glossary (BPG) defines IPV as a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative. BPG 2014-002 (January 2014), p. 36. Department policy clearly states that a suspected IPV means an OI has to exist. See BAM 700, p. 7; BAM 720, p. 1; and BPG 2014-002, p. 36. Because the Department cannot establish an OI in this case, it cannot establish by clear and convincing evidence that Respondent committed an IPV of her FAP program. Thus, Respondent is not subject to a disqualification from the FAP program. See BAM 720, pp. 12 and 16.

CDC Overissuance

In this case, the Department alleges that Respondent committed a client error of her CDC benefits because she and her CDC provider over billed the State of Michigan for

more CDC hours than were needed. Therefore, the Department alleges that due to this overbilling, an overissuance was present for her CDC benefits.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (May 2014), p. 1. For CDC only, provider errors are overissuances caused by a provider. BAM 715, p. 2.

Additionally, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715, p. 6.

The Department's OIG indicates that the time period it is considering the OI period is July 5, 2009 to March 13, 2010. See Exhibit 1, pg. 2.

First, the Department presented Respondent's application dated June 18, 2009, in which she reported her employment and her hours ranged from 10 to 16 hours. See Exhibit 1, pp. 10-19. Respondent also requested in the application CDC services for two children based on her work need and education/training approved by DHS or Michigan Works! Agency (MWA) need. See Exhibit 1, p. 21.

Second the Department presented Respondent's CDC application dated May 26, 2010, in which she requested CDC for one child and reported her need was Monday to Friday and some weekends from 7 a.m. to 4 p.m. See Exhibit 1, pp. 26-29.

Third, the Department presented Respondent's Employer Verification document dated June 21, 2010, which showed that her employment began on November 17, 2008. See Exhibit 1, p. 30. Moreover, the verification indicated that Respondent had not set work hours and her monthly hours varied. See Exhibit 1, pp. 30-32.

Fourth, the Department presented Respondent's education verification document dated June 2, 2010, which showed she attended school one or two times per week and had part time hours and did not attend school in the summer. See Exhibit 1, pp. 33-35.

It appeared that the significance of the employer/school verification was to show that Respondent and provider billed for more CDC hours than the subject was eligible to receive. See Exhibit 1, p. 1. The Department argues that Respondent requested CDC services based on employment and education. See Exhibit 1, p. 21. Moreover, during the alleged OI period, the provider billed for the maximum hours (90 every two weeks). See Exhibit 1, pp. 36-43. However, the Department contends that the employer/school verifications show that Respondent was not eligible for the maximum hours billed, even if both need hours (employment and education) were combined. See budget worksheet, Exhibit 1, p. 52. As such, the Department alleges that Respondent committed a client error of her CDC benefits because she and her CDC provider over billed the State of Michigan for more CDC hours than were needed.

At the hearing, Respondent argued two main points. First, Respondent testified that she was unaware that the CDC provider was billing the maximum amount of hours.

Second, Respondent acknowledged and did not dispute the education/employer information provided (i.e., hours worked per month). Rather, Respondent testified that she supplemented her missing hours by participating in the Work First program (“Work First”) by conducting job searches and/or studying in school. At first, Respondent’s own testimony about Work First was only to show that she was doing other work activities rather than show it was relevant to her CDC need. However, during the hearing, it then appeared that Respondent testified that her CDC need was also based upon her Work First participation.

Moreover, the Department confirmed during the hearing that Respondent received cash assistance (i.e., the Family Independence Program (FIP) benefits) from on or around February 1, 2001 to July 31, 2011, which was during the alleged OI period. The Department testified it only had a couple of case notes in her participant history for the Work First program, but no other documentation. The significance of receiving cash assistance is that a client can also request CDC services when receiving FIP assistance. As part of the FIP program, a client’s participation in the Work First program makes them possibly eligible for CDC services (i.e., need based on an approved activity). See BEM 703 (April 2009), p. 3.

As stated in the FAP IPV section, the same income reporting requirements apply to the CDC benefits. See BAM 105, p. 7. Also, other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in day care needs or providers. BAM 105, pp. 7-8.

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

For CDC eligibility to exist for a given child, each parent/substitute parent (P/SP) must demonstrate a valid need reason. BEM 703, p. 2. There are four CDC need reasons. BEM 703, p. 3. 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; or (4) employment. BEM 703, p. 3.

For an approved activity, child care payments may be approved under this need reason when a client needs child care to participate in an employment preparation and/or training activity or a post-secondary education program. BEM 703, p. 8. The activity or education program must be approved by one of the following: DHS; MWA; Refugee Services contractor; Tribal Employment Preparation program; or Michigan Rehabilitation Services. BEM 703, p. 8. Also, Child Development and Care payments may be approved for clients who are employed or self-employed and receive money wages,

self-employment profits or sales commissions within six months of the beginning of their employment. BEM 703, p. 11.

Based on the foregoing information and evidence, the Department did not establish a CDC benefit OI to Respondent totaling \$3,836.

The Department did present evidence (employer/school verification) to show that Respondent and provider billed for more CDC hours than the subject was eligible to receive. See Exhibit 1, p. 1. A review of the CDC budgets shows that the CDC need based on employment/education does meet the maximum hours the provider was billing, even if the hours were combined. See budget worksheet, Exhibit 1, p. 52. However, it was discovered during the hearing that Respondent also received cash assistance throughout the OI period. As stated above, Respondent credibly testified that she participated in the Work First program in order to supplement her employment/education hours (i.e., job search logs and study at school). As part of the FIP program, a client's participation in the Work First program makes them possibly eligible for CDC services (i.e., need based on an approved activity). See BEM 703, pp. 3 and 8. Thus, it is reasonable to conclude Respondent's CDC need was also based on approved activity due to her participation in the Work First program. Even though documentation was not provided of her Work First participation history, the Department confirmed that she received cash assistance throughout the OI period.

Based on this information, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to establish an OI of CDC benefits. Respondent's Work First participation is considered a valid CDC need. See BEM 703, pp. 3 and 8. Moreover, the Department failed to consider Respondent's approved activity (Work First participation) as a valid CDC need and consider such participation hours in the calculation of the CDC budget. Therefore, the Department failed to establish a CDC benefit OI amount totaling \$3,836.

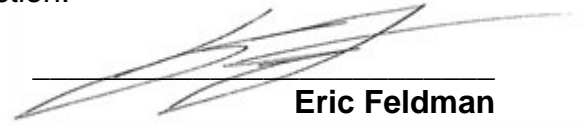
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$5,041 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

delete the OI and cease any recoupment action.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 12, 2014

Date Mailed: June 12, 2014

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.

EJF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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