

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

IN THE MATTER OF:

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

Reg. No.: 2014-27855
Issue No(s): 6006
Case No.: ██████████
Hearing Date: May 28, 2014
County: Saginaw (00)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 telephone hearing was held on May 28, 2014, from Detroit, Michigan. Participants on behalf of the Department included ██████████, Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included Respondent.

ISSUE

Did Respondent receive an OI of

Family Independence Program (FIP)

Food Assistance Program (FAP)

benefits?

State Disability Assistance (SDA)

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. Respondent was a recipient of FIP FAP SDA CDC benefits from the Department.

2. The Department alleges Respondent received a
 FIP FAP SDA CDC
OI during the period May 1, 2012, through January 31, 2013, due to
 Department's error Respondent's error.
3. During the OI period, Respondent was issued \$5,637.84 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
4. The Department alleges that Respondent received a \$5,637.84 OI that is still due and owing to the Department.
5. On February 24, 2014, the Department filed a hearing request, to establish an OI of benefits received by Respondent as a result of Respondent having committed the OI amount.

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.

As a preliminary matter, a Notice of Disqualification Hearing was mailed to Respondent in regards to the above mentioned case. However, the Department is not pursuing an Intentional Program Violation (IPV) for the CDC benefits and the Department testified that it is only pursuing the CDC benefits for an OI amount. As such, the hearing proceeded to address the CDC OI amount and will not address any IPV issue.

In this case, the Department alleges that Respondent committed a client error of her CDC benefits because she did not have a valid CDC need. Specifically, the Hearing Summary indicated that Respondent's employment had ended and she became non-compliant with the Work First program, while continuously receiving CDC benefits. See Exhibit 1, p. 1. Therefore, the Department argues that based upon Respondent's non-compliance with the program and no longer employed, Respondent did not have a CDC need during the alleged OI time period. See Exhibit 1, p. 1.

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.

The Department's OIG indicates that the time period it is considering the OI period is May 1, 2012, through January 31, 2013. At the hearing, the Department presented evidence to show why a client error is present based on her not having a valid need for CDC services (e.g., employment and/or Work First).

First, the OIG report indicated that Respondent was approved for CDC services while she was employed, however, indicated that her employment had ended on or around April 2012. See Exhibit 1, p. 2. The Department presented an unemployment document dated April 30, 2012, to show Respondent was denied unemployment insurance effective April 22, 2012 because she was terminated from her employer. See Exhibit 1, p. 14. The Department also showed Respondent's pay stub that showed a period ending date of April 21, 2012. See Exhibit 1, p. 15.

Additionally, the Department presented redeterminations/applications in which Respondent did not indicate any employment. The Department testified that these documents showed Respondent did not have a CDC need based on employment, even though she continued to receive such assistance. The redeterminations and applications were dated May 17, 2012; September 5, 2012; and October 22, 2012. See Exhibit 1, pp. 10-13 and 22 – 29.

Second, the OIG report indicated that Respondent applied for CDC services to attend the Work First program ("Work First") on May 18, 2012. See Exhibit 1, p. 1. The Department also provided a CDC Provider Verification document dated May 18, 2012, that showed CDC services for three children. See Exhibit 1, pp. 16 – 17. The OIG report indicated that Respondent was approved for Work First and orientation was scheduled for June 25, 2012 and where the Respondent signed the work and self-sufficient rules for cash recipients. See Exhibit 1, pp. 2 and 19-21.

Additionally, the Department presented Work First documents in order to show that Respondent failed to participate in the program. The Department contended that Respondent's failure to participate in the Work First program also showed that she did not have a valid CDC need based on an approved activity. The Work First notes indicated that Respondent only attended the program during the alleged OI period on July 23, 2012 and July 26, 2012. See Exhibit 1, pp. 54-57. Specifically, the Work First notes shows attendance for the orientation on July 23, 2012. See Exhibit 1, p. 54. Also, the case notes indicate that Respondent submitted job search logs on July 26, 2012. See Exhibit 1, p. 54. However, subsequent to that date, Respondent did not attend the Work First program and the program sent her a noncompliance warning letter on September 7, 2012. See Exhibit 1, p. 54. Ultimately, the evidence showed that her cash benefits were terminated on September 18, 2012. See Exhibit 1, p. 56. There were no other case notes after September 7, 2012. See Exhibit 1, p. 54.

Finally, the Department presented an application dated January 18, 2013, in which Respondent requested CDC services for two children and gave the provider's name. See Exhibit 1, pp. 30 – 54. It should be noted that no employment information was provided. See Exhibit 1, p. 45. The OIG report indicated this is when the Department discovered that Respondent utilized CDC services and there was no need reason. See Exhibit 1, p. 2.

At the hearing, Respondent testified that she could not recall if she was terminated on or around April 2012. However, Respondent testified that she was unemployed during the OI period until she received employment on June 15, 2013. Ultimately, Respondent testified that she did have a valid CDC need, which was based upon searching for employment and conducting community service (for her church) through the Michigan Department of Family Independence Agency (FIA) (which is the former name for DHS). Respondent appeared to testify that her DHS worker allowed CDC benefits based on the community service and/or cash program. Respondent, though, failed to present any documentary evidence of job search logs and/or community service logs. It should be noted that the Work First notes notated community service hours dated September 6, 2011; however, this occurred before the alleged OI period. See Exhibit 1, pp. 54-55.

Additionally, Respondent testified that the case notes indicate no-shows because she was notified by the Department she could no longer receive help. See Exhibit 1, pp. 54-55. Thus, Respondent testified that is why she no longer attended Work First. Respondent also testified that she did not know she was receiving CDC services for her children nor did she apply for daycare during the OI time period. It should be noted that even if Respondent did not know about CDC services, the Department can still seek recoupment via agency error. See BAM 705 (May 2014), pp. 1-12.

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105 (May 2012), p. 5. This includes completion of necessary forms. BAM 105, p. 5. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105, p. 7. 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 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 (April 2012), 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.

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. 7. The activity or education program must be approved by DHS; one-stop service center; refugee services contractor; tribal employment preparation program; or Michigan Rehabilitation Services (MRS). See BEM 703, p. 7.

CDC eligibility ends based on an approved activity need reason when:

- The client is no longer participating with the one-stop service center or other employment agency.
- The activity is no longer approved.
- The client no longer meets CDC eligibility requirements.
- The need no longer exists.

BEM 703, pp. 8-9.

Also, CDC 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. 9.

Based on the foregoing information and evidence, the Department established a CDC benefit OI to Respondent.

First, the evidence presented that Respondent did not have a valid CDC need based on no longer being employed. As stated previously, the OIG report indicated that Respondent was approved for CDC services while she was employed; however, indicated that her employment had ended on or around April 21, 2012. See Exhibit 1, p. 2. As such, the evidence is persuasive that Respondent committed a client error of her CDC benefits because she did not have a valid CDC need based on employment. See BEM 703, pp. 1, 3, and 9.

Second, the evidence presented that Respondent did not have a valid CDC need based on being non-compliant with the Work First program. The evidence is sufficient to show that Respondent failed to participate in the Work First program. See Exhibit 1, pp. 54-57. However, even though the Respondent's CDC need based on an approved activity had ended, she continued to receive CDC benefits. See Exhibit 1, pp. 54 – 56. Respondent testified that she continued to look for employment and also participated in community service activities. However, Respondent failed to present any documentary evidence of such activities to show a valid CDC need. As such, the evidence is persuasive that Respondent committed a client error of her CDC benefits because she did not have a valid CDC need based on approved activity. See BEM 703, pp. 1, 3, and 7-9.

Regarding client error overissuances, the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months before the date the OI was referred to the RS, whichever is later. BAM 715, p. 4. To determine the first month of the OI period (for OIs 11/97 or later) the department allows time for: the client reporting period; the full standard of promptness (SOP) for change processing; and the full negative action suspense period. BAM 715, p. 5. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 715, p. 5.

Additionally, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (May 2014), 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.

Applying the above standard and in consideration of the employment ending on or around April 21, 2012, the Department determined that the OI period began on May 1, 2012. See Exhibit 1. It is found that the Department applied the inappropriate OI begin date and the appropriate OI begin date is June 1, 2012. See BAM 715, p. 5.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued CDC benefits by the State of Michigan from May 2012 to January 2013 totaling \$5,637.84. See Exhibit 1, pp. 58-64. However, as stated above, the OI period began in June 2012, thus, the OI amount of \$835.20 for the pay periods of 5/6/12 – 5/19/12 and 5/20/12 – 6/2/12 is subtracted from the OI amount sought. See Exhibit 1, p. 58. Thus, the Department is entitled to recoup \$4,802.64 for the time period of June 2012 to January 2013.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish a benefit OI to Respondent totaling \$4,802.64.

Accordingly, the Department CDC is AFFIRMED.

The Department is ORDERED to initiate collection procedures for a \$4,802.64 OI in accordance with Department policy.



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

Date Signed: June 9, 2014
Date Mailed: June 9, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

EJF/cl

CC:

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