

**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.: 2014-31961
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 three-way telephone hearing was held on May 28, 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; Respondent's first witness, ██████████; and Respondent's second witness, ██████████.

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 February 15, 2011, through December 13, 2012, due to
 Department's error Respondent's error.
3. During the OI period, Respondent was issued \$13,074 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 \$13,074 OI that is still due
and owing to the Department.
5. On March 19, 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 OIG report indicated that the Respondent's provider contacted the Department and reported that the Respondent had been billing CDC benefits for three years and the provider has not been watching the children. See Exhibit 1, p. 2. Therefore, the Department infers there was no valid CDC need during the fraud time period as no CDC services were provided.

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 February 15, 2011, through December 13, 2012. At the hearing, the Department presented evidence to show why a client error is present based on her not having a valid need CDC (e.g., no eligible CDC provider).

First, the Department presented a CDC application dated February 18, 2011, to show that Respondent acknowledged her responsibility to report changes as required. See Exhibit 1, pp. 11-15.

Second, the Department presented multiple CDC Unlicensed Provider Applications and/or CDC Provider Verifications dated March 30, 2012; April 6, 2012; June 11, 2012; and November 19, 2012. See Exhibit 1, pp. 23-35. The OIG report indicated that the significance of these applications is that where the provider wrote and signed their name, that the middle name was misspelled on each application. See Exhibit 1, pp. 23-35. It should be noted that Respondent provided an updated address for the provider received on November 19, 2012 and a copy of the address located on the back of a driver's license was provided. See Exhibit 1, pp. 32-33. It should also be noted that the Department presented a Secretary of State printout dated January 29, 2013, which showed a different spelling than the one filled out in the above applications. See Exhibit 1, p. 39.

Third, the Department presented a letter from the alleged provider dated January 3, 2013, which stated that she had not provided CDC services to the Respondent since 2009. See Exhibit 1, p. 36. Moreover, the letter stated that the Respondent is using the provider's name without her permission. See Exhibit 1, p. 36. Furthermore, the letter stated that the Respondent is billing under the provider's name and having the money directly deposited into the Respondent's personal account. See Exhibit 1, p. 36.

Fourth, the Department presented a police report dated January 3, 2013, which is completed by alleged provider. See Exhibit 1, pp. 37-38. The filing of the report also stated that the Respondent has been using the provider's name to receive CDC payments for care that she did not provide. See Exhibit 1, pp. 37-38.

Fifth, the Department presented a case comments – summary document. See Exhibit 1, p. 49.

At the hearing, Respondent first testified that the provider did provide CDC services for her children during the alleged OI period. Moreover, the Respondent testified that the handwritten letter and police report dated January 3, 2013, was completed by the provider's mother because the mother was angry with the Respondent. Also, in regards to the verification forms having the provider's middle name misspelled, the Respondent testified that she completed and signed the forms on behalf of the provider. Respondent testified that she just thought she spelled the name middle name correctly

and that she only completed the forms because the provider had difficulty in completing them. Respondent testified that the provider was present with the Respondent when the forms were completed. Finally, Respondent testified that she was added to the provider's bank account, in which the CDC payments were deposited into. Respondent testified that she would drive the provider (provider had no transportation) to the bank and withdraw the money for her and would then give the provider the CDC payments.

Additionally, Respondent's second witness testified that she did observe the provider watch Respondent's children during the alleged OI period. The second witness inferred that she was present and witnessed CDC services being rendered by the provider during the alleged OI period.

Also, Respondent had the alleged provider participate via three-way telephone hearing as a witness. The alleged provider/witness acknowledged all of the Respondent's testimony. The alleged provider/witness testified that her mother was angry at the Respondent. Moreover, the alleged provider/witness testified that her mother sent the handwritten letter and police report, which improperly stated that the provider did not watch Respondent's children. Instead, the alleged provider/witness testified that she did provide CDC services to the Respondent's children during the alleged OI period. Finally, the alleged provider/witness agreed that she had difficulty in completing the verification forms and that the Respondent completed it for her.

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105 (January 2011), 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 (January 2011), p. 1.

Eligibility for CDC services exists when the department has established all of the following:

- There is a signed application requesting CDC services.
- Each parent/substitute parent is a member of a valid eligibility group.
- Each parent/substitute parent (P/SP) meets the need criteria.
- An eligible provider is providing the care.
- All eligibility requirements are met.

BEM 703, p. 1.

Care must be provided in Michigan by an eligible provider. BEM 704 (January 2011), p. 2. Another group of providers recognized by the department are unlicensed providers (aides and relatives). BEM 704, p. 2. These providers are enrolled by DHS and are not required to be registered or licensed by Bureau of Children and Adult Licensing (BCAL). BEM 704, p. 2; See also BEM 704, pp. 2-15.

Based on the foregoing information and evidence, the Department established a CDC benefit OI to Respondent. The evidence presented that the Respondent did not have an eligible provider during the OI period, thus, eligibility for CDC services did not exist during this time period. See BEM 703, p. 1.

Care must be provided in Michigan by an eligible provider or an unlicensed provider. See BEM 704, p. 2. The evidence is persuasive that Respondent's children did not receive such care. Specifically, the Department presented multiple documents in which the provider's middle name was misspelled. See Exhibit 1, pp. 23 – 35. Respondent and the alleged provider claimed that Respondent completed the forms on the provider's behalf due to difficulty in understanding such forms. However, Respondent and the alleged provider/witness did not provide credible testimony. Instead, the forms showed on multiple occasions misspellings of the provider's name. See Exhibit 1, pp. 23 – 35. It is understandable if there was a misspelling on one occurrence, however, there were multiple applications and/or verifications submitted throughout the OI period, which showed the provider's middle name misspelled. It is therefore reasonable to conclude that the Respondent completed these forms in order for her to receive CDC services even though there was not an eligible provider present during the OI period. Because there was not an eligible provider established during Respondent's OI period, she was not eligible for CDC services. BEM 703, p. 1 and BEM 704, p. 2.

Additionally, Respondent and/or the alleged provider claimed that the letter and police report were completed by the provider's mother. See Exhibit 1, pp. 36-38. Moreover, Respondent's second witness claimed that she observed the provider care for Respondent's children. However, as stated previously, it is found that the Respondent and the witnesses did not credibly testify. Instead, the documentation showed multiple misspellings on documents and reports (both verbal and written) that the alleged provider did not care for the children during the OI period. See Exhibit 1, pp. 23-38 and 49. As such, the evidence is persuasive that Respondent committed a client error of her CDC benefits and was not eligible for CDC benefits because she did not have an eligible provider. See BEM 703, p. 1 and BEM 704, p. 2.

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 oldest application found dated February 15, 2011, the Department determined that the OI period began on February 15, 2011. See Exhibit 1, pp. 2 and 11-15. It is found that the Department applied the inappropriate OI begin date and the appropriate OI begin date is April 1, 2011. 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 February 2011 to December 2012 totaling \$13,074. See Exhibit 1, pp. 41-48.

First, the Department improperly calculated the total OI amount. The Department included in this amount for pay periods in November and/or December of 2010. See Exhibit 1, p. 41. However, November and/or December of 2010 are not included for the OI period (February 15, 2011 to December 13, 2012). See Exhibit 1, p. 2. Therefore, the November and/or December of 2010 payments are subtracted from the OI amount sought. See Exhibit 1, pp. 41-48.

Second, as stated above, the OI period began in April 2011, thus, the payments for the pay periods of February 13, 2011 to April 9, 2011 are subtracted from the OI amount sought. See Exhibit 1, pp. 41-42. Thus, the Department is entitled to recoup \$10,812 for the time period of April 10, 2011 to December 13, 2012. See Exhibit 1.

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 \$10,812.

Accordingly, the Department CDC is AFFIRMED.

The Department is ORDERED to initiate collection procedures for a \$10,812 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:

[REDACTED]
[REDACTED]
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