

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

IN THE MATTER OF:



Reg. No.: 2014 31204
Issue No(s): 6005
Case No.: [REDACTED]
Hearing Date: July 7, 2014
County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 July 7, 2014 from Detroit, Michigan. The Department was represented by [REDACTED], Lead Regulation Agent of the Office of Inspector General (OIG).

Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of the Child Development and Care (CDC) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving 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. The Department's OIG filed a hearing request on March 12, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. Respondent was a recipient of CDC benefits issued by the Department.
3. Respondent was aware of the responsibility to report changes in circumstances such as birth, death and income.
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time period it is considering the fraud period is February 24, 2002 through March 31, 2007 (fraud period).
6. During the fraud period, Respondent was issued \$25,618.65 CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
7. The Department alleges that Respondent received an OI in CDC benefits in the amount of \$25,618.65.
8. This was Respondent's first alleged IPV.
9. A notice of hearing was mailed to Respondent at the last known address and 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 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 PEM 222), **or**
 - the alleged fraud is committed by a state/government employee.

PAM 720 (October 2006), p. 10.

Intentional Program Violation

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.

PAM 700 (October 2006), pp. 5-6; PAM 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. PAM 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.

The Department outlined three reasons why it believed Respondent committed an IPV of the CDC programs. Each will be addressed separately.

Provider's death

In support of its contention that Respondent committed an IPV, the Department presented several applications for CDC benefits submitted by Respondent to the Department in which Respondent acknowledged that she had received the Information Booklet advising her regarding Things You Must Do which explained reporting changes in circumstances. One of the applications for CDC benefits was submitted on October, 28, 2004. In that application, she listed her mother as the care provider for her minor children. The Department provided Respondent's mother's death certificate which showed that she passed away on [REDACTED]. The Department established that benefits were issued and paid to Respondent's mother. Further, the Department testified that Respondent did not report her mother's death until August 2005 when a new care provider was requested.

Lack of need

The Department contends that Respondent requested benefits in order to participate in Work First or because she was employed. The Department provided evidence which revealed that Respondent only had limited participation with Work First and worked at two companies for less than two months. However, Respondent listed that she was self-employed on her January 27, 2003, October 22, 2003, October 28, 2004, November 20, 2006 and April 23, 2007 applications. The Department provided no evidence to establish that Respondent was not self-employed causing a need for child care services.

Failure to report birth of child

The Department also alleges that Respondent committed an IPV of the CDC program because she did not request any child care assistance for new baby born on [REDACTED] until October 28, 2004. The Department provided evidence that Respondent received child care services for her other minor children during this time. There was clearly a period of time, albeit unknown, that Respondent would not have needed child care services immediately following the birth of her child as she would have been at home and unable to work.

Conclusion

The evidence in this case shows that Respondent failed to report the birth of her child in [REDACTED] failed to report that she did not need child care for any period of time immediately following the birth; and allowed CDC payments to be issued in her mother's name after her mother had passed away. Accordingly, it is found that Respondent intentionally misled the Department for the purposes of maintaining her eligibility for CDC benefits.

Disqualification

Department policy did not address Intentional Program Violations relating to the CDC program for the time period in which this violation took place. However, the Michigan Administrative Code Rules did address the issue of a client's intentional failure to

cooperate as well as the mandatory disqualification periods. Michigan Administrative Code Rule 400.5020 holds as follows:

(3) A program group containing a client or an adult member who intentionally fails to cooperate as required in subrule (1) of this rule, for obtaining benefits for which the program group is ineligible, shall be ineligible for the child development and care program for the following intervals:

- (a) For the first occurrence, 6 months.
- (b) For the second occurrence, 12 months.
- (c) For the third occurrence, lifetime.

(4) Failure to cooperate shall be considered intentional when intent to obtain benefits for which the program group is ineligible is established by any of the following:

- (a) A court.
- (b) An administrative law judge.
- (c) The client or adult program group member signing a repay agreement or disqualification form.

In this case, the undersigned ALJ finds that the Department has satisfied its burden of showing that Respondent committed an IPV concerning CDC benefits. Accordingly, Respondent is subject to a six month disqualification under the CDC program.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. PAM 700, p. 1. Under Department policy, the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months (6 years) before the date the OI was referred to the Recoupment Specialist (RS), whichever is later. PAM 715 (January 2007), p. 4. To determine the first month of the OI period 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. PAM 715, pp. 4-5. 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. PAM 715, pp. 4-5.

Provider's death

The Department alleged that Respondent was overissued benefits in the CDC program from February 24, 2002 through March 31, 2007. The Department clearly established that Claimant failed to report the death of her mother who was the listed child care provider for the minor children at the time of her death. Using the SOP above, the OI period for this period would begin with payments issued on approximately May 1, 2005. Because payments were issued to a non-living person from May 1, 2005 through August 6, 2005, it is found that the Department has established that an OI occurred this

period. The Department provided evidence that payments were issued for two of Respondent's minor children during this period. Payments were made for each of the two minor children during this time period in the amount of \$1,246.00 for a total OI amount during this period of \$2,492.00.

Lack of need

The Department further alleged that Respondent was over issued benefits because she was employed for approximately two months and had limited participation with Work First during the fraud period. As previously stated, Respondent listed self-employment on several of her CDC applications and as such, there was no evidence presented that Respondent was not self-employed and therefore needed child care services during at least some of the fraud period. Therefore, the Department has failed to establish an OI based on lack of need.

Failure to report birth of child

The Department further alleged that Respondent was over issued benefits because she failed to notify her assigned worker that she had given birth to a child on [REDACTED] [REDACTED]. Respondent did not request child care assistance for the newborn child until October 28, 2004 but continued to request services for the older minor children. Again, using the SOP above, the OI period would have begun on approximately February 23, 2004. Given Respondent's dishonesty concerning the death of her mother and because she failed to report that she did not need child care services immediately following the birth of her child, it is found that the Department established that an OI occurred from March 1, 2004 through October 28, 2004. The Department provided evidence that during this time, payments were issued in the amount of \$3,204.00 each for three of Respondent's minor children for a total OI amount during this period of \$9,612.00.

Conclusion

It is found that the Department is entitled to recoupment in the total amount of \$12,104.00 for the periods of May 1, 2005 through August 6, 2005 (for monies improperly paid after the provider's death) and February 23, 2004 through October 28, 2004 (for monies paid when Respondent was at home caring for newborn child).

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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of CDC program benefits in the amount of \$14,952.00 from the CDC program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$14,952.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the CDC program for a period of six months.



JACQUELYN A. MCCLINTON
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 30, 2014

Date Mailed: July 30, 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.

JAM/cl

cc:

