

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-32257
Issue No.: 6005
Case No.: [REDACTED]
Hearing Date: July 31, 2014
County: Wayne-District 17

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 31, 2014 from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent was represented by her attorney [REDACTED]. Respondent personally appeared and provided testimony.

ISSUES

1. Did Respondent receive an overissuance (OI) of 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)?

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 24, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has not requested that Respondent be disqualified from receiving CDC benefits.

3. Respondent signed an Assistance Application (FIA-1171) seeking Food Assistance Program (FAP) and CDC benefits on January 26, 2006. (Exhibit 1, p 18).
4. Respondent indicated on the FIA-1171 that she had 3 minor children in her household. (Exhibit 1, p 13).
5. Respondent reported on the FIA-1171 that she was employed at [REDACTED] and that she was last paid on January 20, 2006. (Exhibit 1, p 15).
6. The Department received Respondent's completed FIA-1171 on January 26, 2006. (Exhibit 1, p 19).
7. Respondent received earnings from [REDACTED] from January 14, 2006 through May 6, 2006. (Exhibit 1, p 28).
8. Respondent did not receive compensation from [REDACTED] effective May 6, 2006. (Exhibit 1, p 28).
9. Respondent filed for unemployment compensation benefits (UCB) on or about May 9, 2006. (Exhibit 1, p 31).
10. Respondent received UCB from May 7, 2006 through November, 2006. (Exhibit 1, p 31-32).
11. The Department provided CDC payments for the 3 minor children who were in Respondent's custody. (Exhibit 1, pp 33-34).
12. Respondent was aware of the responsibility to timely and accurately report to the Department any changes in household circumstances including changes in employment.
13. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
14. The Department's OIG indicates that the time period it is considering the fraud period is April 30, 2006 through October 1, 2006.
15. The Department's OIG submits that Respondent, during the alleged fraud period, was issued [REDACTED] in CDC benefits by the State of Michigan.
16. The Department's OIG contends that Respondent was entitled to [REDACTED] in CDC benefits during the alleged fraud period.
17. The Department's OIG alleges that Respondent received an OI in CDC benefits in the amount of [REDACTED].

18. The Department's OIG claims that this was Respondent's first alleged CDC IPV.
19. 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 goal of the 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. PEM 703 (1-1-2006), p 1.

PEM 703 indicated that the Department "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. See PEM 703, p 1.

For CDC eligibility to exist for a given child, each Parent/Substitute Parent (P/SP) must demonstrate a valid need reason. PEM 703, p 2. "P/SP" means the following persons who live in the home and are unavailable to care for the child due to a valid need reason:

- The child's parent(s)
- The child's stepparent
- The child's foster parent(s)
- The child's legal guardian(s)
- If the child has no parent, stepparent or legal guardian who lives in the home, the applicant/client is the Parent/Substitute Parent for that child.

- If the child's only Parent/Substitute Parent who lives in the home is excluded from providing the care (see NEED in this item), the applicant/client is the Parent/Substitute Parent for that child.

There are four CDC need reasons. Each Parent/Substitute Parent of the child needing care must have a valid need reason during the time child care is requested. 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) MWA Approved Activity; and (4) Employment. PEM 703, p 3.

Intentional Program Violation

An Intentional Program Violation (IPV) is a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. Bridges Program Glossary (BPG) (1-1-2014), p 36.

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 [REDACTED] or more, or
 - the total OI amount is less than [REDACTED], **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 (10-1-2005), pp. 9-10.

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 (7-1-2005), p. 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. There must be clear and convincing evidence that the customer acted intentionally for this purpose. 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 Michigan Civil Jury Instruction (Mich Civ JI) 8.01.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Department policy indicates that clients must report changes in circumstances that potentially affect eligibility or benefit amount. PAM 105 (1-1-2006), p 5. Clients are required to report changes in circumstances within 10 (ten) days after the client is aware of them. PAM 105, 5. These changes include, but are not limited to changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. PAM 105, pp 7-8.

Clients must cooperate with the local office in determining initial and ongoing eligibility. PAM 105, p 5. This includes completion of necessary forms. PAM 105, p 5. Clients must completely and truthfully answer all questions on forms and in interviews. PAM 105, p 5. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. PAM 105, p 5.

In the instant matter, the Department's OIG alleges that Respondent misrepresented her employment status to the Department which resulted in an OI of CDC benefits during the time period referenced above. Specifically, the Department OIG contends

that Respondent failed to report to the Department that her employment at the ██████████ ██████████ ended on April 22, 2006 and did not resume again until June 20, 2007. (See Investigation Report, Exhibit 1, p 3) According to the Department's OIG, Respondent continued to receive CDC benefits for 3 foster children during a period of unemployment from late April, 2006 through June 20, 2007.¹ (See Investigation Report, Exhibit 1, p 3). The Department's OIG determined that Respondent's intentional and wilful conduct resulted in an OI of CDC benefits in the amount of ██████████ during the alleged fraud period.

Respondent, on the other hand, generally denies the allegations. Respondent testified that in January, 2006, she applied for and received CDC benefits from the Department to care for 3 foster children. Respondent stated that she worked at ██████████ at the time. Respondent further testified that as of March 31, 2006, she no longer cared for the children as they were returned to their biological father. Respondent said that during the month of April, 2006, she did not have any children in her care. However, Respondent said that the 3 children returned to her home in May, 2006, but that Respondent was not working at this time. Respondent testified that she called her Department caseworker in May, 2006 and reported that she did not need CDC benefits as she was unemployed. Respondent stated that she was not working until October, 2006 when she obtained employment working for then-██████████ ██████████. Respondent was unaware that the day care provider continued to bill for the 3 foster children and she did not receive any financial benefit during the alleged fraud period.

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. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

The first issue that must be addressed is whether there is clear and convincing evidence on the record to show that Respondent committed an IPV when she allegedly failed to report to the Department that she was no longer had a need for CDC benefits because she was unemployed. This Administrative Law Judge does not find that the

¹ The Department's OIG acknowledged in the Investigation Report that Respondent claimed employment with the Jennifer Granholm for Governor campaign from October 3, 2006 through November 7, 2006. See Exhibit 1, p 2.

evidence to be clear and convincing that Respondent intentionally withheld or misrepresented the fact that she was no longer working at [REDACTED] for the **purpose** of maintaining her CDC program benefits. Respondent's testimony that she reported to her caseworker in May, 2006 that she no longer worked at [REDACTED] and no longer had a need for CDC benefits is credible. Respondent's statements that the 3 foster children were with her from May, 2006 through October, 2006 are also credible. Respondent's testimony is also corroborated by the objective documentation in the record which shows that Respondent was not employed beginning on May 6, 2006. This Administrative Law Judge finds that the clear and convincing evidence on the whole record does not show that Respondent committed an IPV.

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. An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. PAM 700, p 4 (7-1-2005). 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. PAM 700, p 6 (7-1-2005). If unable to identify the type of OI, the Department records it as an agency error. PAM 700, p 4 (7-1-2005).

In this matter, the Department OIG also contends that Respondent received an OI of CDC benefits from April 30, 2006 through October 1, 2006. The Department OIG calculates that the OI amount is [REDACTED]. The Department has provided the record with documentation that does not specifically relate to the receipt of CDC benefits pertaining to Respondent's foster children. In addition, the Department does not clearly show how it has calculated Respondent's [REDACTED] OI of CDC benefits. This Administrative Law Judge does not rule out the possibility that Respondent may have received an OI of CDC benefits, but the Department has failed to provide sufficient documentation in the record so that an accurate calculation can be determined. Accordingly, this Administrative Law Judge finds that the Department has not established that Respondent received an OI of CDC benefits that may be recouped.

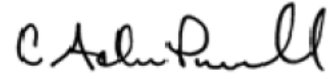
DECISION AND ORDER

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. Respondent did not commit an IPV by clear and convincing evidence.
2. Respondent did not receive an OI of CDC program benefits in the amount of [REDACTED].

The Department is ORDERED to delete the OI and cease any recoupment action.

It is FURTHER ORDERED that the Department shall delete any CDC IPV from Bridges relating to the instant matter.



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

Date Signed: 08/04/2014

Date Mailed: 08/05/2014

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.

CAP/sw

cc:

