

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

IN THE MATTER OF:



Reg. No.: 14-005783
Issue No.: 6005;6006
Case No.: [REDACTED]
Hearing Date: October 16, 2014
County: WAYNE-DISTRICT 76

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 October 16, 2014, from Detroit, Michigan. The Department was represented by [REDACTED], 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 Child Development and Care (CDC) 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 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 July 7, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of CDC benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in circumstances to the Department.
5. Respondent 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 fraud period is March 13, 2011 to December 3, 2011 (fraud period).
7. The Department alleges that Respondent received an OI in CDC benefits in the amount of \$6525.
8. This was Respondent's first alleged IPV of the CDC program.
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 BEM 222), **or**
 - the alleged fraud is committed by a state/government employee.

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

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.

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

In order to be eligible for CDC benefits, each parent must have a need for such benefits. BEM 703 (July 2011), p 1. A valid need exists if the parent is unavailable to provide the care because of family preservation, high school completion, an approved activity or employment. BEM 703, pp 3-4, 5-12. The need must be verified by the Department. BEM 703, p. 12.

The Department testified that Respondent was initially receiving CDC benefits based on her employment. The Department stated that once Respondent's employment ended, she began receiving CDC benefits based on her participation in the Work First program.

In support of its contention that Respondent committed an IPV, the Department presented an application for CDC benefits that Respondent submitted to the Department on March 15, 2011. (Exhibit 1, p. 9-17). A review of the application establishes that Respondent accurately reported that she was laid off from her job in February 2011 and was requesting CDC assistance on the basis that she was participating in an education/training program approved by DHS or Michigan Works. (Exhibit 1, pp. 14-16).

The Department also presented a redetermination for Respondent's Medical Assistance (MA) case that was submitted on April 1, 2011, on which she reports that none of her children are receiving child care and an application for food assistance benefits submitted on May 9, 2011, on which she reports that she is not employed or receiving income.

Although the applications and redeterminations establish that Respondent was advised of her responsibility to report changes in circumstances, they do not establish, by clear and convincing evidence, that Respondent intentionally withheld or misrepresented information in order to receive CDC benefits.

The Department alleges that Respondent's hours of employment and Work First program hours did not meet the CDC needs that were billed by the CDC provider on behalf of Respondent's children. The Department testified that Respondent was noncompliant with the Work First program requirements and that she did not need the CDC benefits issued to her for the time period in which the provider watched the children.

Based on the foregoing, there was insufficient evidence to establish by clear and convincing evidence that Respondent committed an IPV of her CDC benefits, as it remained unclear after further review how Respondent misrepresented her circumstances or intentionally withheld information from the Department in order to continue receiving CDC benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is

otherwise eligible. BAM 710 (July 2013), p. 2. CDC policy imposes the appropriate disqualification and provides that clients will be disqualified for six months for the first occurrence of IPV; twelve months for second occurrence; and lifetime disqualification for the third IPV. BEM 708 (April 2014), pp. 1-3.

In this case, the Department failed to satisfy its burden of showing that Respondent committed a CDC IPV. Therefore, Respondent is not subject to a disqualification from 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. BAM 700, p. 1. For CDC cases, the amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 715 (July 2014), pp. 1, 6. A client error CDC OI occurs when the client receives more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. BAM 715, p.1.

In this case, the Department alleges that Respondent received an OI of CDC benefits on the basis that she continued to take her children to the authorized CDC provider for hours in excess of her need. The Department contended that Respondent's employment hours and hours of participation in the Work First program do not match with the hours that were billed by the CDC provider and authorized by the Department. The Department presented an affidavit from the CDC provider on which she indicates that she watched Respondent's children four to five days a week from March 2011 to December 2011, from 2 pm to 3 am; however, sign in logs or other documentary evidence supporting the provider's statements were not presented. (Exhibit 1, p. 39).

Specifically, the Department alleged that Respondent received a total of \$7776 in CDC benefits for three children, and was eligible to receive \$1248 (for three children), resulting in a CDC OI of \$6528. (Exhibit 1, pp. 40-42). Although the Department presented CDC benefit summary inquiry and CDC provider billing summaries detailing the actual amount of CDC benefits that Respondent's CDC provider was paid, the Department did not present sufficient evidence in support of its testimony that Respondent's correct amount of CDC benefits for the period between March 2011 and December 2011 was \$1248. The Department testified that in calculating the amount of CDC benefits Respondent was eligible to receive, it determined that she was only eligible for 15 hours per period based on her participation in Work First. The Department did not present any documentary evidence showing the number of hours Respondent actually participated in Work First, therefore, the Department's testimony and calculation of the eligible amount could not be verified.

Because it remained unclear after a thorough review of the evidence exactly how the OI was calculated in this case, the Department has failed to establish that Respondent was overissued CDC benefits in the amount of \$6528, and is therefore not entitled to recoupment.

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 of the CDC program by clear and convincing evidence.
2. Respondent did not receive an OI of program benefits in the amount of \$6528 from the CDC program.

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



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **10/29/2014**

Date Mailed: **10/29/2014**

ZB / cl

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

