

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

**IN THE MATTER OF:**

[REDACTED]

MAHS Reg. No.: 14-010203  
Issue No.: 3005, 6005  
Agency Case No.: [REDACTED]  
Hearing Date: August 13, 2015  
County: Oakland (2) Madison Hts

**ADMINISTRATIVE LAW JUDGE:** Colleen Lack

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Health and 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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on August 13, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). [REDACTED] (L.O.), the listed child care provider, appeared as a witness for the Department.

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 Food Assistance Program (FAP) and 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 benefits for FAP and 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. The Department's OIG filed a hearing request on September 2, 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 FAP and CDC benefits issued by the Department.
4. Respondent was aware of the responsibility to timely report any change in circumstances that will affect eligibility or benefit amount.
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 for CDC is June 7, 2009, through August 14, 2010, (fraud period).
7. During the CDC fraud period, Respondent was issued \$ [REDACTED] in CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in CDC benefits in the amount of \$ [REDACTED]
9. The Department's OIG indicates that the time period it is considering the fraud period for FAP is December 1, 2009, through July 30, 2010, (fraud period).
10. During the FAP fraud period, Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
11. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
12. This was Respondent's first alleged IPV.
13. 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 Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP

pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

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 overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1,000 or more, or
  - the total amount is less than \$1,000, 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 1, 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 1, 2014), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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.

Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. BAM 105, (April 1, 2009), pp. 7-8.

In this case, the Department has established that Respondent was aware of her reporting responsibilities. Respondent's signature on the CDC Application and Assistance Applications in this record certifies that she was aware of the reporting responsibilities and that fraudulent participation in benefits could result in criminal, civil or administrative claims. (Department Exhibit A, pp. 67-70, and 97-128) In addition, Respondent had no apparent physical or mental impairment that limited her understanding or ability to fulfill the reporting responsibilities.

In this case, [REDACTED] was enrolled as the CDC Provider for Respondent's case beginning May 31, 2009, and ending September 25, 2010. (Department Exhibit A, pp. 16-17) However, the Child Care Provider Verification form completed by [REDACTED] and Respondent indicated the child care began on June 9, 2009. (Department Exhibit A, pp. 71-72) The Department noted that [REDACTED] was dis-enrolled, because training was not completed. (Department Exhibit A, p. 12-15)

[REDACTED] provided a written statement and testimony that she was never paid by Respondent and never actually watched Respondent's children. [REDACTED] explained that when they lived in [REDACTED] Michigan, Respondent was her neighbor, they were friends and their children were friends. When Respondent found a job, she asked [REDACTED] to provide child care. [REDACTED] agreed to provide the child care and completed paperwork to be enrolled as the CDC provider. [REDACTED] explained that Respondent then moved before she actually watched the children and [REDACTED] never heard from Respondent. [REDACTED] was notified by the IRS that she owed taxes on the CDC payments. [REDACTED] then contacted the Department reporting that she never received any CDC payments from Respondent or provided care for Respondent's children. ([REDACTED] Testimony and Department Exhibit A pp. 129)

It is noted that there was a difference found in initial fraud investigation documentation from January 2013, regarding what [REDACTED] reported to the Department. The January 2013 documentation indicates that [REDACTED], in part, reported that Respondent told her someone else was watching her children and she did not need [REDACTED]. However, the other information in the January 2013 documentation was consistent, such as [REDACTED] being notified by the IRS that she owed taxes on CDC payments, [REDACTED] never watching

Respondent's children, and [REDACTED] not being paid by Respondent. (Department Exhibit A, pp. 12-15) However, this does not appear to be documentation completed or reviewed by [REDACTED] to confirm it was accurate. Overall, [REDACTED]'s testimony is found mostly credible and the assertion that Respondent moved is supported by other documentation, as discussed below.

The Department's documentation shows that replacement warrants were issued on December 10, 2009, for many CDC benefit periods from June 7, 2009, through September 26, 2009. (Department Exhibit A, pp. 90-93) The Department's documentation also included copies of the front side of paid warrants dated from December 10, 2009, though, July 15, 2010, all of which issued to Respondent at an address in [REDACTED]. (Department Exhibit A, pp. 130-147) This is consistent with the [REDACTED] testimony that Respondent moved from [REDACTED], Michigan. The Department's documentation further included copies of the back side of cashed warrants, all of which were signed by Respondent and showed processing stamps from the bank between December 14, 2009, and July 16, 2010. (Department Exhibit A, pp. 49-66)

Respondent's failure to report that [REDACTED] was not actually providing child care resulted in an OI of CDC benefits. Further, Respondent is considered to have unreported income based on cashing the CDC payments and not paying the enrolled CDC provider, which resulted in an OI of FAP benefits. Overall, the evidence establishes that the Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Accordingly, the Department has established that the Respondent committed a FAP and CDC IPV by clear and convincing evidence.

### **Disqualification**

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (April 1, 2014), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. 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.

In this case, the evidence of record established that Respondent committed a FAP and CDC IPV; therefore, she is subject to disqualification.

### **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, the evidence of record shows that during the above-mentioned fraud period Respondent received an OI of CDC benefits in the amount of \$ [REDACTED]. Further, the

evidence of record shows that during the above-mentioned fraud period Respondent received an OI of FAP benefits in the amount of \$ [REDACTED]. The total OI of the CDC and FAP benefits is \$ [REDACTED].

### 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 program benefits in the amount of \$ [REDACTED] from the FAP and CDC programs.
3. The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP and CDC in accordance with Department policy.



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Colleen Lack  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Mailed: **8/21/2015**

CL/jaf

**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. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

[REDACTED]