

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-010869
Issue No.: 6005
Case No.: [REDACTED]
Hearing Date: March 31, 2015
County: Wayne (31) Grandmont

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 March 31, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included Claimant and her mother, [REDACTED].

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 benefits for 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. The Department's OIG filed a hearing request on September 3, 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 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 the group's need for CDC.
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 September 17, 2006, to December 23, 2006, January 7, 2007, to December 22, 2007, and January 6, 2008, to August 2, 2008 (fraud period).
7. During the 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. This was Respondent's first alleged IPV.
10. 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 \$500 or more, **or**
 - the total OI amount is less than \$500, **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 (10/1/14), p. 14.

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 (5/1/14), 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.

In this case, the Department alleges that Respondent was not working during the fraud period. The allegation is that, during the period of September 17, 2006, to December 23, 2006, she benefitted from \$ [REDACTED] in CDC and was not eligible to receive any of it. It further alleges that, during the period of January 7, 2007, to

December 22, 2007, she benefitted from \$ [REDACTED] in CDC and was not eligible to receive any of it. It further alleges that, during the period of January 6, 2008, to August 2, 2008, she benefitted from \$ [REDACTED] in CDC and was not eligible to receive any of it. In total, the allegation is that she received \$ [REDACTED] in CDC during the fraud period and she was not entitled to any of it.

The burden is on the Department to prove, by clear and convincing evidence, that Respondent intentionally violated the program rules. In a CDC case, the Department must prove that the Respondent benefitted by intentionally receiving more in CDC than should have been paid. In this particular case, the allegation is that Respondent was not working when the CDC was being paid.

Respondent testified credibly that her case was reviewed every six months, and that she had to provide verification to her case worker each time to show that (a) she was working, and (b) she needed CDC for her to be able to work. She also testified that she was evicted from her home in 2011 and all of her papers were thrown out.

The Department presented evidence which suggested that Respondent was not employed with a particular employer. It also presented evidence which indicated no employer was paying wages to her. That evidence was rebutted by Respondent who testified that she was an independent contractor and therefore had no employer to report her wages. She was responsible for paying all taxes associated with her employment. The Department submitted an employment verification (Exhibit A Page 55) reflecting her employment as a receptionist beginning April 26, 2008. In another employment verification (Exhibit A Page 57), the same employer reported that her employment ended on May 16, 2008, due to lack of attendance. Interestingly, that same employer submitted an employment verification (Exhibit A Page 53) dated February 4, 2008, reporting she had been employed there since August 2007, her employment was expected to end February 15, 2008, and she "is scheduled to go back to her booth soon as she has good childcare." That verification includes income information showing she had been paid regularly from August through December 2007.

Admittedly, the evidence in this case is not such as will lead to an inescapable conclusion. It is entirely possible that Respondent was not employed at all times during the fraud period. It is possible that her childcare provider billed for more hours than were actually provided. In fact, Respondent made the point that she never saw any records from her childcare provider to show the hours that were being billed to the state. If the provider submitted fraudulent records, that is beyond the Respondent's control. In any case, the burden is on the Department to submit clear and convincing evidence that Respondent committed an IPV. That has not happened here. There are inconsistencies in the evidence. The Department has not established that Respondent was unemployed, or even underemployed, during the three time periods.

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. 15.

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 (7/1/13), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department has not established an IPV. Because it has not established an IPV, there will not be a disqualification.

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.

In this case, the Department has not established an IPV. Likewise, it has not established that there was an OI to be recouped. This is not to say that no OI occurred. It only says that the Department has not presented clear and convincing evidence to show how much, if any, OI occurred.

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. The Department has not established by clear and convincing evidence that Respondent received an OI of program benefits from the CDC program.

The Department is ORDERED to delete the OI and cease any recoupment action. No penalty period will be imposed.



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/1/2015**

Date Mailed: **4/1/2015**

DJ/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.

cc:

A large black rectangular redaction box covers the names and contact information of the recipients listed in the 'cc:' field.