

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-011150
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).

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 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 17, 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 December 21, 2008, to May 23, 2009, December 5, 2010, to December 3, 2011, and December 4, 2011,¹ to September 8, 2012, (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).

¹ It is unclear why the Department separated the period of December 5, 2010, to September 8, 2012, into two periods, but because they made the distinction, that distinction will be recognized in this Decision.

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 December 21, 2008, to May 23, 2009, she benefitted from \$ [REDACTED] in CDC and was eligible to receive \$ [REDACTED] of it. It further alleges that, during the period of December 5, 2010, to December 3, 2011, she benefitted from \$ [REDACTED] in CDC and was eligible to receive \$ [REDACTED] of it. It further alleges that, during the period of December 4, 2011, to September 8, 2012, she benefitted from \$ [REDACTED] in CDC and was eligible to receive \$ [REDACTED] of it. In total, the allegation is that she received \$ [REDACTED] in CDC during the fraud period and she was only eligible to receive \$ [REDACTED] of it.

In a semi-annual contact form, Respondent reported that as of January 7, 2011, her employment had not changed, and her household gross income had not changed by more than \$ [REDACTED] from the previously reported \$ [REDACTED] monthly. (Exhibit A Page 103.) In another semi-annual contact report submitted February 22, 2012, (Exhibit A Page 104) she reported that her employment had changed as of March 5, 2011. In a Verification of Employment received by the Department on November 1, 2012, (Exhibit A Page 100) the Department received verification that she had been employed as a babysitter, working 40 hours per week, since August 8, 2012. Income information was also submitted (Exhibit A Pages 107-111) which shows she was working as a babysitter from May 28, 2010, through August 19, 2011.

The Department provided an Application for State Emergency Relief (SER) (Exhibit A Pages 115-119) dated August 8, 2011, in which Respondent reported no one in her household had any earned or unearned income. Another Application for SER was received on October 18, 2011, (Exhibit A Pages 120-124) and at that time Respondent reported that she had been employed since May 12, 2010, and was working 40 hours per week, earning \$300 every two weeks. Yet another SER application was submitted on February 22, 2012. (Exhibit A Pages 125-130) and in that application she reported starting work on March 5, 2011. She reported gross earnings of \$203 per month, for 40 hours of work per week.

It is impossible to reconcile how she could state in August 2011 that no one in the household was working, then in October 2011, she could state that she had been working since May 2010, and then in February 2012, she could state that she was employed since March 2012 for a different employer for much lower pay. Those SER applications were signed under the

penalty of perjury. At least one of the applications contained a false statement about her employment. Because of her willingness to perjure herself and her absence from the hearing, her documentation is not given any weight.

The Department has not alleged that Respondent was not eligible for any of the CDC that she was provided during the fraud period. It has recognized that she was eligible for much of it. But it has alleged that a substantial portion of it should not have been paid and it has submitted sufficient evidence that Respondent benefitted from the CDC because of false statements she made. The Department has presented clear and convincing evidence that Respondent committed an IPV.

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 did not request disqualification. Therefore, disqualification will not be ordered.

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, Respondent received an OI of \$ [REDACTED] which is to be recouped.

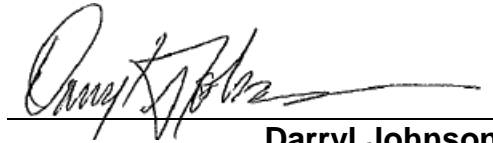
DECISION AND ORDER

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. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did an OI of program benefits in the amount of \$ [REDACTED] from the CDC program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent will not be disqualified from any program as a result of this IPV.



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:

[REDACTED]