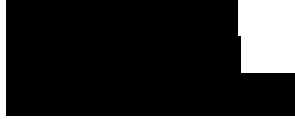


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 14-014604
Issue No.: 6000
Case No.: [REDACTED]
Hearing Date: May 5, 2015
County: Wayne-District 57

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 May 5, 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 October 30, 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 signed a Semi-Annual Contact Report (DHS-1171) on August 23, 2008, acknowledging that she understood her failure to give timely, truthful, complete and accurate information could result in a civil or criminal action or an administrative claim against her. (Dept. Ex A, pp 19-20).
5. Respondent received \$ [REDACTED] in CDC benefits from the State of Michigan during the alleged fraud period of January 9, 2005, through September 27, 2008. The Department alleges that if Respondent had properly reported her status of employment and of being in the same household as to where the care was provided, Respondent would have been entitled to receive \$0 in CDC benefits. (Dept. Ex A, pp 4, 25-38).
6. The Department alleges that Respondent received an OI in CDC benefits in the amount of \$ [REDACTED] (Dept. Ex A, p 4).
7. On March 8, 2008, Respondent's employer submitted a Verification of Employment indicating Respondent was working 50 hours a week and had been employed [REDACTED] since June, 1997. According to the income information provided, Respondent received \$ [REDACTED] a week from February 1, 2008, through February 29, 2008. (Dept. Ex A, pp 10-11).
8. On March 25, 2008, Respondent's employer submitted a Verification of Employment to the Department indicating Respondent was employed at [REDACTED] working 45 hours a week since June, 1997. According to the income information provided, Respondent received \$ [REDACTED] a week from February 1, 2008, through February 29, 2008. (Dept. Ex A, pp 12-13).
9. The pay stubs Respondent submitted to the Department show Respondent was paid \$ [REDACTED] a week from February 1, 2008, through February 29, 2008. (Dept. Ex A, pp 14-15).
10. On March 4, 2008, Respondent submitted a Shelter Verification, listing [REDACTED] as the owner of the property and her landlord. (Dept. Ex A, p 21).
11. On August 23, 2008, Respondent submitted a Semi-Annual Contact Report indicating her employer was [REDACTED] and she had been working for her since July, 1997. (Dept. Ex A, pp 19-20).
12. The pay stubs Respondent submitted to the Department show she was paid \$ [REDACTED] a week from September 5, 2008, through September 26, 2008. (Dept. Ex A, pp 16-17).
13. On March 13, 2009, the Department ran the [REDACTED] license information. It indicated the effective date of the license was October 2, 2006, and the license was revoked December 17, 2008. (Dept. Ex A, p 23).

14. The Department also checked the Wayne County Property Tax Administration System for Respondent's address and learned the property was not owned by [REDACTED] and due to unpaid property taxes from 2007, the property was in forfeiture status. (Dept. Ex A, p 22).
15. Respondent was clearly instructed and fully aware of the responsibility to report all changes to the Department within 10 days.
16. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
17. This was allegedly Respondent's first IPV.
18. 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.

As an initial matter, the Statute of Limitations for IPV's is six years. The case was submitted on July 10, 2008 and was originally submitted to Administrative Hearings on August 13, 2013. Therefore, it is within the Statute of Limitations. BAM 720, p 7 (10/1/2014).

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 (10/1/2014), p. 12.

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 (10/1/2014), 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.

Disqualification

A court or hearing decision that finds a client committed an 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 (7/1/2013), 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.

Overissuance (OI)

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.

Department policy requires clients to report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105, p 9 (4/1/2014). Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p 9.

Here, the Department has established that Respondent was aware of the responsibility to report all changes to the Department. According to Respondent's CDC application, Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities.

In this case, the Department alleges that Claimant worked at the [REDACTED] [REDACTED] which was the same place where her children were being provided daycare. Claimant's employer was also her landlord. The Department alleges that Claimant provided fraudulent pay receipts to the Department because they differed from the amounts listed on the employment verification.

In this case, the evidence is insufficient to establish an OI or IPV. The Department alleges that Respondent was employed at the day care which was also her day care provider. That alone is insufficient to establish fraud. Respondent was not present at the hearing, but if the day care was divided by age groups and Respondent was responsible for a different age group and unavailable to attend to her own children, then there was no IPV. There is simply not enough information to make a factual determination.

The Department also submitted two conflicting Verification of Employment documents from the day care provider. One Verification of Employment matches the income receipts that Respondent provided to the Department. The other one does not. Again, there is no explanation as to the discrepancy in the Verification of Employment forms, and no allegation Respondent completed the forms. Therefore, the forms cannot be used to support the allegation of an IPV by Respondent.

The Department provided Respondent's Wage History by Social Security Number to support that Respondent did not have any wages during the alleged fraud period. Looking at the Social Security Number documentation dated August 14, 2013, it indicates there is no data to retrieve. The Department submitted this screen print from the Social Security Number to show Claimant did not have any wages listed during the alleged fraud period of January 9, 2005, through September 27, 2008. However, from the screen print it is impossible to determine what parameters/dates, the Department searched under to determine Respondent had no income during the alleged fraud period. As a result, this evidence has little value.

Moreover, evidence that the day care's license was revoked in December, 2008, and that the day care property was in forfeiture status as of March, 2009, is not dispositive, because this was after the alleged fraud dates.

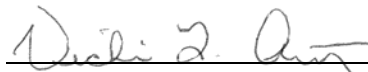
Based on the lack of clear and convincing evidence of an IPV or OI, the Department's request for CDC program disqualification and full restitution must be denied.

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 that Respondent committed an IPV.
2. The Department failed to establish Respondent received an OI of CDC program benefits in the amount of \$ [REDACTED]

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



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/12/2015**

Date Mailed: **5/12/2015**

VLA/las

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:

