

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-019674
Issue No.: 6006
Case No.: [REDACTED]
Hearing Date: September 01, 2015
County: Ingham

ADMINISTRATIVE LAW JUDGE: Adam Purnell

HEARING DECISION

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 September 1, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Recoupment Specialist (RS). Respondent appeared and provided testimony.

ISSUE

Did Respondent receive an overissuance (OI) of Child Development and Care (CDC) benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was a recipient of CDC benefits at all relevant times.
2. Respondent participated in the Partnership. Accountability. Training. Hope. (PATH) program.
3. On February 24, 2011, Respondent was found to be in non-cooperation with PATH and had a triage meeting on March 9, 2011. (Exhibit 1, p. 9)
4. Claimant failed to show good cause for her non-cooperation. (Exhibit 1, p. 9).
5. On November 26, 2014, the Department mailed Respondent a Notice of Overissuance (DHS-4358-A) which alleged that Respondent received a CDC OI in the amount of \$ [REDACTED] during the period February 27, 2011, through April 9, 2011, due to Department error.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT).

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 CDC program may provide a subsidy for child care services for qualifying families when the parent/substitute parent (P/SP) is **unavailable** to provide the child care because of employment, participation in an approved activity and/or because of a condition for which treatment is being received **and** care is provided by an eligible provider. BAM 700, (May 1, 2014) p. 1.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance (OI). BAM 700, (May 1, 2014) p. 1. An overissuance (OI) is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). BAM 700, p 1.

An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or DIT staff or department processes. BAM 700, p 4. If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p 4.

A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. BAM 700, p 6.

Here, the Department argues that Respondent received a CDC OI based on an agency error because after she was found in non-cooperation with PATH and her FIP benefits were closed due to sanction, she no longer had a valid need for CDC benefits. Respondent, on the other hand, made several arguments. First, Respondent stated that the Department informed her that only her FIP benefits would close and that her CDC benefits would continue following the PATH sanction. Second, Respondent testified that she previously used her CDC benefits to attend school for an internship and then later used CDC to attend PATH activities. Respondent submitted documentation in the record which showed that she worked in a community service based work study program through Kellogg Community College from October 5, 2010 through March 24,

2011. (Exhibit 2, pp. 10-14). According to Respondent, she had a valid CDC need both before and after the PATH sanction was imposed.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Respondent's testimony that someone told her that she could keep her CDC benefits active following the PATH sanction is not persuasive. This Administrative Law Judge does not find her testimony to be credible. She offered alternative explanations for continuing to receive CDC benefits. Both Respondent's testimony and her documentation submitted in the record do not show that she had a valid CDC need and that she was entitled to receive CDC benefits during the period in question (February 27, 2011 through April 9, 2011). Rather, Respondent's evidence shows that she had a valid need for CDC during 2010 through 2011 related to her activities at [REDACTED]. (Exhibit 2)

The evidence of record does not show that the Respondent received an OI of CDC benefits during the period alleged. When Respondent no longer was participating in the PATH program due to sanction, she was no longer eligible for CDC benefits due to lack of need. The OI was due to Department error because the Department should have, but failed, to discontinue Respondent's CDC benefits following the end of her PATH participation which resulted in the closure of FIP benefits. The OI period is February 27, 2011, through April 9, 2011.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish a CDC benefit OI to Respondent totaling

\$ [REDACTED]

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED**.

The Department is ORDERED to initiate collection procedures for a \$ [REDACTED] OI in accordance with Department policy.



Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **9/3/2015**

Date Mailed: **9/3/2015**

CAP/las

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

