

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

IN THE MATTER OF:



Reg. No.: 2014-28098
Issue No.: 6005
Case No.: [REDACTED]
Hearing Date: June 26, 2014
County: Wayne (57)

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 June 26, 2014 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 Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?

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 February 25, 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 accurately report to the Department whether she had a need for CDC benefits.
5. Respondent had no 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 May 10, 2009 through July 18, 2009.
7. During the alleged 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. 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 goal of the Child Development and Care (CDC) program is to preserve the family unit and to promote its economic independence and self-sufficiency by promoting safe, affordable, accessible, quality child care for qualified Michigan families. BEM 703, p. 1 (4-1-2009).

The Department of Human Services (DHS) may provide payment for child care services for qualifying families when the parent(s)/substitute parent(s) is **unavailable** to provide the child care because of employment, education and/or because of a health/social condition for which treatment is being received **and** care is provided by an eligible provider. BEM 703, p. 1 (4-1-2009).

Eligibility for Child Development and Care services exists when the department has established **all** of the following:

- There is a **signed application** requesting CDC services, and
- Each parent/substitute parent (see Parent/Substitute Parent section in this item) is a member of a valid **ELIGIBILITY GROUP**, and
- Each parent/substitute parent (P/SP) meets the **NEED** (Reason) criteria as outlined in this item, and
- An eligible provider is providing the care, and
- All eligibility requirements are met. BEM 703, p. 1 (4-1-2009).

There are four CDC need reasons. Each parent/substitute parent of the child needing care must have a valid need reason during the time child care is requested. Each need reason must be verified and exists only when each parent/substitute parent is unavailable to provide the care because of:

1. Family Preservation.
2. High School Completion.
3. An Approved Activity.
4. Employment. [See BEM 703, p. 3 (4-1-2009).]

CDC eligibility ends based on an approved activity need reason when:

- The client is no longer participating with the MWA or other employment preparation agency.
- The activity is no longer approved by that agency.
- The client is no longer participating in the activity.
- The client no longer meets CDC eligibility requirements.
- The need no longer exists. BEM 703, p. 10 (4-1-2009).

Intentional Program Violation

An Intentional Program Violation (IPV) is a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. Bridges Program Glossary (BPG) (1-1-2014), p 36.

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 \$1000 or more, or
 - the total OI amount is less than \$1000, **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 (4-1-2009), p. 10.

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 (1-1-2009), p. 6; 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 Michigan Civil Jury Instruction (Mich Civ JI) 8.01.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105. Clients are required to report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105. These changes include, but are not limited to changes regarding: (1) persons in the home; (2) marital status; (3) address

and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105.

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105. This includes completion of necessary forms. BAM 105. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105.

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. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

In this case, the Department's OIG contends that Respondent is guilty of an IPV after she received CDC benefits although she lacked the need requirements for these benefits. The Department's OIG further asserts that Respondent admitted that she continued to bill the Department for CDC during the time that her CDC provider was no longer caring for her children. The Department included the CDC application into evidence as well as a Fraud Complaint Review form which indicated that Respondent has not used her authorized CDC provider during the fraud period. The Fraud Complaint Form further provides that Respondent possesses the CDC provider's PIN numbers then submits the bills herself and collects the money. The record also contains Update/View Case Notes which provides that Respondent did not have a need for CDC benefits during the fraud period. Respondent was advised of her rights and responsibilities concerning program benefits. Respondent's signature on the Assistance Application in this record certifies that she was aware of these rights and responsibilities. Respondent had no apparent physical or mental impairment that limits her understanding or ability to fulfill these reporting responsibilities.

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.

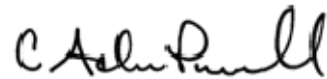
In this matter, the Department has shown that Respondent received an OI of CDC benefits. According to BAM 700, the Department may recoup this OI.

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. Respondent did commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of CDC program benefits in the amount of [REDACTED].

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



C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 07/01/2014

Date Mailed: 07/02/2014

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

CAP/sw

cc:

