

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

IN THE MATTER OF:

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██
████████████████████

Reg. No.: 2014-28446
Issue No(s): 6006
Case No.: ██████████
Hearing Date: May 21, 2014
County: Wayne (31)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Upon a hearing request by the Department of Human Services (Department) to establish an overissuance (OI) of benefits to Respondent, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 400.43a, and 24.201, *et seq.*, and Mich Admin Code, R 400.941, and in accordance with 7 CFR 273.15 to 273.18, 42 CFR 431.200 to 431.250, 45 CFR 99.1 to 99.33, and 45 CFR 205.10. After due notice, a telephone hearing was held on May 21, 2014, from Detroit, Michigan. Participants on behalf of the Department included ██████████, Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included Respondent.

ISSUE

Did Respondent receive an overissuance (OI) of

- | | |
|--|--|
| <input type="checkbox"/> Family Independence Program (FIP) | <input type="checkbox"/> State Disability Assistance (SDA) |
| <input type="checkbox"/> Food Assistance Program (FAP) | <input checked="" type="checkbox"/> Child Development and Care (CDC) |
- benefits?

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 FIP FAP SDA CDC benefits from the Department.

2. The Department alleges Respondent received a
 FIP FAP SDA CDC
OI during the period May 24, 2009, through November 17, 2012, due to
 Department's error Respondent's error.
3. During the OI period, Respondent was issued \$26,012 in FIP FAP SDA
 CDC MA benefits by the State of Michigan, and the Department alleges that
Respondent was entitled to \$13,006 in such benefits during this time period.
4. The Department alleges that Respondent received a \$13,006 OI that is still due
and owing to the Department.
5. On February 27, 2014, the Department filed a hearing request, to establish an OI
of benefits received by Respondent as a result of Respondent having committed
the OI amount.

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).

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 a preliminary matter, a Notice of Disqualification Hearing was mailed to Respondent in regards to the above mentioned case. However, the Department is not pursuing an Intentional Program Violation (IPV) for the CDC benefits and the Department testified that it is only pursuing the CDC benefits for an OI amount. As such, the hearing proceeded to address the CDC OI amount and will not address any IPV issue.

In this case, the Department alleges that Respondent committed a client error of her CDC benefits because she did not have a valid CDC need. Specifically, both parties acknowledged that Respondent's CDC need was based on an approved activity, e.g., The Work First Program ("Work First").

Additionally, the OIG report indicated that Respondent applied and received CDC benefits. See Exhibit 1, p. 2. The OIG report indicated that during the alleged fraud period, Respondent was referred to Work First on several different occasions, but consistently failed to comply with all of the program requirements. See Exhibit 1, p. 2. The OIG report further indicated that due to her inability to attend Work First,

Respondent continuously utilized full CDC services, without having a valid need. See Exhibit 1, p. 2. Therefore, the Department argues that based upon Respondent's non-compliance with the program, her CDC services should have been reduced. See Exhibit 1, p. 2.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (May 2014), p. 1. For CDC only, provider errors are overissuances caused by a provider. BAM 715, p. 2.

Regarding client error overissuances, the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months before the date the OI was referred to the RS, whichever is later. BAM 715, p. 4. To determine the first month of the OI period (for OIs 11/97 or later) the department allows time for: the client reporting period; the full standard of promptness (SOP) for change processing; and the full negative action suspense period. BAM 715, p. 5. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 715, p. 5.

Additionally, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (May 2014), p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715, p. 6.

The Department's OIG indicates that the time period it is considering the OI period is May 24, 2009, through November 17, 2012. See Exhibit 1, pg. 2.

First, the Department presented Respondent's applications dated February 7, 2011; April 6, 2011; and April 30, 2012, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1, pp. 10-69. Specifically, on the all three applications, Respondent listed all three children had child care expenses. See Exhibit 1, pp. 10-69.

Second the Department presented a CDC application dated April 13, 2009, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1, pp. 70-73. Specifically, on the application, Respondent listed all three children needed CDC services. See Exhibit 1, pp. 70-73.

Third, the Department presented Respondent's redeterminations dated April 7, 2010 and March 23, 2011, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1, pp. 74-81. Specifically, only the redetermination dated April 7, 2010, listed all three children needed CDC services. See Exhibit 1, p. 76.

Fourth, the Department presented a Notice of Noncompliance dated November 5, 2010, which indicated that Respondent was found in non-compliance with the Family Independence Program (FIP) for the first time. See Exhibit 1, pp. 82- 83. The

Department also presented a second Notice of Noncompliance dated August 15, 2012, which indicated Respondent was found in non-compliance with the FIP program for the second time. See Exhibit 1, pp. 84-85. It was unclear if whether both sanctions were upheld, pending the triage results. The Department testified that Respondent did have two sanctions applied to her FIP program; however, no documentation was provided.

Fifth, the Department presented Respondent's benefits summary inquiries for the alleged OI period. See Exhibit 1, pp. 86-100.

At the hearing, the Department testified that Respondent was dependent on the CDC benefits due to attending Work First. However, the Department testified that Respondent consistently failed to comply with her lack of attendance. The Department referenced case notes of Respondent's lack of attendance for Work First and did not provide such proof. Nevertheless, the Department's main argument was that due to her inability to attend Work First, Respondent continuously utilized full CDC services, without having a valid need. See Exhibit 1, p. 2.

Respondent testified that she only believed she had one sanction applied to her FIP case. Also, Respondent did not dispute that she utilized CDC services for all three children based on her participation in the FIP program. However, Respondent testified that she only utilized CDC services for all three children during the summer months when school was not in session. However, during the school year, Respondent testified that she only used CDC services for one of her children as the other two attended school. It should be noted that a review of Respondent's application/redeterminations during the alleged OI period indicated CDC service requests for all three children and the applications/redetermination were submitted throughout the year. See Exhibit 1, pp. 10-81. However, a review of the benefit summary inquiries, which shows the CDC payments to the provider, indicated larger payments in the summer months and lower payments during the school year. See Exhibit 1, pp. 86-100. Finally, Respondent testified that she attended Work First for the most part.

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105 (April 2009), p. 5. This includes completion of necessary forms. BAM 105, p. 5. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105, p. 7. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in day care needs or providers. BAM 105, pp. 7-8.

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 (April 2009), p. 1.

For CDC eligibility to exist for a given child, each parent/substitute parent (P/SP) must demonstrate a valid need reason. BEM 703, p. 2. There are four CDC need reasons.

BEM 703, p. 3. 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; or (4) employment. BEM 703, p. 3.

In regards to the Respondent, it appears that the valid need reason existed under the approved activity because Respondent attend the Work First Program. Child care payments may be approved under this need reason when a client needs child care to participate in an employment preparation and/ or training activity or a post-secondary education program. BEM 703, p. 8. The activity must be approved by DHS or the Michigan Works! Agency (MWA) or other categories as listed in BEM 703. See BEM 703, p. 8.

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.

Based on the foregoing information and evidence, the Department did not establish a CDC benefit OI to Respondent totaling \$13,006. The Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to establish an OI of CDC benefits.

The evidence failed to establish that Respondent did not have a valid CDC need based on an approved activity, e.g., Work First. See BEM 703, pp. 8-10. The Department's contention was that the Respondent consistently lacked attendance with Work First, but continuously utilized full CDC services. However, the Department only presented two Notice of Noncompliance letters to show a lack of attendance. Respondent, though, believed she only had one sanction applied to her FIP case. The Department failed to present further evidence showing how many sanctions Respondent had applied to her FIP benefits.

Additionally, the Department kept referencing case notes throughout the hearing to show Respondent's inability to attend Work First. However, the case notes were not provided as evidence in the hearing. In general, the Department failed to provide credible evidence to show Respondent's lack of attendance during the alleged OI period. For example, the Department did not present job search logs, attendance logs, etc...from work first in which it would show a log of her attendance history. On the other hand, Respondent credibly testified that she attended Work First and utilized the services mainly in the summer months. Respondent's credibility is supported by the

fact that a review of the benefits summary inquiries shows the CDC payments to the provider were larger in the summer months and lower during the school year. See Exhibit 1, pp. 86-100.

In summary, Respondent's CDC need was based upon an approved activity, e.g., Work First. See BEM 703, p. 8. The Department attempted to argue that Respondent did not have a valid need (approved activity) due to her lack of participation in the Work First program. Thus, Respondent continued to utilize CDC services even though the valid need did not exist and this led to the OI amount. However, as stated above, the evidence failed to show that Respondent consistently lacked attendance with Work First. Therefore, the Department failed to show Respondent no longer had a valid CDC need based on an approved activity. See BEM 703, pp. 8-10. Because the evidence presented that the CDC services were rendered during the alleged OI period, the Department failed to establish a CDC benefit OI amount totaling \$13,006.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not establish a CDC benefit OI to Respondent totaling \$13,006.

Accordingly, the Department is REVERSED.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 2, 2014

Date Mailed: June 2, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (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 48909-07322

EJF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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