

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

IN THE MATTER OF:



Reg. No.: 2014-28869
Issue No(s): 6005
Case No.: [REDACTED]
Hearing Date: June 5, 2014
County: Genesee-06

ADMINISTRATIVE LAW JUDGE: Darryl T. 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 June 5, 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 Care (CDC) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (FAP)?

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 March 4, 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 was aware of the responsibility to report changes in her household circumstances.
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 August 1, 2011 through April 30, 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 \$0.00 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).

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 \$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 (7/1/13), 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 (7/1/13), p. 6; 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, Claimant applied for CDC on July 25, 2011, and she acknowledged that she understood that he needed to report changes in her household circumstances. She was awarded CDC. At the time she applied, she was working at [REDACTED]. She subsequently began working for [REDACTED] and for [REDACTED] in

September 2011. She did not report her change in employment, or her change in income.

Claimant's earnings are reflected on Exhibit 1 Page 35. The payments made for her CDC (including amounts applied toward an OI Claimant had previously received) are reflected on Exhibit 1 Page 36-39. After her actual earnings were considered, the Department found that she would not have received any CDC. The Department has established that Claimant received an OI of \$ [REDACTED] in CDC.

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. 16. 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. CDC violations are also subject to different disqualification periods as provided in BEM 708 (4/1/14):

When it is determined that a client or adult group member intentionally violated a program rule, a referral should be submitted to the Office of Inspector General (OIG). If the OIG investigation determines an intentional program violation was committed, a disqualification referral and the Investigation Closure Packet will be sent to CDC policy for review.

CDC Policy will impose the appropriate disqualification. Disqualification periods will be:

- Six months for the first occurrence.
- Twelve months for the second occurrence.
- Lifetime for the third occurrence.

BEM 708 was not adopted until April 1, 2014, and cannot be applied *ex post facto*. However, Michigan Administrative Rule 400.5020 has the same disqualification periods. Rule 400.5020 was effective April 10, 2012. Here, the Department has alleged Claimant committed an IPV from August 1, 2011 through April 30, 2012. Claimant received \$ [REDACTED] in CDC between April 8, 2012, and April 21, 2012. Based upon the standard of clear and convincing evidence applicable here, the undersigned is convinced that Claimant received CDC through an IPV after the disqualification period became codified. Therefore, Claimant is subject to a six month disqualification.

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, Claimant received \$ [REDACTED] for the time period of August 1, 2011 through April 30, 2012. She was not entitled to those benefits. The Department has established 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 intentional program violation (IPV).
2. Respondent received 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 be disqualified from CDC for a period of six months.



Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 9, 2014

Date Mailed: June 9, 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.

DTJ/las

cc:

[REDACTED]