

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

IN THE MATTER OF:



Reg. No.: 201429544
Issue No.: 6005
Case No.: [REDACTED]
Hearing Date: July 30, 2014
County: Wayne (District 18)

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 July 30, 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) 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 March 45, 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 truthfully and accurately report to the Department any changes in household circumstances including changes in income and/or employment.
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 periods it is considering the fraud period is October 1, 2006 through December 23, 2006, March 16, 2008 through December 20, 2008 and January 7, 2007 and April 14, 2007.
7. During the October 1, 2006 through December 23, 2006 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. During the March 16, 2008 through December 20, 2008 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.
9. During the January 7, 2007 and April 14, 2007 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.
10. The Department alleges that Respondent received an OI in CDC benefits in the amount of [REDACTED], [REDACTED], and [REDACTED], respectively. The total alleged CDC OI for all fraud periods is [REDACTED].
11. 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 CDC program is the Department's unified child care program. Qualified families may receive assistance when the parent(s), or substitute parent(s) is unavailable to provide care because of employment, approved education/training and/or because of an approved health/social condition for which treatment is being received. Bridges Program Glossary (BPG), p. 12 (7-1-14).

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. PEM 703 (10-1-2007), p 1.

For CDC eligibility to exist for a given child, each P/SP must demonstrate a valid need reason. PEM 703 (10-1-2007), p 4.

There are four valid CDC need reasons. Each P/SP 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 P/SP is unavailable to provide the care because of:

1. Family preservation.
2. High school completion.
3. An approved activity.
4. Employment. PEM 703 (10-1-2007), p 4.

Eligibility for CDC for income-eligible ends the earliest of the following:

- The requirements are no longer met.
- The family has excess income.
- The need no longer exists. PEM 703 (10-1-2007), p 17.

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 ██████ or more, or
 - the total OI amount is less than ██████, **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.

PAM 720 (10-1-2007), 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.

PAM 700 (10-1-2007), p. 6; PAM 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. PAM 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. PAM 105. Clients are required to report changes within 10 (ten) days of receiving the first payment reflecting the change. PAM 105. Clients are required to report changes in circumstances within 10 (ten) days after the client is aware of them. PAM 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. PAM 105.

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

Here, the Department alleges that Respondent misrepresented her employment information to the Department which created an OI of CDC program benefits. According to the Department, Respondent failed to timely report that her employment with [REDACTED] ended in 2006, but she continued to receive CDC benefits during this time period. The Department also alleges that Respondent failed to provide satisfactory evidence of her self-employment as a [REDACTED] for [REDACTED], which resulted in an OI of CDC in 2007 and 2008.

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.

The salient issue is whether there is clear and convincing evidence on the record to show that Respondent committed an IPV when she intentionally and fraudulently reported to the Department that she was working in order to receive an OI of benefits. The record evidence shows that Respondent was not employed at ██████████ ██████████ in 2008 based on the IG-001 Employee Wage History by SSN. (Exhibit 1, p. 21) The records also contained an April 23, 2007 FAP and MA assistance application signed by Respondent which indicated that no person in the household was employed or self-employed. (Exhibit 1, p 25). This assistance application notes indicated that Respondent last worked at ██████████ in March, 2007. (Exhibit 1, p 30). The records contained an assistance application from 2005, where Respondent disclosed that she worked at ██████████. (Exhibit 1, pp 34-41). The remaining exhibits (IG-202 CDC Payments) in the record show that Respondent received CDC in 2006, 2007 and 2008. (Exhibit 1, pp 53-63). These records; however, do not confirm that Respondent failed to report to the Department that she was no longer employed at Ramsey's Family Restaurant or was not actually self-employed as a ██████████ at ██████████ during any of the alleged fraud periods. This Administrative Law Judge finds that the clear and convincing evidence on the whole record does not show that Respondent committed an IPV. The evidence of an IPV in this record, without more, does not rise to the level of clear and convincing.

Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. PAM 700, p. 1. An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. PAM 700, p 4 (10-1-2007). 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. PAM 700, p 6 (10-1-2007). If unable to identify the type of OI, the Department records it as an agency error. PAM 700, p 4 (10-1-2007).

In this matter, the Department has not shown that Respondent received an OI of CDC benefits.

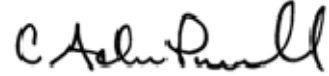
DECISION AND ORDER

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 not commit an IPV by clear and convincing evidence.

2. Respondent did not receive an OI of CDC program benefits.

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



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

Date Signed: 08/04/2014

Date Mailed: 08/05/2014

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.

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