

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

IN THE MATTER OF:

██████████
████████████████████
████████████████████

Reg. No.: 2014-34831
Issue No(s): 6005
Case No.: ██████████
Hearing Date: September 4, 2014
County: Wayne (41)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 September 4, 2014, from Detroit, Michigan. The Department was represented by ██████████ Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included:

██████████

ISSUES

1. Did Respondent receive an overissuance (OI) of Child Development and Care (CDC) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving 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. The Department's OIG filed a hearing request on April 16, 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 circumstances to the Department.
5. Respondent did not have an 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 are: August 8, 2004 to September 18, 2004; September 4, 2005 to December 24, 2005; January 8, 2006 to December 23, 2006; and January 7, 2007 to November 10, 2007 (fraud period).
7. During the August 8, 2004 to September 18, 2004 fraud period, the Department alleges that Respondent was issued \$1440 in CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. During the September 4, 2005 to December 24, 2005 fraud period, the Department alleges that Respondent was issued \$7520 in CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
9. During the January 8, 2006 to December 23, 2006 fraud period, the Department alleges that Respondent was issued \$19834 in CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$8648 in such benefits during this time period.
10. During the January 7, 2007 to November 10, 2007 fraud period, the Department alleges that Respondent was issued \$13442 in CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1222 in such benefits during this time period.
11. The Department alleges that Respondent received a total OI in CDC benefits in the amount of \$32,366.
12. This was Respondent's first alleged IPV.
13. 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 (May 2014), pp. 12-13.

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. For CDC cases, the amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 715 (July 2014), pp 1, 6. A client error CDC OI occurs

when the client receives more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. BAM 715, p.1.

In this case, the Department sought to recoup an alleged OI from the CDC program on the basis that Respondent received CDC benefits without having a need. The Department testified that Respondent was issued (i) \$1440 in CDC benefits from August 8, 2004 to September 18, 2004; (ii) \$7520 in CDC benefits from September 4, 2005 to December 24, 2005; (iii) \$19834 in CDC benefits from January 8, 2006 to December 23, 2006; and (iv) \$13442 in CDC benefits from January 7, 2007 to November 10, 2007, for a total CDC issuance of \$42236. The Department alleged that Respondent was entitled to only \$9870 during the periods referenced above and that the total OI for the four fraud periods was \$32366. (Exhibit 1, p.2.)

Although the Department testified that Respondent received CDC benefits during the periods at issue, the Department failed to present any documentary evidence such as benefit issuances or CDC provider issuances to support its testimony that Respondent was actually issued CDC benefits totaling \$42236. Therefore, the actual amount of CDC benefits received by Respondent was not established.

In addition, the Department failed to include any CDC OI budgets or any other evidence to support its contention that Respondent was eligible to receive \$8648 for the period between January 8, 2006 and December 23, 2006 or that she was eligible to receive \$1222 for the period between January 7, 2007 and November 10, 2007. The Department remained unable to explain how the CDC OI was calculated in this case, and as such, the Department has failed to establish that Respondent was overissued CDC benefits in the amount of \$32366. Therefore, the Department is not entitled to recoupment.

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 (May 2014), p. 7; 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, the Department alleged that Respondent committed an IPV of the CDC program because she misrepresented the circumstances of her employment and received CDC benefits without having a need. In order to be eligible for CDC benefits, each parent must have a need for such benefits. BEM 703 (July 2013), p 1. A valid need exists if the parent is unavailable to provide the care because of family preservation, high school completion, an approved activity or employment. BEM 703, pp 3-4, 5-12. The need must be verified by the Department. BEM 703, p. 12.

As discussed above, because the Department has failed to establish that Respondent was overissued CDC benefits and because an OI is a condition of suspected IPV, the Department has failed to satisfy its burden in establishing that Respondent committed an IPV of CDC benefits by misrepresenting her need for CDC benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

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. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 2013), p. 2. CDC policy imposes the appropriate disqualification and provides that clients will be disqualified for six months for the first occurrence of IPV; twelve months for second occurrence; and lifetime disqualification for the third IPV. BEM 708 (April 2014), pp. 1-3.

In this case, the Department failed to satisfy its burden of showing that Respondent committed a CDC IPV. Therefore, Respondent is **not** subject to a disqualification from the CDC program.


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 program benefits in the amount of \$32366 from the CDC program.

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



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 26, 2014

Date Mailed: September 26, 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.

ZB/cl

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