

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

IN THE MATTER OF:



Reg. No.: 2014-6268
Issue No.: 3005, 6005
Case No.: [REDACTED]
Hearing Date: January 8, 2014
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (DHS), 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 January 8, 2014, from Detroit, Michigan. [REDACTED], Regulation Agent for the Office of Inspector General (OIG), testified on behalf of DHS. 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

The first issue is whether Respondent committed an Intentional Program Violation (IPV).

The second issue is whether Respondent received an over-issuance of Food Assistance Program (FAP) benefits and Child and Dependent 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 an ongoing FAP and CDC benefit recipient.
2. Respondent reported to DHS that she was employed for various employers including [REDACTED] (Employer 1) and [REDACTED] (Employer 2).

3. Over the course of [REDACTED] 06 through [REDACTED]/07, DHS issued \$9,482 in FAP benefits to Respondent and \$21,890 in CDC benefits to Respondent's CDC provider.
4. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV resulting in overissuances of \$21,890 in CDC benefits and \$9,482 in FAP benefits.

CONCLUSIONS OF LAW

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. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

This hearing was requested by DHS, in part, to establish that Respondent committed an IPV. DHS may request a hearing to establish an IPV and disqualification. BAM 600 (8/2012), p. 3.

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms. *Id.*

There is no evidence that Respondent signed a DHS-826 or DHS-830. There is also no evidence that a court decision found Respondent responsible for an IPV. Thus, DHS seeks to establish an IPV via administrative hearing.

The Code of Federal Regulations defines an IPV. Intentional program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16 (c).

DHS regulations also define IPV. A 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 their reporting responsibilities. BAM 720 (1/2011), p. 1. see also 7 CFR 273(e)(6).

IPV is suspected when there is **clear and convincing** (emphasis added) evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. *Id.* 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. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

DHS alleged that Respondent reported fabricated employment for the purpose of obtaining CDC benefits. To establish that Respondent committed an IPV, DHS must establish that Respondent reported non-existent employment.

DHS presented Respondent's employee wage history (Exhibits 11-12). DHS presented testimony that the wage history reflected only earnings reported to the Michigan Treasury by Respondent's employers. The history listed that Respondent received earnings totaling \$258.08 in 2007 and \$0 in 2006.

The first page of a Verification of Employment (Exhibit 34) concerning Respondent's employment with Employer 1 was presented. The document was unsigned but a DHS mailing date of [REDACTED]/00 was noted. The form noted that Respondent worked 20 hours per week for \$5.75 per hour. The form noted that Respondent worked five days per week, from 10:00 a.m. through 2:00 p.m.

A Verification of Employment (Exhibits 32-33) concerning Respondent employment with Employer 1 was presented. The document was signed by [REDACTED] on [REDACTED] 01. The document noted that Respondent worked 30 hours per week for \$6.25 per hour. The form noted that Respondent was a receptionist performing 6 weekly shifts, each from midnight until 5:00 a.m.

DHS presented a letter signed by [REDACTED]. The letter stated that Respondent was employed with [REDACTED] from [REDACTED]/06 until 12/07, not counting Respondent's maternity leave from [REDACTED] 06 through [REDACTED]/06.

DHS presented Respondent's Michigan Works Agency participation history (Exhibits 13-19). The notes were made by various MWA representatives. On [REDACTED]/06 it was noted that MWA contacted Ms. Gantt of Employer 2 and that Respondent was still employed 25 hours per week for \$6.95 per hour. On [REDACTED]/07 it was noted that Respondent was still

employed with Employer 2. On [REDACTED]/07 it was noted that Respondent was “still employed” with Employer 2. On [REDACTED]/07, a representative noted that Respondent was employed at [REDACTED]. On [REDACTED] 11, it was noted that it was verified that [REDACTED] was contacted and that Respondent was working 25 hours per week for \$7.40 per hour.

DHS presented Respondent’s CDC benefit history (Exhibits 21-28). The history verified that \$21,890 in CDC benefits were paid on behalf of Respondent over the period of [REDACTED]/06-[REDACTED]1/07.

DHS established that Respondent’s alleged employment was not reported to the Michigan Department of Treasury by her alleged employers. This fact does not rule-out that Respondent’s employment was for “under the table” wages. Generally, “under the table” employment is much more likely to be fraudulent employment rather than employment reported to a state treasury. Though cash wages increases a probability of fraud, it does not verify that the employment did not exist. The reality is that some employers will pay employees in cash. It is worth noting that no known DHS policy prohibits the issuance of CDC benefits for employment performed for cash wages.

DHS expressed skepticism over Respondent having the same manager for two different employers. Generally, a client is not likely to have the same manager at different jobs. On the other hand, it is plausible that Respondent was hired by the same person who happened to own multiple businesses or work at two different employers.

DHS expressed immense doubt about Respondent working a midnight shift at a beauty salon. It is theoretically possible that a beauty salon would have midnight hours, but the likelihood is highly improbable. The improbable job hours is relevant to a fraud determination because the job appears to be one reported by Respondent during the alleged fraud period. On the other hand, the form listing the improbable midnight shift was submitted to DHS several years before the alleged fraud period.

Typically, CDC fraud occurs when a client fabricates employment so that a friend and/or family member can bill the State of Michigan; often, the CDC provider splits some portion of the CDC payments with the client. As CDC benefit issuances increase, a client has more incentive to defraud. CDC benefits exceeding \$20,000 is a significant motivation for Respondent to lie about being employed though the evidence is only circumstantial.

DHS also noted that unsuccessful attempts were made to contact Respondent’s previously reported employer. It is not that surprising that DHS could not verify the existence of employers who did not report wages to the State of Michigan over five years after the employers were last known to be open for business. As more time passes, the inability to verify information is more likely to be due to businesses closing and phone numbers changing rather than due to client fraud.

The biggest obstacle for DHS in establishing fraud is that Respondent was approved for CDC benefits. Prior approval for CDC benefits means that DHS previously deemed

Respondent's proofs of employment to be credible. Presented evidence established that multiple MWA representative also accepted that Respondent's employment was legitimate. DHS is not presenting any drastically different information than previous DHS and MWA representatives did not possess.


Based on the totality of evidence, DHS established that there is some degree of proof that Respondent committed fraud; the degree neither rose to a clear and convincing nor probable standard. Accordingly, DHS failed to establish that an overissuance or IPV occurred.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

DHS also alleged a FAP benefit IPV. The allegation assumed that Respondent improperly kept all issued CDC payments made from [REDACTED]/06 through [REDACTED]/07. Based on the finding that Respondent did not commit CDC fraud, it is also found that Respondent did not commit FAP benefit fraud.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS failed to establish that Respondent committed an IPV for FAP and CDC benefits issued for the benefit months of [REDACTED]/06-[REDACTED]/07. DHS further failed to establish that Respondent received an overissuance of benefits. The hearing request of DHS is **DENIED**.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 1/30/2014

Date Mailed: 1/30/2014

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.

CG/hw

cc:

