

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

IN THE MATTER OF:



Reg. No.: 2014-787
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: December 3, 2013
County: Wayne 57

ADMINISTRATIVE LAW JUDGE: Dale Malewska

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 December 3, 2013 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 over-issuance (OI) of Child Development and 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 Child Development and Care (CDC)?

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 August 2, 2013, 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 the 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 case within the allotted reporting period. Exhibit A, [sub 1] pages 1 - 24.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The car lot/employment in question [REDACTED] had no place to conduct business, vehicles with flat tires, engine parts in the interior cabins, no posted hours/days of operation and on regulatory inspection [during normal business hours] by [REDACTED] was found [REDACTED]." See Testimony and Exhibit #1 at pp. 28 – 32.
7. The Department's OIG indicates that the time period it is considering the fraud period is July 1, 2011 through December 30, 2011.
8. During the fraud period, Respondent was issued \$5,222.00 in CDC benefits by the State of Michigan.
9. The Department alleges that Respondent received an OI in CDC benefits in the amount of \$ [REDACTED]
10. This was Respondent's first alleged IPV.
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), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

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.

Additionally, for CDC, the program group's continued eligibility rests upon ongoing verification of need [in this case employment] and the Department's access to investigative tools to verify employment as well as other criteria mandating regular and non-regular review. See BEM 703 (7-1-2013) at pp. 4, 11-13.

Clients must cooperate with the local office in determining initial and ongoing eligibility. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. There remain reporting requirements for both earned and unearned income. BAM 105.

The Department reviewed the Respondent's CDC eligibility in light of the required schedule for annual review and after receiving "...zero cooperation from the Employer" – the Respondent's [REDACTED]. The Department determined the Respondent was no longer eligible for [REDACTED] because she actually was not working. See Exhibit #1, pp. 25 through 32.

The Claimant reported on interview conducted on [REDACTED] that she "worked for the [REDACTED]" contradicting an earlier interview with her [REDACTED] – who also ran two other [REDACTED] adjacent to the non-operational [REDACTED]. The Employer told the investigator that the Respondent/niece was a "general [REDACTED] who also worked at these other businesses – [REDACTED] – "as needed."

Disqualification

The Respondent never acknowledged that her aunt was her employer until disclosed by the OIG agent. She then stated that she worked at all three businesses "fulltime." This work was never reported to the Department.

The Department properly utilized the best available information on the investigation of the Respondent's [REDACTED]. The [REDACTED] was clearly a sham. On a regular business day in the company of [REDACTED] the [REDACTED] was found "[REDACTED]", no places to conduct business or sit to read or [REDACTED], etc. He added that the vehicles, for the most part, showed signs of disuse; flat tires, popped hoods with the general patina of long term storage.

Absent the testimony of the Respondent and based on the persuasive testimony of the OIG agent on the scene of the [REDACTED] it was properly determined that the Respondent was no longer eligible for the CDC program because, in fact, she was not working. The job at the [REDACTED] did not exist.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record finds that the Department met its burden of proof with clear and convincing evidence in line with Department policy when it determined the Respondent was no longer eligible for the CDC program because she did not work as reported.

Over-issuance

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, the Department clearly established an OI in the amount of \$ [REDACTED]

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 commit an IPV by clear and convincing evidence.
- 2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the following program CDC.

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 12 months. 24 months. lifetime.



Dale Malewska
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 2/10/14
Date Mailed: 2/11/14

2014-787/DM

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.

DM/tb

cc:

