

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 14-012545
Issue No.: 6006
Case No.: ██████████
Hearing Date: March 23, 2015
County: WEXFORD

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Upon a hearing request by the Department of Human Services (Department) to establish an overissuance (OI) of benefits to Respondent, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 400.43a, and 24.201, *et seq.*, and Mich Admin Code, R 400.941, and in accordance with 7 CFR 273.15 to 273.18, 42 CFR 431.200 to 431.250, 45 CFR 99.1 to 99.33, and 45 CFR 205.10. After due notice, a three-way telephone hearing was held on March 23, 2015, from Detroit, Michigan. Participants on behalf of the Department included ██████████, Recoupment Specialist. Participants on behalf of Respondent included Respondent, ██████████.

ISSUE

Did Respondent receive an OI of Child Development and 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 a recipient of CDC benefits from the Department.
2. On August 5, 2014, the Department sent Respondent a Notice of Overissuance (OI notice) informing her of a CDC overissuance (OI) for the period of November 3, 2013 to April 19, 2014, due to client error. See Exhibit 1, pp. 3-4. The OI notice also indicated that the OI balance was ██████████ due to Respondent's work hours were less than the amount of time the children were at daycare. See Exhibit 1, p. 3.
3. On September 22, 2014, Respondent filed a hearing request, protesting the Department's action. See Exhibit 1, p. 1.

4. On September 22, 2014, DHS requested a debt collection hearing.

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).

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.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (May 2014), p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715 (July 2014), p. 6.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715, p. 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (October 2013), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 9.

Other changes must be reported within 10 days after the client is aware of them. BAM 105, pp. 9-10. These include, but are not limited to, changes in child care needs or providers. BAM 105, pp. 9-10.

In this case, the Department alleges that Respondent received an OI of CDC benefits because her work hours were less than the amount of time her children were at day care.

First, the Department presented Respondent's employment verification and earnings history. See Exhibit 1, pp. 8-15. Specifically, the Department presented Respondent's Recoupment Table, which provided a detail calculation of the OI amount. See Exhibit 1, p. 5. For example, the Recoupment Table indicated for pay period 323, Respondent's original hours paid for CDC services was 80 hours; however, the Department alleged that Respondent only worked 67 hours for this certain pay period. See Exhibit 1, p. 5. The Recoupment Table indicated it caused 13 hours of recoupment in which this pay period contributed to the overall OI calculation. See Exhibit 1, p. 5. The Department testified that Respondent's hours of employment were based on information from The Work Number and its system to determine the number of hours Respondent worked per pay period. See Exhibit 1, p. 1. However, during the hearing, the Department testified that it was uncertain as to how it determined the number of hours worked. The Department testified this case was referred from a Recoupment Analyst from the Michigan Department of Education. See Exhibit 1, pp. 6-7. The Department testified this worker calculated the figures in the Recoupment Table and this worker was unable to be present as a witness. Furthermore, Respondent's employment verification was unhelpful as to determine how Respondent's employment hours were calculated. See Exhibit 1, pp. 8-10.

Second, the Department presented Respondent's CDC details and CDC billing and attendance invoices. See Exhibit 1, pp. 16-91.

At the hearing, Respondent argued that the Department miscalculated the hours worked section in the Recoupment Table. Respondent testified that the hours worked section failed to include her one-hour meal periods she had each day. Respondent testified that she worked three to five days per week and had a one-hour lunch for each work day. This would result in an approximate 6 to 10 hours of biweekly valid needs hours to be added to this section. The Department testified that it was unsure if the hours worked section took into consideration Respondent's meal periods.

It should be noted that the Recoupment Analyst from Michigan Department of Education e-mail correspondence indicated that it requested verification of Respondent's income, but never received it. See Exhibit 1, pp. 6-7. Again, though, the Recoupment Analyst failed to be present at the hearing.

The Department uses the gross (before deductions) countable, monthly income to determine the amount the department will pay (department pay per-cent) towards the group's child care costs. BEM 525 (July 2013), p. 1. RFT 270 provides a CDC income eligibility scale and provider rates. See RFT 270 (October 2011), p. 1.

The Department determines the valid need hours for each parent/substitute parent (P/SP) at application, redetermination, and when a change in work or activity hours is reported. BEM 710 (July 2013), p. 1. The Department calculates the actual need hours considering: (i) time spent in the activity; (ii) meal periods during the work day; and (iii) study and required lab time. See BEM 710, p. 1.

The Department documents each need determination in the case record. BEM 710, p. 1. This documentation must include: calculations used to arrive at the need determination and the source of the information used in the need determination. BEM 710, p. 1.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it established a CDC benefit OI to Respondent totaling \$985.66.

First, the local office and client or Authorized Hearing Representative (AHR) will each present their position to the Administrative Law Judge (ALJ), who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (January 2015), p. 35. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 37. In this case, the Department testified that it was uncertain as to how it determined the number of hours worked. The Recoupment Analyst from the Michigan Department of Education was unable to present as a witness in order to provide testimony as to how it calculated the figures in the Recoupment Table. As such, the Department failed its burden of showing that it established a CDC benefit OI to Respondent totaling ██████ in accordance with Department policy. See BAM 600, pp. 35-37.


Second, Respondent argued that the Department miscalculated the hours worked section in the Recoupment Table. Respondent testified that the hours worked section failed to include her one-hour meal periods she worked each day. The Department was unable to rebut Respondent's claim that it failed to include her meal periods in the employment hours. Policy states that actual need hours considers meal periods during the work day. See BEM 710, p. 1. If the Department included Respondent's meal periods during the work day, this would obviously result in a lower or no OI present for each pay period.

For the above stated reasons, the Department failed to satisfy its burden of showing that it established a CDC benefit OI to Respondent totaling ██████.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not establish a CDC benefit OI to Respondent totaling ██████.

Accordingly, the Department is REVERSED.


Eric Feldman
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/24/2015**

Date Mailed: **3/24/2015**

EJF/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CC:

[REDACTED]