

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-015040
Issue No.: 6001
Case No.: [REDACTED]
Hearing Date: April 01, 2015
County: WASHTENAW (DISTRICT 20)

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on April 01, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Participants on behalf of Respondent included: [REDACTED].

ISSUES

1. Did Respondent receive an overissuance (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 November 5, 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 acknowledged on an application for assistance dated February 3, 2011, the obligation to report any change to her employment 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 period it is considering the fraud period is January 27, 2013, through April 20, 2013.
7. During the 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. The Department alleges that Respondent received an OI in CDC benefits in the amount of [REDACTED]
9. This was Respondent's first alleged IPV.
10. 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 \$500 or more, **or**
 - the total OI amount is less than \$500, **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 1, 2014), p. 12-13.

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 1, 2014), p. 7; 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.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. 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. 16.

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 1, 2013), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

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 Child Development and Care (CDC) eligibility to exist for a given child, each parent or substitute parent must demonstrate a valid need reason. The four valid CDC needs reasons are family preservation, high school completion, an approved activity, and employment. Department of Human Services Bridges Eligibility Manual (BEM) 703 (November 1, 2014), p 4.

In this case, the Respondent acknowledged on an application for assistance dated February 3, 2011, the responsibility to report any changes to her employment to the Department. The Respondent was an ongoing Child Development and Care (CDC) recipient from January 27, 2013, through April 20, 2013, and the Department had approved her with employment as her verified need for benefits. The Respondent's employment ended on January 17, 2013, but she did not report this to the Department until April 20, 2013. During the period of alleged fraud, the Respondent did not have a verified need for child care. If the Respondent had reported that she had no need for child care that could be authorized by Department policy, the Department would not have issued any of the CDC benefits the Respondent received during the period of alleged fraud.

The Respondent did not dispute that she failed to report her ending employment, but argued that she did have a valid need for child care. The Respondent testified that she was attending school. The Respondent testified that she did not report her ending employment to the Department because she did not feel it was necessary to receive any additional benefits, including additional food assistance, that she may have been eligible for.

This Administrative Law Judge finds that the Respondent had a duty to report any change to her circumstances that could affect her eligibility to receive ongoing benefits. Department policy does not allow for a person receiving CDC benefits to accept less food assistance than they might be eligible for as an alternative to having their CDC benefits close.

Department policy allows for a person attending school to receive CDC benefits as an approved activity but the policy. In this case, the Respondent did not attempt to have her educational program approved by the Department so that she could retain her eligibility for CDC benefits. Since there was no approved activity or other valid need for

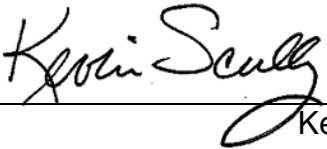
continuing CDC benefits, the Respondent was not eligible for those benefits and received an overissuance of benefits.

This Administrative Law Judge finds that the Respondent was aware of the regulations of the CDC program and was aware that a loss of employment would affect her eligibility for continuing benefits. The Department has established by clear and convincing evidence that the Respondent intentionally withheld reporting her loss of employment to the Department for the purposes of receiving Child Development and Care (CDC) that she would not have been eligible for otherwise.

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. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of [REDACTED] from the following program(s) CDC.
3. The Department is ORDERED to initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.
4. It is FURTHER ORDERED that Respondent be disqualified from CDC for a period of 6 months.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Acting DHS Director
Department of Human Services

Date Signed: **4/6/2015**

Date Mailed: **4/6/2015**

KS/sw

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.

cc:

