

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

IN THE MATTER OF:

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Reg. No.: 14-015035
Issue No.: 6005
Case No.: ██████████
Hearing Date: June 18, 2015
County: WAYNE-DISTRICT 15
(GREYDALE)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department or DHHS), 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 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on June 18, 2015, from Detroit, Michigan. The Department was represented by ██████ ██████, 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 overissuance (OI) of Child Development and Care (CDC) program 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 benefits for 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 was aware of the responsibility to report changes in CDC need.
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 October 15, 2006 to January 19, 2008 (fraud period).
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 \$0.00 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 Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and 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.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total 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 (October 2014), pp. 12-13; ASM 165 (May 2013), pp. 1-7.

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 or CDC provider 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.

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. 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 720, p. 8.

In order to be eligible for child care benefits, clients or adult group members must comply with the CDC program rules as outlined in the Administrative Rule R400.5020, in the Michigan Administrative Code. BEM 708 (April 2014), p. 1. Clients or adult group members, who are found to be in violation of the identified program rules, may serve a six month, twelve month or lifetime disqualification. BEM 708, p. 1.

Rule violations include failure to: provide accurate eligibility information; verify eligibility information; cooperate with a Department investigation; and report changes timely and accurately. BEM 708, p. 1.

Rule violations shall be considered intentional and result in a disqualification if established by: a court; an administrative law judge (ALJ); or the client or adult group member's signed repay agreement or disqualification form. BEM 708, p. 1.

Additionally, clients must report changes in circumstance that potentially affect eligibility or benefit amount. Program Administrative Manual (PAM) 105 (July 2006), p. 7. Changes must be reported within 10 days: after the client is aware of them, or the start date of employment. PAM 105, p. 7. Other reporting requirements include, but are not limited to, changes in day care needs or providers. PAM 105, p. 7.

In the present case, the Department alleges that Respondent committed an IPV of her CDC benefits based on her CDC need was reduced or stopped due to client misrepresentation.

First, the Department presented Respondent's benefits application and CDC application dated October 20, 2006, to show that she acknowledged her responsibility to report changes as required. See Exhibit A, pp. 48-59. In the application, Respondent requested CDC for her four children (Child's A, B, C, and D) and her need reason was employment. See Exhibit A, pp. 50-51 and 56-57. Respondent reported that she was employed and she began employment on September 11, 2006. See Exhibit A, p. 51.

Second, the Department presented Respondent's application dated September 25, 2007. See Exhibit A, pp. 40-47. In the application, Respondent requested CDC for her

four children (Child's A, B, C, and D) and did not mark a need reason (i.e., employment). See Exhibit A, p. 42. Respondent reported that she was employed and that she began employment in October of 2006, however, she did not provide an employer name. See Exhibit A, p. 43.

Third, the Department presented Respondent's verification of employment received on September 27, 2007. See Exhibit A, pp. 38-39. In the verification, the employer indicated she was employed from September 11, 2006, ongoing. See Exhibit A, p. 38.

Fourth, the Department presented Respondent's CDC application dated December 28, 2007. See Exhibit A, pp. 34-37. In the application, Respondent requested CDC for her four children (Child's A, B, C, and D) and her need reason was participating in a Michigan Works! Agency (MWA) approved activity. See Exhibit A, p. 34. Moreover, Respondent indicated she was no longer working and needed cash assistance. See Exhibit A, p. 34.

Fifth, the Department presented Respondent's work first participation history, which showed that she was not enrolled in an employment training during the period of June 6, 2006 to May 20, 2008. See Exhibit A, pp. 27-33.

Sixth, the Department presented Respondent's CDC payment history for Child's A-D and the CDC benefit summary inquiries to show how the Department calculated the alleged OI amount. See Exhibit A, pp. 9-26.

Seventh, the Department indicated in the evidence list that Respondent claimed two children on her tax records; however, never provided such documentation as evidence. See Exhibit A, pp. 3 and 7.

Eighth, an OIG agent spoke to the Respondent on February 16, 2011, as indicated in the OIG investigation report. See Exhibit A, p. 3. The OIG investigation report stated the following from the interview: (i) Respondent denied working for the employer she allegedly listed in the applications; (ii) she never received CDC benefits, but reported that she is a CDC provider; and (iii) the OIG agent asked if Respondent knew the provider listed and Respondent indicated it was her sister-in-law and that she was not familiar with the address the provider listed. The OIG investigation report further indicated that the signatures on the applications and on the identification card appear to match (of the Respondent). See Exhibit A, p. 3. However, this conversation with the Respondent does not show by clear and convincing evidence that she committed an IPV of her CDC benefits. The undersigned finds the evidence unpersuasive as it occurred more than four years ago, it appears the OIG agent that the conversation took place with is not present for the hearing, and the documented notes is considered hearsay. See Michigan Rules of Evidence Rule 801(c) ("Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted).

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of her CDC benefits or that a CDC OI is present in this case.

First, the undersigned is perplexed as to how the Department calculated the total OI amount. The Department sought an OI amount of [REDACTED] however, the undersigned calculated a total OI amount of [REDACTED]. See Exhibit A, pp. 9-12. The Department's alleged OI amount appears to be based on three of the children rather than four. As such, the evidence is unclear why the Department pursued an OI amount for only three of the four children receiving CDC assistance. Based on the above information, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to establish an OI amount for CDC benefits.

Second, based on the evidence presented, the undersigned concluded that a CDC need was present in this case for a majority of the alleged OI/IPV period.

The Department of Human Services (DHS) may provide payment for child care services for qualifying families when the parent(s)/substitute parent(s) is unavailable to provide the child care because of employment, education and/or because of a health/social condition for which treatment is being received and care is provided by an eligible provider. PEM 703 (July 2006), p. 1.

For CDC eligibility to exist for a given child, each parent/substitute parent (P/SP) must demonstrate a valid need reason. PEM 703, p. 2. There are four CDC need reasons. PEM 703, p. 3. Each need reason must be verified and exists only when each parent/substitute parent is unavailable to provide the care because of: (1) family preservation; (2) high school completion; (3) an MWA approved activity; or (4) employment. PEM 703, p. 3.

For employment, CDC may be approved for clients who are employed or self-employed and receive money wages, self-employment profits or sales commissions within six months of the beginning of their employment. PEM 703, p. 9. A DHS-38, Verification of Employment, completed by the employer, is an acceptable form of verification to verify the need for CDC based on employment. See PEM 703, pp. 10-11.

The Department presented a Verification of Employment that showed Respondent was employed as of September 2006 to on or around December 2007, when Respondent indicated in her application that she was no longer employed. See Exhibit A, pp. 34 and 38. Thus, Respondent had a valid CDC need based on her employment. See PEM 703, p. 3. Thus, it is unclear why the Department sought an IPV and/or OI amount against the Respondent for this time period. Now, the evidence is somewhat persuasive that Respondent did not have a CDC need after her employment ended and the fact that she was not enrolled in an MWA approved activity after December 2007. Nonetheless, the Department failed to establish by clear and convincing evidence that

Respondent committed an IPV of her CDC benefits as the evidence established that Respondent did have a valid CDC need for a majority of the alleged fraud period/OI period. Moreover, this evidence fails to establish that Respondent received an OI in CDC benefits as a valid CDC need was present for a majority of the time period.

Third, an IPV requires that an OI exist. Department policy states that suspected IPV means an OI exists for which all three of the following conditions exist as stated above. See BAM 700, p. 7; BAM 720, p. 1. Moreover, the Bridges Policy Glossary (BPG) defines IPV as a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative. BPG 2014-015 (July 2014), p. 36. Department policy clearly states that a suspected IPV means an OI has to exist. See BAM 700, p. 7; BAM 720, p. 1; and BPG 2014-015, p. 36. Because the Department cannot establish that the OI in this case, it cannot establish by clear and convincing evidence that Respondent committed an IPV of her CDC program. Thus, Respondent is not subject to a disqualification from the CDC program. See BAM 720, pp. 12 and 16.

In summary, the Department failed to satisfy its burden of showing that Respondent committed an IPV concerning CDC benefits or that an OI is present in this case. Therefore, Respondent is not subject to disqualification from CDC benefits nor is the Department entitled to recoup benefits. See BAM 700, p. 1 and BEM 708, p. 1.

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 not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did not** receive an OI of program benefits in the amount of [REDACTED] from the CDC benefits.

