

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-015158
Issue No.: 6005
Agency Case No.: [REDACTED]
Hearing Date: October 15, 2015
County: Muskegon

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and 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 October 15, 2015 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 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 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. The Department's OIG filed a hearing request on August 25, 2015 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 timely and accurately report to the Department any changes in household circumstances within 10 days.
5. Respondent had no 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 31, 2010 through April 24, 2010.
7. During the alleged fraud period, Respondent submitted bills for and was issued \$ [REDACTED] in CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 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 CDC 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 goal of the Child Development and Care (CDC) program is to preserve the family unit and to promote its economic independence and self-sufficiency by promoting safe, affordable, accessible, quality child care for qualified Michigan families. BEM 703 (7-1-2015), p. 1.

The CDC program may provide a subsidy for child care services for qualifying families when the parent/substitute parent (P/SP) is **unavailable** to provide the child care because of employment, participation in an approved activity and/or because of a condition for which treatment is being received **and** care is provided by an eligible provider. BEM 703, p. 1.

In order to be eligible for CDC for a given child, each parent or step-parent (P/SP) must demonstrate a valid need reason. BEM 703, p. 4. There are four valid CDC need reasons. Each P/SP of the child needing care must have a valid need reason during the time child care is requested. Each need reason must be verified and exists only when each P/SP is unavailable to provide the care because of: (1) family preservation; (2) high school completion; (3) an approved activity; or (4) employment. BEM 703, p. 4.

In order to be eligible for child care benefits, clients or adult group members must comply with the Child Development and Care (CDC) program rules as outlined in the Administrative Rule R400.5020, in the Michigan Administrative Code. BEM 708 (4-1-2014), 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.
- Report changes timely and accurately.

Rule violations shall be considered intentional and result in a disqualification if established by:

- A court.
- An administrative law judge (ALJ).
- The client or adult group member's signed repay agreement or disqualification form.

See BEM 708, p 1.

CDC Policy will impose the appropriate disqualification. Disqualification periods will be:

- Six months for the first occurrence.
- Twelve months for the second occurrence.
- Lifetime for the third occurrence.

See BEM 708, p 1.

Intentional Program Violation

An Intentional Program Violation (IPV) is a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. Bridges Program Glossary (BPG), p 36.

The Department's OIG requests IPV hearings for the following cases:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
2. 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 (10-1-2014), p. 12-13.

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 (5-1-2014), p. 6; 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 Michigan Civil Jury Instruction (Mich Civ JI) 8.01.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Here, the Department alleges that Respondent committed an IPV when she failed to timely and properly report to the Department that she no longer had a CDC need reason and continued to bill the State of Michigan for daycare. Respondent did not appear at the hearing.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

In this case, the record shows that Respondent no longer attended Work First and was no longer employed as of January 22, 2010. (Exhibit 1, pp 11-12, 13-14) Despite no longer having a need for CDC benefits, Respondent continued to bill for CDC benefits during the fraud period. Respondent was advised of her rights and responsibilities concerning program benefits. (Exhibit 1, pp. 8-10) Respondent's signature on the assistance application in this record certifies that she was aware of these rights and responsibilities. (Exhibit 1, p. 10) Respondent had no apparent physical or mental impairment that limits her understanding or ability to fulfill these reporting

responsibilities. The record shows that Respondent intentionally and fraudulently failed to report that she was no longer working or attending Work First in order to receive an OI of CDC benefits. Accordingly, this Administrative Law Judge finds clear and convincing evidence on the whole record that Respondent committed an IPV because intentionally failed to report information needed to make a correct benefits determination.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

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. CDC policy provides a 6 month disqualification period for the first IPV offense. BEM 708, p 1.

Here, the Department has shown that Respondent was guilty of her first IPV concerning CDC benefits. As a result, Respondent shall be personally disqualified from receiving CDC benefits for a period of 6 months.

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. In this matter, the Department has shown that Respondent received an OI of CDC benefits. According to BAM 700, the Department may recoup this OI.

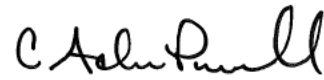
DECISION AND ORDER

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 CDC benefits in the amount of \$ [REDACTED]

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent shall be disqualified from CDC benefits for a period of 6 months.



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Human Services

Date Signed: 10/16/2015

Date Mailed: 10/16/2015

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NOTICE: 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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

