



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 7, 2016
MAHS Docket No.: 15-008861
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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), 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 three-way telephone hearing was held on March 3, 2016, from Detroit, 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) 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 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 [REDACTED], 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 needs.
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 [REDACTED] (fraud period).
7. During the fraud period, Respondent was issued \$2,250 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 \$2,250.
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 IV-A, IV-E 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 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.

In the present case, the Department alleges that Respondent committed an IPV of her CDC benefits because she failed to report that her CDC need reason (college – an approved activity) had ended.

For CDC eligibility to exist for a given child, each parent/substitute parent (P/SP) must demonstrate a valid need reason. BEM 703 (April 2012) p. 2. There are four CDC need reasons. BEM 703, p. 3. Each parent/substitute parent of the child needing care must have a valid need reason during the time child care is requested. BEM 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 approved activity; or (4) employment. BEM 703, p. 3.

Consider each need reason (family preservation, high school completion, approved activity, employment) separately to determine the appropriate eligibility group. BEM 703, p. 3. More than one eligibility group and/or need reason may exist in some cases. BEM 703, p. 4. For example, an employed client may need child care while at work and also when attending school. BEM 703, p. 4.

Additionally, clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (May 2012), p. 7. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in day care needs or providers. BAM 105, pp. 7-8.

First, the Department presented Respondent's application dated [REDACTED], CDC application dated [REDACTED] and CDC Provider Verification dated [REDACTED], to show that she acknowledged her rights and responsibilities. See Exhibit A, pp. 9-31.

Second, the Department presented Respondent's redetermination dated [REDACTED], which was submitted before the alleged fraud period. See Exhibit A, pp. 32-35. In the redetermination, Respondent indicated that both her children receive CDC assistance and her need reason for the care was school. See Exhibit A, p. 34. Respondent also reported that she was attending college full-time. See Exhibit A, p. 33.

Third, the Department presented Respondent's school records that showed she was registered to attend college for the spring semester, which occurred from [REDACTED]. See Exhibit A, p. 36. Thus, the Department argued that her need

reason to receive CDC benefits ended [REDACTED], but she continued to receive CDC benefits even though she was ineligible for them.

Fourth, the OIG Investigation Report (OIG report) indicated that the agent spoke to the Respondent via telephone on [REDACTED]. See Exhibit A, p. 3. The OIG report indicated that Respondent stated she never received CDC when it was not necessary and that she had employment throughout the time period in question. See Exhibit A, p. 3. Thus, the Department presented Respondent's IG-001, Employee Wage History by Social Security Number (SSN), which showed that she had been employed for the 4th quarter of 2012 (October 2012 to December 2012). See Exhibit A, p. 39.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of CDC benefits. There was no evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld her CDC need information. For example, a redetermination submitted during the alleged fraud period in which Respondent reported that her CDC need was based on school when in fact it wasn't. The Department presented several documents, however, this was before the alleged fraud period. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented her CDC need information for the purpose of establishing, maintaining, increasing or preventing reduction of her CDC program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of CDC benefits.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 1; BEM 708 (April 2014), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning CDC benefits. Therefore, Respondent is not subject to a disqualification under the CDC program. BEM 708, p. 1.

Overissuance

As stated previously, the Department failed to show that Respondent committed an IPV of her CDC benefits. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error overissuance 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 (July 2014), p. 1.

However, for the reasons stated below, the Department failed to satisfy its burden of showing that Respondent received an OI of CDC benefits.

First, applying the overissuance period standards and in consideration of that Respondent's CDC need reason ended [REDACTED], the Department determined that the OI period began on [REDACTED]. See Exhibit A, pp. 3 and 36. It is found that the Department applied the inappropriate OI begin date. See BAM 715, pp. 4-5. Instead, the OI begin date should have been [REDACTED]. See BAM 715, pp. 4-5 (the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period). Thus, June 2012 would not be part of the alleged OI period.

Second, Respondent informed the OIG agent that she did have a valid CDC need during the alleged OI period based on her employment. See Exhibit A, p. 3. The Department presented Respondent's IG-001, Employee Wage History by SSN, which showed that she had been employed for the 4th quarter of 2012 (October 2012 to December 2012). See Exhibit A, p. 39. Policy states that more than one eligibility group and/or need reason may exist in some cases. BEM 703, p. 4. For example, an employed client may need child care while at work and also when attending school. BEM 703, p. 4. The Department included October 2012 as part of the OI period. But, Respondent possibly had a valid CDC need based on employment for October 2012. Therefore, there is persuasive evidence showing that Respondent was employed for October 2012, which would be a valid CDC need to obtain benefits for October 2012.

Third, Respondent's redetermination received on [REDACTED], indicated that the Department was reviewing her eligibility for Cash assistance. See Exhibit A, p. 32. Cash assistance includes the Family Independence Program (FIP) benefits, which again, can be another valid CDC need under the approved activity need reason (participate in an employment preparation and/or training activity). See BEM 703, p. 7.

Fourth, in establishing the OI amount, the Department presented Respondent's Benefit Summary Inquiry, which showed the amount of CDC benefits that were issued. See Exhibit A, pp. 37-38. Two of the CDC pay periods indicated "Tax Offset." See Exhibit A, p. 37. Therefore, the Department already appeared to collect Respondent's debt

through tax offsets. See BAM 725 (July 2014), pp. 10-11 (tax offsets). Thus, these pay periods would also not be included in the OI period.

For the above stated reasons, the Department failed to satisfy its burden of showing that Respondent received an OI of CDC benefits during the alleged period. See BEM 708, p. 1 and BAM 700, p. 1. The evidence is persuasive to conclude that other valid CDC need reasons were present throughout the alleged OI period (i.e., employment and approved activity). Moreover, the Department included benefit periods in the OI determination, which should have not been included due to tax offsets or applying the improper OI begin date. As such, the Department failed to satisfy its burden of showing that Respondent received an OI of CDC benefits in this case. See BEM 708, p. 1 and BAM 700, 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 CDC program benefits in the amount of \$2,250.

The Department is **ORDERED** to delete the OI and cease any recoupment action.

EF/ hw



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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the

request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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 48909-8139

DHHS

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]