



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 3, 2016  
MAHS Docket No.: 15-014465  
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 telephone hearing was held on March 2, 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 the Child Development and Care (CDC) 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 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 July 30, 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 report changes in CDC need and/or employment.
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 \$2,081.76 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 \$2,081.76.
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.

As a preliminary matter, attempts were by the Michigan Administrative Hearing System (MAHS) to have Respondent participate in the hearing to address the overissuance portion of the hearing, but to no avail.

### **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 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.

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

Shortly after commencement of the hearing, it was discovered that Respondent signed a Request for Waiver of Disqualification Hearing, in which she did not admit that the facts as presented are correct. See Exhibit B, p. 2. However, Respondent chose to sign this waiver request and understood that she would be disqualified from the programs listed on the notice. See Exhibit B, p. 2. The client/authorized representative (AR) is determined to have committed an IPV by signing a DHS-826, Request for Waiver of Disqualification Hearing, or DHS-830, Disqualification Consent Agreement, or other recoupment and disqualification agreement form. BAM 720, p. 2. Because Respondent signed the Request for Waiver of Disqualification Hearing, it is established that Respondent committed a CDC IPV. See Exhibit B, pp. 1-2 and BAM 720, p. 2. As such, the undersigned will not further address the IPV portion of this hearing decision.

### **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, 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 satisfied its burden of showing that Respondent committed an IPV concerning CDC benefits. Therefore, Respondent is subject to a disqualification under the CDC program. BEM 708, p. 1.

### **Overissuance**

As previously stated, the Department has established that Respondent committed an IPV of CDC benefits.

In the present case, the Department alleges that Respondent received an OI of her CDC benefits based on her CDC need was stopped because she her employment ended. Thus, the Department argued that Respondent continued to receive CDC benefits even though she was ineligible for them.

For CDC eligibility to exist for a given child, each parent/substitute parent (P/SP) must demonstrate a valid need reason. BEM 703 (October 2009) 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.

For purposes of this case, Respondent's CDC need was based on employment. See Exhibit A, pp. 20 and 27.

Additionally, clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (October 2009), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

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. 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.

Based on the foregoing information and evidence, the Department did establish a CDC benefit OI to Respondent.

First, the Department presented a letter from Respondent's employer dated [REDACTED], [REDACTED] and received by the Department on [REDACTED]. See Exhibit A, p. 30. Based on this letter, Respondent's employment was terminated effective [REDACTED]. See Exhibit A, p. 30. In fact, Respondent reported in a redetermination received by the Department on [REDACTED], that she was employed and also that her employment ended on [REDACTED]. See Exhibit A, pp. 25-28. The evidence established that Respondent was no longer eligible for CDC benefits based on her employment ending. See BEM 703, p. 3 and BAM 105, pp. 7-8. Respondent continued to receive CDC benefits even though she was ineligible for them. Thus, an OI is present in this case.

Second, because Respondent's employment ended effective [REDACTED], the undersigned finds that the Department applied the inappropriate OI begin date.

Policy states the overissuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months before the date it was referred to the Recoupment Specialist (RS), whichever is later. BAM 720, p. 7. To determine the first month of the overissuance period (for overissuances 11/97 or later) the Department allows time for: (i) the client reporting period, per BAM 105; (ii) the full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the full negative action suspense period. BAM 720, p. 7. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 720, p. 7.

Applying the above standard and in consideration of the Respondent's need reason ending [REDACTED], the Department determined that the OI period began [REDACTED]. It is found that the Department applied the inappropriate OI begin date and the appropriate OI begin date is for the CDC OI pay period of [REDACTED] to [REDACTED]. See Exhibit A, p. 29 and BAM 720, p. 7. The Department paid \$520.44 in CDC benefits for the pay period of [REDACTED] to [REDACTED]. See Exhibit A, p. 29. Thus, the Department can initiate recoupment/collection procedures for the amount of \$520.44 in accordance with Department policy.

### **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 CDC program benefits in the amount of \$520.44.

The Department is ORDERED to reduce the OI to \$520.44 for the period [REDACTED], [REDACTED] to [REDACTED], and initiate recoupment/collection procedures in accordance with Department policy.

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

EF/hw



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**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]