



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR



Date Mailed: April 20, 2016
MAHS Docket No.: 15-015003
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 April 7, 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 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 [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 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], and [REDACTED], [REDACTED] (fraud period).
7. During the fraud period, Respondent was issued \$28,354.60 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 \$28,354.60.
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 of the misrepresentation of her employment. The Department argued that Respondent misrepresented eligibility when she submitted false documentation to the Department indicating that she was employed when in fact she was not employed during the alleged fraud period.

For CDC eligibility to exist for a given child, each parent/substitute parent (P/SP) must demonstrate a valid need reason. Program Eligibility Manual PEM 703 (January 2005 to July 2006) pp. 2-3. There are four CDC need reasons. PEM 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. 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) Michigan Works! Association (MWA) approved activity; or (4) employment. PEM 703, p. 3.

Additionally, clients must report changes in circumstance that potentially affect eligibility or benefit amount. Program Administrative Manual (PAM) 105 (January 2005 to January 2007), 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, pp. 7-8.

First, the Department presented three of Respondent's applications dated [REDACTED] [REDACTED]; and [REDACTED], which were all submitted throughout the alleged fraud period. See Exhibit A, pp. 10-33. In each application, Respondent listed her employer as [REDACTED]. See Exhibit A, pp. 13, 21, and 29. However, the Department argued that Respondent was not employed with her alleged employer when she signed these documents. See Exhibit A, p. 8. Also, in her application dated [REDACTED], Respondent requested CDC assistance for her children based on her need reasoning being work. See Exhibit A, p. 20.

Second, the Department's presented Respondent's Verification of Employment dated [REDACTED], in which it indicated that she worked at [REDACTED]. See Exhibit A, pp. 36-37. The verification stated that she began employment in "4-04" (unclear if this meant "[REDACTED]" or "April of 2004"), her employment status was "employed," the date of her last paycheck was [REDACTED], she indicated that some days she would work from 2:30 p.m. to 10:30 p.m., and the form was completed by a manager at Value World. See Exhibit A, pp. 36-37. Again, the Department argued that this documentation contained untrue information. See Exhibit A, p. 8. The Department's

evidence list indicated that an OIG agent (not present for this hearing) spoke with the site manager of [REDACTED] on [REDACTED] and indicated the business hours rarely went beyond 9:30 p.m. and the agent was referred to [REDACTED]. See Exhibit A, p. 8. The OIG agent notated this conversation on the employment verification. See Exhibit A, p. 36.

Third, because the agent was referred to Superior Management, the agent subpoenaed and requested an employment verification regarding the Respondent. See Exhibit A, p. 38. The records indicated that Respondent was hired on [REDACTED] and was discharged for excessive tardiness on [REDACTED]. See Exhibit A, p. 39.

Fourth, the OIG Investigation Report (OIG report) indicated that the agent spoke to Respondent on [REDACTED], in which she stated the following: (i) she was employed with Value World during the alleged fraud period; and (ii) she worked the hours indicated on the DHS-38 Verification of Employment documentation. See Exhibit A, p. 3.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of CDC benefits. The OIG agent failed to demonstrate by clear and convincing evidence that Respondent submitted false documentation to the Department indicating that she was employed during the alleged fraud period. In the present case, one employment verification shows that Respondent was not employed during the alleged fraud period. See Exhibit A, pp. 38-39. However, another employment verification shows that she was employed with [REDACTED] during the alleged fraud period. See Exhibit A, pp. 36-37. The Department did not present any additional evidence to show that Respondent falsified her employment information in order to continue receiving CDC benefits. Furthermore, the conversation between the OIG agent and the site manager at [REDACTED] in September of 2009 occurred several years ago. And, the OIG agent was not present for this hearing to provide additional testimony. Nonetheless, 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. 15; 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.

Nonetheless, a client error is not present in this case. As stated previously, the OIG agent failed to demonstrate that Respondent submitted false applications and an employment verification indicating she was employed throughout the alleged fraud period. Because the Department failed to show that Respondent was not employed throughout the alleged fraud/OI period, the Department failed to establish that her CDC need stopped. Therefore, there is no OI present in this case.

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 \$28,354.60.

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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]