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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: July 14, 2016
MAHS Docket No.: 15-018779
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on June 16, 2016, 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 the Department establish by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Child Development and Care (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. On an application for assistance dated July 8, 2013, the Respondent acknowledged the duty to report all changes to employment and income for all group members to the Department in a timely manner. Exhibit A, pp 10 – 11.

2. On her July 8, 2013, application for assistance, the Respondent reported that her husband had moved into her residence on July 8, 2013. Exhibit A, p 19.
3. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
4. On July 8, 2013, the Respondent reported to the Department that her employment had ended on April 20, 2013. Exhibit A, p 15.
5. On July 8, 2013, the Respondent reported to the Department that she had started self-employment on January 8, 2013, and would be receiving a gross monthly income of \$ [REDACTED] Exhibit A, p 16.
6. On July 8, 2013, the Respondent reported to the Department that she would be receiving child support income. Exhibit A, p 16.
7. On July 10, 2014, the Respondent reported that her husband had moved out of her home as of July 10, 2014. Exhibit A, pp 58 – 62.
8. On an application for assistance date June 27, 2014, the Respondent acknowledged the duty to report all changes to employment and income for all group members to the Department in a timely manner. Exhibit A, p 22 – 62.
9. On her July 27, 2014, application for assistance, the Respondent reported that her husband was living in her household. Exhibit A, p 22.
10. On June 27, 2014, the Respondent reported employment with [REDACTED] and [REDACTED].
11. On an application for assistance dated July 30, 2014, the Respondent acknowledged the duty to report to report all changes to employment and income to the Department in a timely manner. Exhibit A, p 63 – 98.
12. On her July 30, 2014, application for assistance, the Respondent reported that her husband was not living in her residence. Exhibit A, pp 65 – 68.
13. On July 30, 2014, the Respondent reported to the Department that she needed Child Development and Care (CDC) benefits due to work. Exhibit A, p 72.
14. On July 30, 2014, the Respondent reported employment with [REDACTED] and [REDACTED]. Exhibit A, p 73.
15. On August 26, 2014, the Respondent reported on a Redetermination (DHS-1010) form that there was no change to her employment or income. Exhibit A, pp 99 – 104.

16. On an application for assistance dated November 5, 2014, the Respondent acknowledged the duty to report all changes to employment and income for all group members to the Department in a timely manner. Exhibit A, pp 105 – 144.
17. On November 5, 2014, the Respondent reported to the Department that she needed Child Development and Care (CDC) benefits due to work and approved education/training/employment preparation. Exhibit A, p 117.
18. On November 5, 2014, the Respondent reported to the Department that she was employed with [REDACTED]. Exhibit A, p 118.
19. On an application for assistance dated June 1, 2015, the Respondent acknowledged the duty to report all changes to employment and income for all group members to the Department in a timely manner. Exhibit A, pp 145 – 181.
20. On June 1, 2015, the Respondent reported to the Department that she needed Child Development and Care (CDC) benefits due to work and approved education/training/employment preparation. Exhibit A, pp 156 – 157.
21. On June 1, 2015, the Respondent reported to the Department that she was employed at [REDACTED]. Exhibit A, p 158.
22. The Respondent's husband received earned income of \$ [REDACTED] in the first quarter of 2014, \$ [REDACTED] in the second quarter of 2014, and \$ [REDACTED] in the third quarter of 2014. Exhibit A, p 182.
23. The Respondent's husband applied for benefits on February 9, 2015, and reported the Respondent's address as his mailing address, but listed another address as his residence. Exhibit A, p 191.
24. The Respondent's husband had vehicle registered with the Michigan Department of State using the Respondent's address from December 23, 2011, through June 26, 2015. Exhibit A, p 183.
25. The Respondent was an ongoing Child Development and Care (CDC) recipient from February 9, 2014, through May 3, 2014, receiving benefits totaling \$ [REDACTED].
26. The Respondent was an ongoing Child Development and Care (CDC) recipient from September 7, 2014, through July 11, 2015, receiving benefits totaling \$ [REDACTED].
27. On October 2, 2015, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, p 5 – 7.
28. This was Respondent's first alleged IPV.

29. The Department's OIG filed a hearing request on October 2, 2015, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.

30. 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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

- FAP trafficking OIs 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 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.

Department of Health and Human Services Bridges
Administrative Manual (BAM) 720 (January 1, 2016), pp 12-
13.

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.

Department of Health and Human Services Bridges
Administrative Manual (BAM) 700 (January 1, 2016), 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.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. 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. 16.

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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

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.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. This includes reporting starting or stopping employment and changes in income received.

Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2015), pp 1-20.

Clients are allowed ten calendar days to provide the verifications requested by the Department. The Department should send a negative action notice when the client indicates a refusal to provide the verification, or the time period provided has lapsed and the client has not made a reasonable effort to provide it. The Department should extend the time limit no more than once if the client cannot provide the verification despite a reasonable effort. Department of Human Services Bridges Assistance Manual (BAM) 130 (May 1, 2012), pp 1-7.

A legal or biological parent of a child for whom CDC benefits are requested must be a member of the benefit group. Department of Health and Human Services Bridges Eligibility Manual (BEM) 205 (July 1, 2016), p 1.

On an application for assistance dated July 8, 2013, the Respondent acknowledged the duty to report all changes to employment and income to the Department in a timely manner. The Respondent did not have an apparent physical or mental impairment that would limit her understanding or ability to fulfill this requirement.

The Department alleges that the Respondent's husband was living in her household, which made him a mandatory group member. As a parent to children for whom CDC benefits were requested, the Respondent's husband must provide a verified need for CDC benefits. The Department alleges that the Respondent was unemployed during periods where CDC benefits were requested without a verified need.

The Department presented evidence that the husband had employment end on January 26, 2014. If the Respondent had reported her husband's loss of income within 10 days of this change in circumstances, the Department would have redetermined her eligibility to receive continuing benefits for the benefit period following February 27, 2014. In this case, the Department alleges that the Respondent was not eligible for CDC benefits as of February 9, 2014.

The Department's evidence indicates that the Respondent's husband received earned income from another employer in the second and third quarters of 2014. No evidence of the actual dates the husband was employed was available during the hearing. If the Respondent had reported a period of employment ending April 1, 2014, the Department would have redetermined her eligibility for CDC benefits as of May 3, 2016.

The Department alleges that during the period of alleged fraud, the Respondent's husband was living in her household. The Department's investigator concluded that the Respondent's home was a single family home based on observations of a single entrance to the home. The Department's Investigation Report (MDHHS-4652) also indicates that the City of Detroit Records Database lists the Respondent's home as a two-family unit dwelling. Verification documents submitted by the Respondent concerning the nature of her residence that may have been submitted during eligibility interview were not entered into the hearing record.

The Respondent's husband applied for assistance on February 9, 2015, and reported the Respondent's address as his mailing address, but listed another address as his residence. The Respondent's husband also used the Respondent's address to register a vehicle with the Michigan Department of State.

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).

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.*

This Administrative Law Judge finds that the Department failed to present clear and convincing evidence on the record that the Respondent's husband was not living in a separate unit from the Respondent at the address reported by the Respondent as her residence. The Department failed to establish that the Respondent's residence is not a two-family residence that may or may not have two distinct mailing addresses. This Administrative Law Judge finds that the Department has failed to establish by clear and convincing evidence that the Respondent's husband was available to care for the Respondent's children based on employment ending January 26, 2014.

If the Respondent's husband was living with the Respondent, this Administrative Law Judge finds that the Department failed to establish that the Respondent's husband was not engaged in employment or training during the second and third quarters of 2014 that created a need for CDC benefits.

This Administrative Law Judge finds that the Department has failed to present clear and convincing evidence of an Intentional Program Violation (IPV).

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

KS/las



Kevin Scully
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]

[REDACTED]

Petitioner

[REDACTED]

Respondent

[REDACTED]