



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 20, 2016
MAHS Docket No.: [REDACTED]
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION AND
OVERISSUANCE**

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), 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 [REDACTED], from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], regulation agent with the Office of Inspector General. [REDACTED] investigator, testified on behalf of MDHHS. Respondent appeared and was not represented.

ISSUES

The first issue is whether MDHHS established Respondent received an overissuance (OI) of benefits.

The second issue is whether MDHHS established that Respondent committed an intentional program violation (IPV).

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an ongoing recipient of Child Development and Care (CDC) benefits.

2. Respondent's CDC eligibility was based on employment with an employer (hereinafter "Employer").
3. Respondent's employment with Employer ended [REDACTED].
4. Respondent probably, but not clearly and convincingly, failed to report employment stoppage with Employer to MDHHS.
5. Respondent's probable failure to report the employment stoppage resulted in Respondent receiving [REDACTED] in over-issued CDC benefits from [REDACTED].
6. On [REDACTED], MDHHS requested a hearing to establish Respondent committed an IPV and received an OI of [REDACTED] in CDC benefits for the months from [REDACTED].

CONCLUSIONS OF LAW

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. MDHHS 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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS requested a hearing, in part, to establish Respondent received an overissuance of benefits. MDHHS presented an Intentional Program Violation Repayment Agreement (Exhibit 1, pp. 5-6) dated [REDACTED]. The agreement (unsigned by Respondent) alleged Respondent received an over-issuance of [REDACTED] in CDC benefits from [REDACTED], through [REDACTED]. The repayment agreement, along with MDHHS testimony, alleged the OI was based on Respondent's lack of CDC need.

At application or redetermination, each [parent/substitute parent] must demonstrate a valid need reason. BEM 703 (April 2016), p. 4. There are four valid CDC need reasons listed below. *Id.* Each need reason must be verified. *Id.* [The need reasons are] family preservation, high school completion, an approved activity, [or] employment. *Id.* Child care may be approved for [parents/substitute parents] who are employed or self-employed and receive money, wages, self-employment profits or sales commissions. *Id.*, p. 11.

It was not disputed that Respondent's only valid need for CDC was based on employment. It was disputed if Respondent was employed.

MDHHS presented a letter (Exhibit 1, p. 49) dated [REDACTED], from Respondent's former employer. The letter stated Respondent worked from [REDACTED], to [REDACTED]. The letter further stated Respondent's final date of work was [REDACTED], and that she did not "physically work" for the employer in [REDACTED]. MDHHS appeared to obtain the letter in response to a subpoena (see Exhibit 1, p. 50).

MDHHS presented an untitled document purportedly listing Respondent's quarterly earnings history (Exhibit 1, pp. 58-60). The document listed employment income for Respondent in the third quarter of 2012. No income was indicated for subsequent quarters, through [REDACTED].

Presented evidence sufficiently verified Respondent ceased working for Employer as of [REDACTED]. Thus, as of [REDACTED] Respondent would not be entitled to receive CDC benefits unless she had further need.

Respondent testimony conceded she lost employment with Employer, however, Respondent testified she immediately obtained new employment. Respondent testified her new job paid her "under-the-table"; thus, the employment earnings would not appear on any State of Michigan earnings statements (such as Respondent's quarterly earnings history).

Respondent testified she reported her employment stoppage with Employer to MDHHS. Respondent testimony also claimed she reported her subsequent under-the-table employment to MDHHS. Respondent presented no proof of either during the hearing.

It is virtually impossible for MDHHS to prove that Respondent did not possess and report cash-paid employment in [REDACTED]. It is similarly difficult to expect Respondent to verify that she had cash-paid employment during the alleged OI period, and that she reported the employment to MDHHS. During the hearing, Respondent was given an opportunity to present the best available evidence.

Respondent testified that she reported her under-the-table employment earnings from [REDACTED] 1 to the IRS. Respondent testified she could verify her reporting by presenting her [REDACTED] federal tax return. Respondent testified she was certain that she still possessed her tax records from [REDACTED]. If Respondent reported her under-the-table earnings to the Internal Revenue Service (IRS), it would be more likely that Respondent reported the employment to MDHHS. The record was extended 14 days solely for the purpose to allow Respondent an opportunity to verify she reported earnings to the IRS in the [REDACTED] tax year. Respondent failed to present her tax statements. Respondent's failure to verify reporting earnings was indicative that she had none.

Given presented evidence, it is found that it is probable that Respondent had no CDC need reason after [REDACTED]. Thus, all CDC benefits issued to Respondent after [REDACTED] were over-issued. MDHHS alleged the OI totaled [REDACTED]

MDHHS presented a portion of Respondent's CDC benefit history (Exhibit 1, pp. 61-62). The history listed various CDC payments to Respondent's CDC provider totaling [REDACTED] from [REDACTED].

It is found MDHHS established an OI of [REDACTED] in CDC benefits. The analysis will proceed to determine if Respondent's non-reporting amounted to an IPV.

The Code of Federal Regulations defines an IPV. Intentional program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16 (c).

[An IPV is a] benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative. Bridges Program Glossary (October 2015), p. 36. A 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 their reporting responsibilities.

BAM 720 (January 2016), p. 1; see also 7 CFR 273(e)(6).

MDHHS alleged Respondent failed to update employment information to MDHHS for the purpose of receiving CDC benefits for which Respondent was not entitled. MDHHS further contended Respondent's failure was purposeful and intentional.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

MDHHS presented Respondent's handwritten Assistance Application (Exhibit 1, pp. 8-19) requesting CDC benefits, among others. Respondent's application signature was dated [REDACTED] (and updated on July 2, 2009). The application stated that Respondent's signature was certification that Respondent reviewed and agreed with the

application's Information Booklet; the Information Booklet informs clients of various MDHHS policies, including the requirement of reporting changes within 10 days.

MDHHS presented Respondent's handwritten Assistance Application (Exhibit 1, pp. 26-46). Respondent's application signature was dated [REDACTED]. The application stated that Respondent's signature was certification that Respondent reviewed and agreed with the application's Information Booklet; the Information Booklet informs clients of various MDHHS policies, including the requirement of reporting changes within 10 days.

MDHHS established Respondent received an OI of [REDACTED]. The amount of OI is a compelling incentive for Respondent to purposely not report an employment stoppage. Thus, there was motive for Respondent to not report an employment stoppage.

It has already been found that Respondent received an OI; that was based on a lesser standard of proof than required for an IPV. Despite persuasive evidence that an OI occurred, there were factors suggesting a clear and convincing standard was not met.

IPV is suspected when there is **clear and convincing** [emphasis added] evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. *Id.* 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. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

MDHHS requested a hearing approximately 5 years and 8 months after an OI occurred. Though Respondent failed in her proof to verify employment, she could have been reasonably hampered by the significant passage of time since the employment. Respondent did not make such an argument during the hearing, however, the time period is so large that there is a presumed difficulty for clients to have to verify employment so long after the employment ended.

Though Respondent failed in submitting tax records from [REDACTED] MDHHS also failed in the same attempt. MDHHS testimony indicated client tax records are obtainable and that an attempt would make to submit the same records Respondent stated she would submit. The burden of submission properly rests with Respondent, as she mentioned the records would verify her testimony, however, MDHHS also accepted a responsibility to submit Respondent's [REDACTED] tax records.

Establishment of an IPV is most easily verified by written documentation from a respondent which contradicted known facts. Generally, MDHHS will have difficulty in establishing a clear and convincing purposeful failure to report information when there is not written documentation from a respondent which contradicts known facts. The present case does not justify deviation from the general rule.

Given presented evidence, it is probable, though not clear and convincing, that Respondent failed to report a stoppage in employment causing an OI of benefits. The failure to meet the clear and convincing standard merits denying MDHHS' request to establish an IPV disqualification against Respondent.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received [REDACTED] in over-issued CDC benefits from [REDACTED], through [REDACTED]. The MDHHS request to establish an overissuance is **PARTIALLY APPROVED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent received an OI of FAP benefits of [REDACTED]. It is further found that MDHHS failed to establish Respondent committed an IPV based on an unreported employment stoppage. The MDHHS request to establish Respondent committed an IPV and received an OI of CDC benefits for [REDACTED] is **DENIED**.

CG/hw



Christian Gardocki

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]
[REDACTED]

[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]