



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 19, 2016
MAHS Docket No.: 16-012474
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 October 18, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared on her own behalf.

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 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 June 14, 2016, 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 only use her CDC during periods of eligibility.
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 January 2, 2015, through February 26, 2015 (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in CDC benefits in the amount of \$ [REDACTED].
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 January 1, 2016, 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 (1/1/16), p. 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.

BAM 700 (1/1/16), p. 6; 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 this case, Respondent was attending school and was provided CDC to care for her four children while she was in training. She became pregnant and entered the hospital in December 2014 to deliver her baby. She was not released until [REDACTED], and then she was staying home with her children. She was not attending classes between January 2, 2015, and February 26, 2015, yet the Department was paying her day care provider during that time. She testified that she did not understand that she had to tell the Department when her children were not attending day care, and she did not expect her provider would be billing the Department when her children were not attending.

BEM 706 (4/1/16) p. 3 requires providers to bill the Department biweekly for care that was provided, and each bill is to cover a two-week pay period. A provider can charge up to 208 hours per child in care, even if the child is absent. "Child absence hours may be billed for any periods in which the child is not in care when he/she would have normally been in attendance. This includes periods when the provider is open for business, as well as when the facility is closed." In order to bill for absences, the provider must have a written policy to charge all families for child absences. BEM 706, p. 4-5.

The Department provided a documentation from Respondent's school (Exhibit 1 Pages 10-13) confirming that Respondent was on medical leave from January 2, 2015, through February 27, 2015. The Department also provided evidence (Page 14) showing it had paid benefits for the dates of January 11, 2014, through February 21, 2015.

When the Department discovers a potential OI in CDC, it is supposed to do all of the following:

1. Take immediate action to correct the current benefits; see BAM 220, Case Actions, for change processing requirements.
2. Obtain initial evidence that an overissuance potentially exists.
3. Determine if it was caused by department, provider or client actions.
4. Refer all client errors to the RS within **60 days** of suspecting or if a suspected overissuance exists. BAM 715 (1/1/16) p. 2

There is no evidence that the Department determined whether this OI was caused by the Department, by the provider, or by the Respondent. The Department is supposed to refer the matter to the OIG if an IPV is suspected. BAM 715, p. 4.

Unless the Department is recouping a CDC OI from the provider, the Department is to notify the Respondent by sending the following forms (BAM 715, p. 10), along with an explanation of the reason for the overissuance and the manual items:

- DHS-4358A, Notice of Overissuance.
- DHS-4358B, Agency and Client Error Repayment Agreement.
- DHS-4358C, Overissuance Summary.
- DHS-4358D, Hearing Request for Overissuance or Recoupment Action.

The evidence packet submitted by the Department did not include those form numbers, although it included some similar forms with different form numbers.

In the hearing summary (Page 1) the Department stated, "A DHS-1046 Semi-Annual Report signed by subject on 12/03/2014 shows that subject agreed to report any changes in the household within 10 days." That form is found in Exhibit 1 Pages 8-9, and that form said it needed to be submitted by January 1, 2015, or Respondent's "Food Assistance Case will close effective 01/31/2015." There is no indication that anything Respondent stated in that form was incorrect. There are no questions asking whether Respondent continued to be enrolled in school. There are no instructions to Respondent that she was obligated to report a change within 10 days. The form was dated December 3, 2014, and her statements were accurate at the time.

The Department has the burden of proving by clear and convincing evidence that Petitioner committed an IPV. In this case, it has not met that burden. There are unanswered questions such as, did the provider have a policy requiring payment for child care, even when days were missed? Did the provider intentionally defraud the Department by billing for dates when Respondent's children were not in attendance?

As explained above, the provider can bill for up to 208 hours per child, even when the child is absent. The Department provided an attendance record (Page 11) showing Respondent attended training for 155.5 hours from February 27, 2015 through April 15, 2015 (approximately seven weeks). The time period at issue here was approximately eight weeks, and it is entirely possible that Respondent would not have exceeded the 208 hours allowed during that eight week period.

Because of these facts, the Department has not succeeded in establishing that Petitioner intentionally violated CDC program rules. It is possible that the provider intentionally defrauded the Department, and in that case the Department can pursue an IPV against the provider. But, the Department cannot prove an IPV on the Respondent's behalf just on the basis of the provider billing even when the children were not in attendance. The Department's witness conceded that CDC is paid based upon billings from the provider, and not claims made by the Respondent.

Disqualification

A client who is found to have committed a CDC IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (4/1/14), 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 proved an IPV. Without an IPV, there is no basis to disqualify Respondent from the CDC program.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, as stated above, the Department has failed to prove that Respondent received an OI of CDC benefits.

DECISION AND ORDER

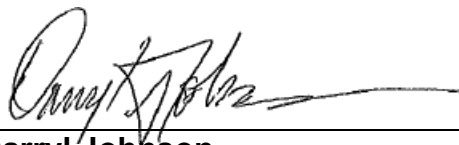
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an OI of FAP program benefits.

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

It is FURTHER ORDERED that no disqualification period is imposed upon Respondent based upon the facts presented by the Department.

DJ/mc

A handwritten signature in black ink, appearing to read 'Darryl Johnson', with a long horizontal flourish extending to the right.

Darryl Johnson

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]