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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

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 31, 2017
MAHS Docket No.: 16-013838
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. 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 January 5, 2017, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent, [REDACTED], represented herself at the proceeding.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP), Family Independence Program (FIP), and 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 FAP, FIP, and 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 25, 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 FAP, FIP, and CDC benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in income and CDC need.
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 FAP and FIP fraud period is December 1, 2006 to August 31, 2007 (FAP and FIP fraud periods).
7. The Department's OIG indicates that the time period it is considering the CDC fraud period is December 24, 2006 to August 18, 2007 (CDC fraud period).
8. During the fraud period, Respondent was issued ██████████ in FAP and FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP, FIP, and CDC benefits in the amount of ██████████
10. This was Respondent's first alleged CDC IPV.
11. This was Respondent's second alleged FAP and FIP IPV.
12. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193,

and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

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 (January 2016), pp. 12-13; ASM 165 (May 2013), pp. 1-2.

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 (January 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.

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, the Department alleges that Respondent committed an IPV of her FAP, FIP, and CDC benefits. The undersigned Administrative Law Judge (ALJ) will address the FAP and FIP allegations below and then the CDC allegations separately.

FAP/FIP - Intentional Program Violations, Disqualifications, and Overissuances

In this case, the Department's alleges that Respondent committed an IPV of her FAP and FIP for the period of December 1, 2006 to August 31, 2007. Exhibit A, p. 3. The Department argued that it is requesting disqualification and recoupment of benefits for the FAP and FIP programs due to Respondent's misrepresentation of employment. Exhibit A, p. 1 and see Program Administrative Manual (PAM) 105 (November 2006), p. 7 (Responsibility to Report Changes).

Moreover, the Department alleges that Respondent received an OI of FAP benefits totaling [REDACTED] and an OI of FIP benefits totaling [REDACTED]. See Exhibit A, p. 3. 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. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8. However, the Department did not present any OI budgets showing how the OI amounts were calculated. The Department only presented Respondent's Benefit Summary Inquiry showing her FAP and FIP issuance history. See Exhibit A, pp. 27-32. But, this evidence alone, fails to establish how the Department calculated an OI of FAP and FIP benefits. Accordingly, the Department did not satisfy its burden of showing that Respondent received an OI of FAP and FIP benefits. See BAM 715, p. 8.

Furthermore, an IPV requires that an OI amount exists. Department policy states that suspected IPV means an OI exists for which all three of the following conditions exist as stated above. See BAM 700, p. 7; BAM 720, p. 1. Moreover, the Bridges Policy Glossary (BPG) defines IPV as a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative. BPG 2015-015 (October 2015), p. 36. Department policy clearly states that a suspected IPV means an OI has to exist. See BAM 700, p. 7; BAM 720, p. 1; and BPG 2015-015, p. 36. Because the Department cannot establish an OI in this case, it cannot establish by clear and convincing evidence that Respondent committed an IPV of her FAP and FIP programs. Thus, Respondent is not subject to a disqualification from the FAP and FIP programs. See BAM 720, pp. 12 and 16.

CDC - Intentional Program Violation

Based on BEM 708 policy, Client Disqualifications, CDC rule violations shall be considered intentional and result in a disqualification if established by an ALJ. BEM 708 (April 2016) p. 1. Because the Department requested an IPV hearing in this case and policy states that CDC rule violations shall be considered intentional if established by an ALJ, the undersigned ALJ will determine if whether Respondent committed an IPV of CDC benefits.

In this case, Respondent received CDC benefits during the alleged fraud period based on participating in the Michigan Works! Agency (MWA) approved activity – the Work First program. Exhibit A, p. 37. The Department alleges that Respondent misrepresented CDC need eligibility when she failed to meet her approved activity requirements, as she did not attend the Work First program consistently during the alleged fraud period. Exhibit A, p. 1. To simply the Department's argument, it argued that Respondent was not in compliance with the Work First program and thus, she was not eligible for CDC benefits.

First, the Department presented Respondent's application dated on or about August 31, 2006. Exhibit A, pp. 12-19. In the application, Respondent reported employment earnings. Exhibit A, p. 15.

Second, the Department presented Respondent's CDC application dated December 13, 2006, in which she requested CDC assistance based on her participating in an MWA approved activity, which was known as the Work First program. Exhibit A, pp. 37-38.

Third, the Department presented Respondent's application dated on or about July 22, 2007, which was submitted during the alleged fraud period. Exhibit A, pp. 20-26. In the application, Respondent did not report any employment income. Exhibit A, pp. 22-23.

Fourth, the Department presented Respondent's wage history that showed she did not have any employment earnings during a majority of the alleged fraud period. Exhibit A, p. 39. The wage history showed that she did have earnings for the 1st quarter of 2007 (January to March), but that she only earned [REDACTED] for this entire quarter. Exhibit A, p. 39. The reason for this document is to show that Respondent could not have received CDC benefits based on an employment need. The evidence established that Respondent's CDC need during the alleged fraud period was based only on the MWA approved activity, which was the Work First program.

Fifth, the Department presented a Notice of Employment and/or Self-Sufficiency Related Noncompliance (non-compliance notice) dated July 16, 2007, which informed her that she was in non-compliance for the date of June 26, 2007, due to a fracture knee interfering with job search. Exhibit A, p. 41. However, a review of Respondent's Work First case notes appeared to show that she was provided a good cause for the non-compliance based on a medical deferral. Exhibit A, p. 62.

Sixth, the Department presented Respondent's Work First case notes to show that she was not in compliance with job search requirements. See Exhibit A, pp. 42-64.

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 (July 2006), p. 2. 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) MWA approved activity; or (4) employment. PEM 703, p. 3.

Additionally, all Family Independence Program (FIP) and Refugee Assistance Program (RAP) clients, unless deferred or engaged in activities other than employment which meet participation requirements, must be referred to Work First and participate in employment-related activities to increase their employability and to find employment. PEM 230A (November 2006), p. 1. All mandatory participants must engage in employment or participate in other MWA-approved work activities up to 40 hours per week on average. PEM 230A, p. 1.

As a condition of eligibility, mandatory participants in the eligible group must work or engage in activities leading to employment. PEM 233A (July 2006), p. 1. Noncompliance for mandatory applicants, recipients, or member adds without good cause includes failing or refusing to participate in employment-related activities required by the MWA or other contractor, etc...PEM 233A, pp. 1-2. Good cause is a valid reason for noncompliance with employment related activities. PEM 233A, p. 3.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of her CDC benefits. The OIG Investigation Report (OIG report) indicated that Respondent was overbilled for one child in the CDC program beginning December 24, 2006, due to her failure to attend the Work First program. Exhibit A, p. 3. The OIG report indicated that the agent reviewed the case notes and found that Respondent did not attend the program consistently. Exhibit A, p. 3. As such, the Department argued that Respondent was not eligible for CDC benefits as she did not have a valid need. However, the undersigned ALJ disagrees. The undersigned ALJ reviewed Respondent's case notes and found that she did have periods of time in which she was participating in the Work First program that would have made her eligible for CDC benefits. See Exhibit A, pp. 42-64. The OIG agent must prove by clear and convincing evidence that Respondent misrepresented her CDC eligibility by not meeting the Work First program requirements. However, Respondent failed to provide sufficient evidence showing that she misrepresented her eligibility. Instead, as stated above, the undersigned ALJ found periods of time in which she was participated in the Work First program and if not, she had several valid excused absences for not attending (i.e., illness). Exhibit A, p. 56. Because the Department failed to satisfy its burden of showing that Respondent did not participate in the Work First program, it failed to prove by clear and convincing evidence that she misrepresented her CDC eligibility by not meeting the Work First program requirements.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented her CDC need eligibility 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.

CDC 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 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. BAM 720, p. 16.

CDC 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. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 705 (January 2016), p. 6 and BAM 715 (July 2016), p. 6.

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 or agency error. But, the undersigned ALJ finds that neither client nor agency error is present in this case. The undersigned ALJ concluded that the Department failed to satisfy its burden of showing that Respondent did not participate in the Work First program. As such, the Department is unable to prove that Respondent did not have a valid CDC need based on her participation in the Work First program and therefore, cannot establish 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, FIP, and CDC program benefits in the amount of [REDACTED].

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

EF/tm



Eric J. 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]
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