



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: February 21, 2017
MAHS Docket No.: 16-008723

[REDACTED]
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 10, 2017, 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. The Notice of Disqualification Hearing (MAHS-827) sent to Respondent was not returned as undeliverable. In accordance with 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5), and Bridges Administration Manual (BAM) 720 the hearing proceeded in Respondent's absence.

ISSUE

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Did Respondent receive an over-issuance (OI) of Child Development and Care (CDC) benefits between June 5, 2011 and December 3, 2011 that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. On September 15, 2009, Respondent submitted an application for Family Independence Program (FIP) and Child Development and Care (CDC) benefits.

Respondent reported her earned income was ending on September 25, 2009. The Department case worker's notes state that "customer was routed to JET."

2. On August 5, 2010, Respondent submitted a Redetermination (DHS-1010). On the form Respondent reported she was employed beginning July 24, 2010, at [REDACTED].
3. A [REDACTED] run in 2015, showed that Respondent received [REDACTED] in wages from [REDACTED] Inc during the 2nd quarter of 2011. The wage match showed no earnings during the 3rd and 4th quarters of 2011.
4. The Department failed to meet its evidentiary burden of showing that Respondent committed an Intentional Program Violation (IPV) or that Respondent received a Child Development and Care (CDC) over-issuance.

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.

Bridges Administration Manual (BAM) 720 Intentional Program Violation governs the Department's actions in this case. OIG requests IPV hearing for cases involving:

1. FAP trafficking over-issuances that are not forwarded to the prosecutor.
2. 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.

INTENTIONAL PROGRAM VIOLATION

BAM 720 states that 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 reporting responsibilities.

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. In other words, the Department must show that the Respondent engaged in a fraudulent act or omission they knew would result in receiving assistance they were not eligible for.

In this case the Department alleges that Respondent committed an Intentional Program Violation (IPV) based on the fact that a [REDACTED] showed no wages paid during the 3rd and 4th quarter of 2011. The Department submitted no evidence which showed that Respondent was NOT receiving Family Independence Program (FIP) benefits and NOT participating in required employment and/or self-sufficiency activities as a requirement to receive Family Independence Program (FIP) benefits. Participation in employment and/or self-sufficiency activities is a valid need reason for receiving Child Development and Care (CDC) benefits.

The Department failed to meet its evidentiary burden of showing that Respondent committed an Intentional Program Violation (IPV).

OVER-ISSUANCE

Over-issuance Period

BAM 720 states that the over-issuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months (6 years) before the date it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.

The full standard of promptness (SOP) for change processing, per BAM 220.
The full negative action suspense period.

The over-issuance period ends the month (or pay period for CDC) before the benefit is corrected.

In this case, the Department submitted evidence showing that Respondent received Child Development and Care (CDC) benefits. The Department submitted no evidence which showed that Respondent was NOT receiving Family Independence Program (FIP) benefits and NOT participating in required employment and/or self-sufficiency activities as a requirement to receive Family Independence Program (FIP) benefits. Participation in employment and/or self-sufficiency activities is a valid need reason for receiving Child Development and Care (CDC) benefits.

The Department failed to meet its evidentiary burden of showing that Respondent received a Child Development and Care (CDC) over-issuance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department HAS NOT established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV). Neither has the Department established that Respondent received a Child Development and Care (CDC) over-issuance.

Accordingly, the Department's decision is **REVERSED**. The Department may not take any action toward recoupment of Child Development and Care (CDC) benefits issued to Respondent between June 5, 2011 and December 3, 2011.



Gary J. Heisler

Gary Heisler

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

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]