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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]

Date Mailed: February 15, 2017
MAHS Docket No.: 16-013735
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 [REDACTED], from Detroit, 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 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 [REDACTED], 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 report changes in employment information/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 fraud period is [REDACTED], (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 U.S. 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 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.

Based on BEM 708 policy, Client Disqualifications, CDC rule violations shall be considered intentional and result in a disqualification if established by an Administrative Law Judge (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, the Department argues that Respondent committed an IPV of her CDC benefits because she intentionally misrepresented her earned income in order to remain eligible for CDC benefits. The evidence shows that Respondent received CDC benefits based on her need reason being employment.

On [REDACTED], Respondent initially applied for CDC benefits and included a Day Care Aide/Relative Care Provider Application. Exhibit A, pp. 33-38. In the application, Respondent indicated she needed CDC services due to work, to attend school, and to attend the Michigan Works! Agency (MWA) approved activity; and she also reported employment/self-employment in the application. Exhibit A, pp. 33-34. On [REDACTED], Respondent also included a Verification of Employment with the application and reported that she was employed as a cashier, with an hourly wage of \$ [REDACTED] Exhibit A, pp. 39-40.

On [REDACTED], Respondent submitted pay stubs from [REDACTED] [REDACTED] for the pay dates of [REDACTED]. Exhibit A, pp. 45-46.

On [REDACTED], Respondent submitted an application and indicated that she had begun working at [REDACTED], with a start date of [REDACTED], for [REDACTED]-hours a week, and her hourly wage was \$ [REDACTED] Exhibit A, pp. 9-16.

On or about [REDACTED], Respondent submitted a Verification of Employment listing her employment as cashier and indicated her hourly wage again is \$ [REDACTED] Exhibit A, pp. 41-42.

On or about [REDACTED], Respondent signed a Semi-Annual Contact Report in which she again reported that she was employed with [REDACTED] as of [REDACTED] of [REDACTED] Exhibit A, pp. 43-44.

On [REDACTED], Respondent submitted another application in which she indicated that she worked for "[REDACTED]" and worked [REDACTED] hours a week and her hourly wage was \$ [REDACTED]. Exhibit A, pp. 17-24.

On [REDACTED], Respondent submitted another application in which she indicated that she worked for "[REDACTED]" and worked [REDACTED] hours a week and her hourly wage was \$ [REDACTED]. Exhibit A, pp. 25-32. But, she reported that her employment would not continue. Exhibit A, p. 28. In the notes section of the application, the caseworker notated that Respondent quit her job at "[REDACTED]" on [REDACTED]. Exhibit A, p. 32.

On [REDACTED] Respondent submitted pay stubs from "[REDACTED]" for the pay dates of [REDACTED]. Exhibit A, p. 47.

Based on the above information, Respondent kept reporting that she worked as a cashier and/or with "[REDACTED]" and provided on two different occasions proof of her pay stubs from the employer. However, the Department argued Respondent intentionally misrepresented her earned income in order to remain eligible for CDC benefits. On [REDACTED], a subpoena was returned from "[REDACTED]" showing that Respondent was employed with them from [REDACTED] and provided her payroll journal for the pay periods of August 5, 2005, to [REDACTED]. Exhibit A, pp. 52-60. The Department further indicated Respondent last exceeded [REDACTED] hours of work per week on the pay day of [REDACTED]. Exhibit A, p. 58. Finally, the Employment Verification showed no employment earnings for Respondent after [REDACTED], even though she kept reporting she was receiving earnings from this employer after this date.

The Department also presented an "IG-001 Employee Wage History by SSN" that showed no employment earnings from "[REDACTED]" for Respondent from 3rd quarter of [REDACTED] ongoing, which again, she reported that she was receiving income from this employer at the time. Exhibit A, p. 48.

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 (January 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.

For employment verification, CDC payments may be approved for clients who are employed or self-employed and receive money wages, self-employment profits or sales commissions within six months of the beginning of their employment. PEM 703, p. 9. Tools to verify need based on employment include pay stubs indicating number of work

hours, a DHS-38, Verification of Employment, completed by the employer, etc...PEM 703, pp. 10-11.

Additionally, clients must report changes in circumstance that potentially affect eligibility or benefit amount. Program Administrative Manual (PAM) 105 (January 2006), p. 7. Changes must be reported within 10 days: after the customer is aware of them, or the start date of employment. PAM 105, p. 7. Other reporting requirements include, but are not limited to, changes in day care needs or providers. PAM 105, p. 7.

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. As stated above, Respondent received CDC benefits during the alleged fraud period based on a need reason of employment. The Department argued Respondent intentionally misrepresented her earned income in order to remain eligible for CDC benefits. For example, the Department presented a subpoena from her employer showing that she had not been employed with [REDACTED]." after [REDACTED], yet, she kept reporting she was receiving earnings from this employer after this date. Exhibit A, pp 52-60. Thus, the Department claimed she intentionally misrepresented her employment to the Department in order to continue to receive CDC benefits. However, the evidence packet also included pay stubs from Respondent showing that she received income from the employer at issue on [REDACTED]. Exhibit A, p. 47. In fact, based on an application dated [REDACTED] Respondent reported that her employment ended on [REDACTED]. Exhibit A, p. 32. This evidence is contrary to the Department's subpoena request because it shows that she was employed after [REDACTED]. The OIG agent reviewed the pay stubs and indicated the pay stubs were not legitimate because there was no routing number located on them. However, the undersigned ALJ does not find the OIG agent's argument persuasive. The undersigned ALJ reviewed the pay stubs and found them to be proper. Based on this information, the OIG agent failed to demonstrate by clear and convincing evidence that Respondent intentionally misrepresented her earned income in order to remain eligible for CDC benefits. Instead, the undersigned ALJ discovered evidence in which she was employed and could have received CDC benefits throughout a majority of the alleged fraud period (employment ended [REDACTED], and alleged fraud period ended [REDACTED]).

Accordingly, in the absence of any clear and convincing evidence the Respondent intentionally withheld or misrepresented her CDC need information 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.

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 an 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.

Overissuance

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 error.

A client/CDC provider error overissuance occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (January 2016), p. 6.

In this case, the Department alleged that Respondent received an OI of \$ [REDACTED] in CDC benefits for the period of [REDACTED]. See Exhibit A, p. 3. However, the OIG agent failed to demonstrate that Respondent intentionally misrepresented her earned income in order to remain eligible for CDC benefits during the alleged fraud/OI period. The evidence established that Respondent was actually employed throughout a majority of the alleged OI period. Exhibit A, p. 32. Now, the evidence appears to indicate that Respondent's CDC need based on employment ended after [REDACTED], because she reported that she quit. See Exhibit A, p. 32. However, the burden is on the Department to show that she received an OI of \$ [REDACTED] in CDC benefits that it sought in this case for the entire alleged OI period. The Department failed this burden because the evidence is credible to show that she was eligible to receive CDC benefits for a majority of the alleged OI period. As such, the Department failed to establish that Respondent received an OI of \$ [REDACTED] in CDC benefits for the period of [REDACTED].

Additionally, even if Respondent's CDC need reason ended or about [REDACTED] the OI begin date would not have begun until after the alleged OI period. Policy states to determine the first month of the OI period, the Department must account for the 10 days to report by the client, the 10 days for the specialist to act on the change and the 12-day negative action period. See BAM 715, pp. 4-5. This means that if her employment ended on [REDACTED], the OI period would have not begun until [REDACTED]

█████ Thus, the Department is not entitled to recoup any CDC benefits because the OI begin date is after the alleged OI period of ██████. See BAM 715, pp. 4-5.

Accordingly, based on the above stated reasons, the Department failed to establish that Respondent received an OI of \$ ██████ in CDC benefits for the period of ██████
████████████████████

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 CDC program benefits in the amount of \$ ██████

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

EJF/jaf



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]

Petitioner

[REDACTED]

Respondent

[REDACTED]

[REDACTED]