



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: February 27, 2017
MAHS Docket No.: 16-014499
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 February 16, 2017, from Lansing, Michigan.

The Department was represented by [REDACTED], Regulation Agent, of the Office of Inspector General (OIG). [REDACTED] testified on behalf of the Department. The Department submitted 74 exhibits which were admitted into evidence.

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). The record was closed at the conclusion of the hearing.

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 CDC benefits for 6 months?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on August 23, 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 CDC program benefits for 6 months.
3. Respondent was a recipient of CDC benefits issued by the Department. [Dept. Exh. 29].
4. On March 30, 2010, Respondent submitted a Change Report to the Department which reported a change of address and indicated the best time to contact her was during her lunch hour. [Dept. Exh. 21-25].
5. On May 24, 2010, the Department issued Respondent a Work Participation Program Appointment Notice informing her of her appointment date of May 28, 2010, at 8:45 a.m. [Dept. Exh. 30-31].
6. On August 10, 2010, the Department issued Respondent a Work Participation Program Appointment Notice informing her of her appointment date of August 20, 2010, at 8:45 a.m. [Dept. Exh. 32-33].
7. On August 24, 2010, the Department issued Respondent a Work Participation Program Appointment Notice informing her of her appointment date of September 3, 2010, at 8:45 a.m. [Dept. Exh. 34-35].
8. On March 8, 2011, Respondent submitted a Change Report to the Department reporting new contact information. [Dept. Exh. 28].
9. On January 10, 2016, Respondent's Employee Wage History by social security number indicated no income for 2011, and only \$ [REDACTED] in income for 2010. [Dept. Exh. 38].
10. On January 10, 2016, Respondent's husband's Employee Wage History by social security number indicated no income for 2011, and only \$ [REDACTED] in income for 2010. [Dept. Exh. 39].
11. On July 11, 2016, the Department printed out Respondent's Welfare Registration: Participant History. Respondent was not registered. [Dept. Exh. 36-37].

12. Respondent was aware of the responsibility to properly report when her employment ended and she no longer required CDC benefits.
13. Respondent did not have any apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
14. The Department's OIG indicates that the time period it is considering the fraud period is June 20, 2010, through July 16, 2011.
15. During the fraud period, Respondent was issued \$ [REDACTED] in CDC benefits by the State of Michigan, and the Department that Respondent was entitled to CDC benefits during this time period. [Dept. Exh. 56-61].
16. The Department alleges that Respondent received an overissuance of CDC benefits in the amount of \$ [REDACTED].
17. This was Respondent's first alleged CDC IPV.
18. 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:

- FAP trafficking OIs 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, pp 12-13 (1/1/2016).

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 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 Respondent intentionally continued billing for CDC benefits when neither she, nor her husband were employed. Respondent's signature on the CDC Change Reports dated March 30, 2010, and May 24, 2010, certifies that she was aware that fraudulent participation in CDC could result in criminal, civil, or administrative claims. Here, the Department established by clear and convincing evidence that Respondent intentionally failed to report her and her husband's unemployment to the Department for the purpose of maintaining CDC benefits. Because of Respondent's intentional overbilling for CDC, she received an overissuance of \$ [REDACTED] which the Department is entitled to recoup.

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. 17. 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. 18.

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 (4/1/2016). 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. 17.

Based on the record evidence, Respondent is disqualified for 6 months.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1 (1/1/2016).

In the above captioned matter, Respondent received an overissuance of \$ [REDACTED] based on her intentional billing of CDC hours, while she and her husband were unemployed, which the Department is entitled to collect.

DECISION AND ORDER

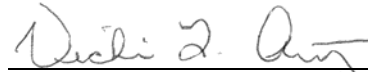
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an overissuance of program benefits in the amount of \$ [REDACTED] from the CDC program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from for a period of 6 months.

VLA/bb



Vicki Armstrong
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]