



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 16, 2018
MAHS Docket No.: 18-002000
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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, 42 CFR 431.230(b), 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 April 12, 2018, 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 the 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 February 28, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG **has not** 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 truthfully and accurately answer all questions on the Application and Redetermination for benefits.
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 February 2016 through October 2016 (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 not 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 United States Postal Service 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 October 1, 2014, 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 \$500.00 or more, or
 - the total amount is less than \$500.00, 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 (October 2017), pp. 5, 12-13; ASM 165 (August 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 700 (October 2016), pp. 7-8; 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 did not truthfully identify her household circumstances on the Redetermination. Specifically, the Department alleges that she failed to notify the Department that her daughter's father was living in the home. In CDC cases, group composition is the determination of which persons living together are included in the program group. BEM 205 (July 2012), p. 1. Living together means sharing a home except for temporary absences. *Id.* When CDC is requested for a child, each of the following persons who live together must be in the program group:

- Each child for whom care is requested.
- Each child's legal and/or biological parent(s) or stepparent.
- Each child's unmarried, under age 18, sibling(s), stepsiblings or half sibling(s).
- The parent(s) or stepparent of any of the above sibling(s).
- Any other unmarried child(ren) under age 18 whose parent, stepparent or legal guardian is a member of the program group.

Id. In addition, each parent/substitute parent must demonstrate a valid need reason for CDC benefits to be provided. BEM 703 (October 2012), p. 2. If one parent/substitute parent is available, CDC eligibility does not exist. BEM 703, p. 3. A parent/substitute parent includes the following persons who live in the home:

- The child's legal or biological parent(s).
- The child's foster parent(s).
- The child's legal guardian(s).
- The applicant/client, if:
 - The child has no parent, stepparent, or legal guardian who lives in the home.
 - The child's only parent/substitute who lives in the home is excluded from providing the care

BEM 703, pp. 2-3. Parent/substitute parents must be identified separately for each child for whom CDC is requested as they are not always the same for each child in the home. BEM 703, p. 2. Valid need reasons include unavailability resulting from family preservation, high school completion, an approved activity, or employment. BEM 703, p. 3.

The Department provided evidence that [REDACTED] (MC) was living in the home during the fraud period through tax records, utility records, and a FAP application for Mr. [REDACTED] each listing his address as the same as the Respondent. However, the Department did not provide evidence of the relationship between Respondent's daughter and MC. While Respondent's daughter's name is similar to MC, it is possible that MC has some other relationship to Respondent's daughter other than a parent/substitute parent. Without establishing the relationship between MC and Respondent's daughter, it cannot be said that MC should have been included on the CDC application. BEM 205, p. 1. Therefore, the Department has not met its burden of proof in establishing an IPV.

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. Clients are disqualified for 10 years for a FAP or FIP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FAP or FIP, 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 by CDC Policy 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 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 established an IPV. Therefore, Respondent is not subject to a period of disqualification from the CDC program.

Overissuance

When a client group or CDC provider receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The Department has alleged that, due to failing to report her household circumstances, Respondent received an OI of CDC benefits.

In this case, the Department has not established that Respondent received more benefits than she was entitled to receive. As discussed above, the Department has not shown that Respondent should have listed MC as a household member on her application for benefits because the Department did not establish the relationship between Respondent's daughter and MC. If there is no parent/substitute parent relationship between Respondent's daughter and MC, Respondent was entitled to the receipt of FIP benefits. Therefore, no OI has been established. The Department may not recoup or collect the alleged OI of \$ [REDACTED]

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. The Department **has not** met its burden of proof in establishing an OI of CDC benefits.

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

It is FURTHER ORDERED that Respondent is not subject to a period of disqualification from the CDC program.



AM/

Amanda M. T. Marler

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

Petitioner

[REDACTED]

DHHS

[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

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