



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 11, 2018
MAHS Docket No.: 17-015777
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on May 15, 2018, from Lansing, Michigan. The Department was represented by Joseph Gregurek, 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 the Child Development and Care (CDC) program?

FINDINGS OF FACT

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

1. On an application for assistance dated August 8, 2007, Respondent acknowledged her duties and responsibilities including the duty to provide a valid reason for needing Child Development and Care (CDC) benefits. Respondent

did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 8-15.

2. Respondent acknowledged under penalties of perjury that her August 8, 2007, application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, p 14.
3. Respondent reported on her August 8, 2007, application for benefits that no person in her household was employed or self-employed and that she was on maternity leave since approximately July 13, 2007. Exhibit A, pp 10.
4. Respondent's employer reported to the Department that she was employed as a certified nurse aid from January 29, 2007, through February 27, 2008. Exhibit A, p 16.
5. Department records indicate that on May 15, 2008, Respondent was referred to obtain back up child care, referred to job search/job readiness activities, and that she would be starting on May 19 at Goodwill. Exhibit A, p 19.
6. Respondent received Child Development and Care (CDC) benefits totaling \$1,740 from March 1, 2008, through April 30, 2008. Exhibit A, p 20.
7. On November 7, 2017, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,740 overpayment. Exhibit A, pp 4-6.
8. On July 26, 2016, the Department sent Respondent a CDC Disqualification Consent Agreement (MDE-832). Exhibit A, p 21.
9. The Department's OIG filed a hearing request on November 7, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
10. This was Respondent's first established IPV.
11. 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Child Development and Care (CDC) program is established by Titles IVA, IVE 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.

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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 12-13.

Overissuance

When a client group receives benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2016), p 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. Changes that must be reported include changes in employment status and providing a valid need for CDC benefits. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2018), pp 1-20.

There are four valid CDC need reasons: Family preservation, high school completion, an approved activity, and employment. Each P/SP of the child needing care must have

a valid need reason when child care is requested. More than one need reason may exist in some cases. Department of Health and Human Services Bridges Eligibility Manual (BEM) 703 (January 1, 2018), pp 4-5.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (January 1, 2018), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (January 1, 2018), p 7. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

On an application for assistance dated August 8, 2007, Respondent acknowledged her duties and responsibilities. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Through a collateral contact with Respondent's former employer, the Department received a signed memorandum indicating that Respondent was employed from January 29, 2007, to February 27, 2008, as a certified nurse aide. Respondent reported on her August 8, 2007, application for assistance, which indicates that no one in her household was receiving earned income and that she was on maternity leave since approximately July 13, 2007. No evidence was presented on the record establishing whether Respondent was using sick leave or short-term disability insurance from approximately July 13, 2007, through February 27, 2008.

The Department's position is that Respondent was receiving CDC benefits based on her employment but that she continued to receive CDC benefits after her employment ended.

However, the record evidence does not support a finding that Respondent had requested CDC based on employment, or that she did not have some other valid need for CDC allowable under BEM 703 during the period of alleged fraud.

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 the reporting responsibilities, and

- The client has no apparent physical or mental impairment that limits the understanding or ability to fulfill reporting responsibilities.

BAM 700, p 7, BAM 720, p. 1.

The evidence supports a finding that Respondent acknowledged her duties and responsibilities on August 8, 2007, and that her employment ended on February 27, 2008. The evidence does not indicate how many hours she was working, if any, before her employment officially ended. The evidence does not establish the need for CDC that Respondent would have had to report to the Department when she applied for CDC benefits or whether this need changed after her initial application was filed. Although there is insufficient evidence to support a valid need for CDC benefits after March 1, 2008, there is also insufficient evidence to support a finding that Respondent intentionally failed to report information that resulted in an overissuance of CDC benefits because she may have been approved for some other reason than employment.

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).

The Department has the burden of establishing by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

In this case, the Department has failed to establish that Respondent failed to report circumstances for the purposes of maintaining her eligibility for Child Development and Care (CDC) benefits because there is insufficient evidence to establish that Respondent was receiving CDC benefits for employment that had ended as the need for benefits.

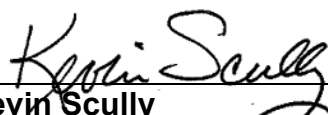
The Department has not established an Intentional Program Violation (IPV).

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

KS/hb



Kevin Scully
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) 763-0155; 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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

Kent County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]