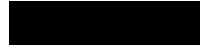


STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

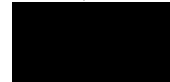


Respondent

Reg. No: 2008-20240

Issue No: 3052; 4052

Case No:



Load No:

Hearing Date:

March 4, 2009

Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services (department) request for a disqualification hearing. After due notice, a hearing was held on March 4, 2009. The claimant did not attend the hearing.

ISSUES

Whether respondent committed an Intentional Program Violation (IPV) on the Food Assistance Program (FAP) and the State Disability Assistance (SDA) program and whether respondent received an overissuance of benefits 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. Department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of FAP and SDA benefits received by respondent as a result of respondent

having committed an Intentional Program Violation (IPV); the OIG also requested that respondent be disqualified from receiving program benefits.

2. Respondent signed Assistance Application (1171) on December 11, 2005, acknowledging that he understood his failure to give timely, truthful, complete and accurate information could result in a civil or criminal action or an administrative claim against him (Department Exhibit #6, pages 24 - 31).

3. Respondent reported that he lived with his father on the application (Department Exhibit #6, pages 24, 31)

4. Respondent used his FAP benefits solely in the state of Indiana beginning June 1, 2006 through October 3, 2006.

5. The Office of Inspector General indicates that the time period they are considering the fraud period is July 1, 2006 through October 31, 2006 (Department Hearing Summary).

6. During the alleged fraud period in which the respondent was residing in Indiana, the respondent was issued \$443.00 in FAP benefits and \$1056.00 in SDA benefits. (Department Exhibit 4 – 5, pages 21 – 23)

7. According to Michigan Department of Corrections information, the Respondent was paroled to the State on Indiana on [REDACTED] and his supervision in that state did not end until [REDACTED] (Department Exhibit #3, page 19 – 20).

8. Respondent was clearly instructed and fully aware of his responsibility to report any changes in residency to the department.

9. Respondent was physically and mentally capable of performing his reporting responsibilities.

10. Respondent has not committed any previous intentional FAP or SDA program violations.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In this case, the department has requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV and the department has asked that respondent be disqualified from receiving benefits. The department's manuals provide the following relevant policy statements and instructions for department caseworkers:

**BENEFIT OVERISSUANCES**

**DEPARTMENT POLICY**

**All Programs**

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). PAM, Item 700, p. 1.

**Definitions**

The **Automated Recoupment System (ARS)** is the part of CIMS that tracks all FIP, SDA and FAP OIs and payments, issues automated collection notices and triggers automated benefit reductions for active programs.

A **claim** is the resulting debt created by an overissuance of benefits.

The **Discovery Date** is determined by the Recoupment Specialist (RS) for a client or department error. This is the date the OI is known to exist and there is evidence available to determine the OI type. For an Intentional Program Violation (IPV), the Office of Inspector General (OIG) determines the discovery date. This is the date the referral was sent to the prosecutor or the date the OIG requested an administrative disqualification hearing.

The **Establishment Date** for an OI is the date the DHS-4358A-D, Repay Agreement, is sent to the client and for an IPV, the date the DHS-4357 is sent notifying the client when the disqualification and recoupment will start. In CIMS the “establishment date” has been renamed “notice sent date.”

An **overissuance (OI)** is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold).

**Overissuance Type** identifies the cause of an overissuance.

**Recoupment** is a DHS action to identify and recover a benefit OI. PAM 700, p. 1.

## **PREVENTION OF OVERISSUANCES**

### **All Programs**

DHS must inform clients of their reporting responsibilities and act on the information reported within the Standard of Promptness (SOP).

During eligibility determination and while the case is active, clients are repeatedly reminded of reporting responsibilities, including:

- . Acknowledgments on the application form, **and**
- . Explanation at application/redetermination interviews, **and**

- . Client notices and program pamphlets.

DHS must prevent OIs by following PAM 105 requirements and by informing the client or authorized representative of the following:

- . Applicants and recipients are required by law to give complete and accurate information about their circumstances.
- . Applicants and recipients are required by law to promptly notify DHS of all changes in circumstances within 10 days. FAP Simplified Reporting (SR) groups are required to report only when the group's actual gross monthly income exceeds the SR income limit for their group size.
- . Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.
- . A timely hearing request can delete a proposed benefit reduction.

## **INTENTIONAL PROGRAM VIOLATION**

### **DEFINITIONS**

#### **All Programs**

#### **Suspected IPV**

**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 their reporting responsibilities.

Intentional Program Violation (IPV) is suspected when there is clear and convincing evidence that the client or CDC provider has intentionally withheld or misrepresented information for the

purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. PAM, Item 720, p. 1. The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:
- (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
  - (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).

The federal Food Stamp regulations read in part:

(6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

## **IPV**

### **FIP, SDA AND FAP**

**IPV** exists when the client/AR is determined to have committed an Intentional Program Violation by:

- . A court decision.
- . An administrative hearing decision.
- . The client signing a DHS-826, Request for Waiver of Disqualification or DHS-83, Disqualification Consent Agreement, or other recoupment and disqualification agreement forms. PAM, Item 720, p. 1.

### **FAP Only**

**IPV** exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. PAM 720, p. 2.

## **OVERISSUANCE AMOUNT**

### **FIP, SDA, CDC and FAP Only**

The amount of the OI is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. PAM 720, p. 6.

### **IPV Hearings**

#### **FIP, SDA, CDC, MA and FAP Only**

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings for cases when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1,000 or more, **or**

- . The total OI amount is less than \$1,000, **and**
  - .. The group has a previous IPV, **or**
  - .. The alleged IPV involves FAP trafficking, **or**
  - .. The alleged fraud involves concurrent receipt of assistance (see PEM 222), **or**
  - .. The alleged fraud is committed by a state/government employee.

Excluding FAP, OIG will send the OI to the RS to process as a client error when the DHS-826 or DHS-830 is returned as undeliverable and no new address is obtained. PEM, Item 720, p. 10.

## **DISQUALIFICATION**

**FIP, SDA and FAP Only**

Disqualify an active **or** inactive recipient who:

- . is found by a court or hearing decision to have committed IPV, **or**
- . has signed a DHS-826 or DHS-830, **or**
- . is convicted of concurrent receipt of assistance by a court, **or**
- . for FAP, is found by SOAHR or a court to have trafficked FAP benefits.

A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. PAM 720, pp. 12-13.

**Standard Disqualification Periods**

**FIP, SDA and FAP Only**

The standard disqualification period is used in all instances except when a **court** orders a different period (see **Non-Standard Disqualification Periods**, in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:

- . One year for the first IPV
- . Two years for the second IPV
- . Lifetime for the third IPV

**FIP and FAP Only**

- . Ten years for concurrent receipt of benefits (see PEM 203). PAM 720, p. 13.

In this case, the department has established that respondent was aware of the responsibility to report any changes in residency to the department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. Respondent received FAP and SDA benefits. Beginning in June, 2006 and continuing through October, 2006, the respondent used his FAP benefits solely in the state of Indiana, showing he

was residing in the State of Indiana. The department also provided information from the Michigan Department of Corrections that shows the claimant paroled to the State of Indiana on [REDACTED] and continued to be supervised in the State of Indiana until [REDACTED]

Department policy indicates that clients must report all changes that could potentially affect eligibility or benefits amount within ten days of when the client is aware of the change. PAM, item 507, p. 7. This would include any change in residency. Department policy indicates that a resident is a person living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. PEM, item 220, p. 1. In this case, the respondent was clearly not residing in the State of Michigan as his benefits were used solely in the State of Indiana and he had paroled to the State of Indiana. Thus, it is apparent he was a resident of Indiana.

Department policy indicates that the overissuance amount is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. PAM, item 720, p. 6. This Administrative Law Judge is not certain on how the department arrived at their OI amount. The claimant was issued the following amounts during the period of July, 2006 through October, 2006:

FAP: \$110 (July, 2006); \$110 (August, 2006); \$110 (September, 2006) and \$113 (October, 2006), for a total FAP OI of \$443.00.

SDA: \$132 (July 8, 2006); \$132 (July 21, 2006); \$132 (August 5, 2006); \$132 (August 19, 2006); \$132 (September 8, 2006); \$132 (September 22, 2006); \$132 (October 6, 2006); \$132 (October 20, 2006) for a total SDA OI of \$1056.00.

All of the benefits issued during this period were in error as the claimant was residing in another state and would not have been eligible to receive benefits if he had reported his true residency.

Thus, the total OI is \$443 for FAP and \$1056 for SDA.

This Administrative Law Judge therefore concludes that the department has shown, by clear and convincing evidence, that respondent committed a first intentional violation of the FAP program, resulting in a \$443.00 overissuance and a first intentional violation of the SDA program, resulting in a \$1056.00 overissuance from July, 2006 to October, 2006. Consequently, the department's request for FAP and SDA program disqualification and full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides respondent committed a first intentional FAP program violation.

Therefore it is ORDERED that:

(1) Respondent shall be personally disqualified from participation in the FAP and SDA programs for one year. This disqualification period shall begin to run immediately as of the date of this Order.

(2) Respondent is responsible for full restitution of the \$443.00 FAP overissuance and \$1056.00 SDA overissuance caused by his Intentional Program Violation (IPV).

/s/  
\_\_\_\_\_  
Suzanne L. Keegstra  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: June 15, 2009

Date Mailed: June 17, 2009

2008-20240/SLK

**NOTICE:** The law provides that within 30 days of receipt of the above Decision and Order, the respondent may appeal it to the circuit court for the county in which he/she lives.

SLK [REDACTED]

cc: [REDACTED]