

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Respondent

Reg. No: 2008-20276  
Issue No: 3055  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
May 13, 2009  
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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, an in-person hearing was held on Wednesday, May 13, 2009. The respondent personally appeared and testified with her attorney, [REDACTED].

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) 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) The agency's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of benefits received by respondent as the result of respondent having committed an Intentional Program Violation (IPV); the OIG also requested that respondent be disqualified from receiving program benefits.

(2) The respondent was the recipient of FAP benefits during the period of June 1, 2001 to May 31, 2003. The respondent's address for the contested time period was [REDACTED]. (Department Exhibit 28)

(3) Respondent was aware of the responsibility to report all employment and income to the agency. The respondent signed a FIA-1171 dated April 9, 2001 and April 11, 2002, acknowledging the reporting requirements. The respondent did not list [REDACTED] as residing in her home and his income. (Department Exhibit 28-42) The respondent's boyfriend is the father of at least one of her children as cited in the Affidavit of Parentage dated [REDACTED]. (Department Exhibit 44)

(4) Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.

(5) Respondent did not fully report all employment and income to the agency. The respondent did not fully report changes in group composition and income to the department as required. The respondent's children's father was in the home and employed, as referenced by a client contact sheet completed by the caseworker on April 9, 2001 stating that the respondent and her boyfriend came in for the respondent's yearly FIP/FS review. The respondent's boyfriend is the father of her two youngest children. The respondent and her boyfriend stated to the department caseworker that they were considering having the respondent's boyfriend move into the home, but first wanted to know how this would affect their case. The respondent's boyfriend

was collecting unemployment, but was expected to be called back to work soon. The respondent's boyfriend was a [REDACTED] by trade working for the union and earning [REDACTED] per hour where he earned [REDACTED] last year. The respondent's boyfriend stated that he uses the respondent's address as his mailing address because he doesn't want the guys he lives with to know his business. The department caseworker asked the respondent's boyfriend where he lives and he said with friends. The department caseworker documented that she had suspected prior to this that the respondent's boyfriend was living with her. The department caseworker ran sample budgets with the respondent's boyfriend's income and showed that she would have excess income for FIP. The respondent stated to the department caseworker to leave the case as it was, in other words, the respondent's boyfriend would not be moving in. The department caseworker did ask the respondent to provide proof that the respondent's boyfriend was not living with her.

(Department Exhibit 43)

- The respondent's boyfriend used her address for the Secretary of State records dated May 1, 2003 and May 6, 2003. (Department Exhibit 45-52)
- A write-o-gram requesting a copy of the respondent's boyfriend's driver's license for proof of residency received April 19, 2001. (Department Exhibit 53-54)
- A United States Post Office verification that the respondent's boyfriend was having mail delivered to the home as cited in the FIA-3060, Address Verification, dated April 27, 2001 and May 3, 2003. (Department Exhibit 55-56)
- Employment verification from [REDACTED], dated 2002-2007 (Department Exhibit 58-60)
- Employment verification at [REDACTED] dated February 1, 2007. (Department Exhibit 62-64)

- Employment verification and tax withholding documents from [REDACTED] signed by the respondent's boyfriend verifying his address of [REDACTED] signed on November 6, 2001. (Department Exhibit 68-69)
- An Immigration and Naturalization Service employment eligibility verification signed November 7, 2001 and a copy of his driver's license. (Department Exhibit 70-71)
- A [REDACTED] Area School emergency medical care form that showed the respondent's boyfriend at the address above cited that was signed by the respondent on August 29, 2000. (Department Exhibit 78)
- The respondent's boyfriend's unemployment application inquiry showing the above-cited address for the dates of February 23, 2002 through June 13, 2002. (Department Exhibit 79)

(6) As the result of the failure to report employment and income, respondent committed an IPV and received of overissuance of benefits of \$3,501.00 during the period of June 1, 2001 to May 31, 2003. (Department Exhibit 104-108, 109-158)

(7) This was respondent's first IPV.

#### 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).

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.

#### **i14002**

#### **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.

### **FAP Only**

When the OI involves two or more FAP groups which should have received benefits as one group, determine the OI amount by:

- . Adding together all benefits received by the groups that must be combined, **and**
- . Subtracting the correct benefits for the one combined group. PAM 720, pp. 6-7.

### **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 all income and employment to the department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities.

As a result of the failure to report all income, respondent committed an IPV and received an overissuance which the department is entitled to recoup in the amount of \$3,501.00.

As a result of the IPV, the department properly requested that respondent be disqualified from participation in the FAP program for one year.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides respondent committed an Intentional Program Violation of the FAP program and that the department is entitled to recoup the overissuance of FAP benefits in the amount \$3,501.00.

Accordingly, the respondent is disqualified from participation in the FAP program for one year. The agency is entitled to recoup the overissuance of benefits respondent ineligibly received. Respondent is ordered to reimburse the agency for the overissuance.

/s/  
Carmen G. Fahie  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: July 23, 2009

Date Mailed: July 23, 2009

2008-20276/CGF

**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.

CGF/vmc

cc:

