

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2009-12854
Issue No.: 1052
Case No.: [REDACTED]
Hearing Date: March 23, 2011
DHS County: Macomb (50-36)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, an in-person hearing was held in Sterling Heights, Michigan, on March 23, 2011. Respondent appeared and testified. Respondent was represented by [REDACTED]. The Department was represented by [REDACTED] (OIG).

The record was left open for the receipt of additional evidence regarding the bank account in question. Respondent's representative submitted a copy.

ISSUE

1. Did Respondent commit an Intentional Program Violation (IPV) of the Family Independence Program (FIP)?
2. Is the Department entitled to recoup \$5,134.50 in FIP benefits?
3. Should the Respondent be disqualified from FIP benefits for one year?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on December 30, 2008, to establish Respondent allegedly intentionally misrepresented facts and received an over issuance of benefits, and the Department is requesting to recoup \$5,134.50 in FIP benefits for the time frame of April 1, 2006, through June 30, 2007.

2. Respondent was aware of the responsibility to report all income and assets and all changes including address, employment and income of all household members to the Department, as indicated by the signature on the application submitted by the Department.
3. Respondent did not report a physical or mental condition that may limit understanding or ability to fulfill the employment and income reporting responsibilities.
4. The Respondent failed to report a bank account (both savings and checking) listing him as a joint member on his application dated April 26, 2007.

CONCLUSIONS OF LAW

FIP was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601 *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual (BAM) and the Bridges Eligibility Manual (BEM).

In this case, the Department requested a disqualification hearing to establish an over issuance of benefits and to recoup the over issuance, and the Department asked that Respondent be disqualified from receiving benefits. The Department's manuals provide the relevant policy statements and instructions for Department caseworkers. In part, the policies provide:

BENEFIT OVERISSUANCES: BAM 700, p. 1

DEPARTMENT POLICY

All Programs

When a customer group receives more benefits than they are ... entitled to receive, the department must attempt to recoup the over issuance (OI).

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.

An **over issuance (OI)** is the amount of benefits issued to the Customer group in excess of what they were eligible to receive.

Over issuance Type identifies the cause of an over issuance.

Recoupment is a department action to identify and recover a benefit over issuance. BAM 700, p.1.

PREVENTION OF OVERISSUANCES

All Programs

The department must inform customers of their reporting responsibilities and act on the information reported within the standard of promptness.

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

- acknowledgments on the application form, **and**
- your explanation at application/re-determination interviews, **and**
- customer notices and program pamphlets.

The department must prevent OIs by following PAM 105 requirements and by informing the customer 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 the department of any changes in circumstances within 10 days.
- 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.
- If the department is upheld or the customer fails to appear at the hearing, the customer must repay the OI.

Record on the application the customer's comments and/or questions about the above responsibilities. BAM 700, p. 2.

INTENTIONAL PROGRAM VIOLATION

SUSPECTED IPV

All Programs

Suspected IPV means an OI exists for which all three of the following conditions exist:

- the customer intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; and
- the customer was clearly and correctly instructed regarding his or her reporting responsibilities; and
- the customer has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his reporting responsibilities.

Intentional Program Violation (IPV) is suspected when the customer has **intentionally** withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. There must be clear and convincing evidence that the customer acted intentionally for this purpose. BAM 720, p.1

OVERISSUANCE AMOUNT

FIP, SDA, CDC and FAP Only

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

IPV Hearings

FIP, SDA, CDC, MA and FAP Only

OIG represents the department during the hearing process for IPV hearings.

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

OIG requests IPV hearings for cases involving:

1. Prosecution of welfare fraud or ... is declined by the prosecutor for a reason other than lack of evidence, **and**
2. The total OI amount of FIP, SDA, CDC, MA and FAP programs combined is \$1,000.00 or more or ...

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 an FIA-826 or FIA-830, or
- is convicted of concurrent receipt of assistance by a court, ...

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.

Standard Disqualification Periods BAM 720, pp. 12, 13

FIP, SDA and FAP

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

The federal Food Stamp regulations read, in part:

- (c) Definition of **intentional program violation**. For purposes of determining through administrative disqualification hearings whether or not a person has committed an intentional program violation, intentional program violations 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 related to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP's. 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).

In this case, the Department has established by clear and convincing evidence that Respondent was aware of the responsibility to report all income and assets to the Department. The first demonstration of Respondent's understanding of the reporting requirements is the signed DHS-1171 application form for the period in question. Also established by clear and convincing evidence is that there was no report of Respondent's inability to understand the reporting requirements due to mental or physical disability.

However, the Department has failed to prove by clear and convincing evidence that Respondent intentionally failed to report the bank accounts in question. The evidence submitted does demonstrate, regardless of Respondent's alleged understanding, that he was, in fact, a joint member on the accounts in question. However, these accounts appear to have been created in 1979, when Respondent would have been approximately 21 years old. The alleged IPV was to have occurred 27 years later. The testimony of Respondent was that he was unaware of the accounts other than he had been placed on them as a right to the account in the case something happened to his mother.

The Department has failed, as stated above, to demonstrate by clear and convincing evidence that Respondent intentionally withheld this information in order to become eligible for FIP. Page 1 of the Department's Exhibit (investigative report) indicates "unable to determine any account activity on his behalf." The Department has demonstrated with sufficient evidence that, up until 2008, Respondent was a joint member on the accounts in question. However, the Department has not demonstrated that Respondent himself made use of the accounts in question.

Respondent and his representative assert that Respondent believed he was only on the accounts for survivorship purposes. This, however, fails to prevent the asset from being attributed to Respondent. Respondent was listed as a joint member on the accounts in

question and had full right to liquidate and demand funds from those accounts during the timeframe in question. Whether or not he knew he had these rights is immaterial, as the legal right to the account remained and this Administrative Law Judge is limited to only considering whether Respondent had right to the accounts in question. The evidence presented both at hearing and following the hearing fails to demonstrate that Respondent had no rights as a joint account holder to the funds in question.

The Department has not proven that Respondent committed an IPV of FIP by clear and convincing evidence; but, the Department has proven that Respondent received FIP benefits he was ineligible to receive during the timeframe in question as he was a joint account holder on bank accounts with assets in excess of program limits.

All Programs

Suspected IPV means an OI exists for which all three of the following conditions exist:

- the customer intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; **and**
- the customer was clearly and correctly instructed regarding his or her reporting responsibilities; **and**
- the customer has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his/her reporting responsibilities.

PAM 720, p. 1.

The Department is entitled to recoup the amount issued in excess of what Respondent was eligible to receive. The undersigned reviewed the over issuance amount of FIP benefits and finds the Department's FIP budget computations to be correct. Respondent owes \$5,134.50 in FIP benefits. The Department is entitled to recoup this amount.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides the following:

1. The evidence has not established Respondent committed an IPV of FIP.

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2. The Department's request for disqualification from the FIP program for one year is DENIED.
3. The Department is entitled to recoup the over issuance total of \$5,134.50 in FIP benefits.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 23, 2011

Date Mailed: August 23, 2011

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.

JWO/pf

cc:

