

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: 2009-20292
Issue No: 1052, 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 17, 2009
Shiawassee County DHS

ADMINISTRATIVE LAW JUDGE: Steven M. Brown

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 June 17, 2009. A Notice of Disqualification Hearing was mailed to Respondent at his last known address and was not returned by the US Post Office as undeliverable. Respondent's last known address is [REDACTED]. Respondent did not appear at the hearing and it was held in respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3178(5).

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) On October 31, 2006, Respondent signed an Assistance Application, DHS-1171, listing him and his three sons [REDACTED] as living in his home and acknowledging responsibility to report all changes in household circumstances to the Department within 10 days of such change. (Exhibits 12-19)

(2) On November 1, 2006, the Department mailed Respondent a Verification of Student Information, DHS-3380, for [REDACTED]. (Exhibit 20)

(3) Respondent signed the DHS-3380 on November 5, 2006 and it was completed and signed by [REDACTED] on November 7, 2006. It lists the Name of Responsible Person With Whom the Student is Residing— [REDACTED] and Relationship to Student— [REDACTED]. Additionally, it lists the School Year/Term/Semester Begin Date— [REDACTED], the End Date— [REDACTED] and the Expected Date of Completion/Graduation— [REDACTED]. (Exhibit 20)

(4) On January 24, 2007, the Department mailed Respondent a Verification of Student Information, DHS-3380, for [REDACTED]. (Exhibit 21)

(5) Respondent did not sign this document, but the DHS-3380 was completed and signed by [REDACTED] on February 9, 2007. It lists the Name of Responsible Person With Whom the Student is Residing— [REDACTED] and Relationship to Student— [REDACTED]. Additionally, it lists Comments— [REDACTED] does stay with his [REDACTED]—on weekends. (Exhibit 21)

(6) The Department alleges that, as a result of Respondent's failure to accurately report who was residing in his household at the time of application and/or to report all changes in household circumstances to the Department within 10 days of such change, Respondent was

overissued [REDACTED] in FAP benefits and [REDACTED] in FIP benefits from November 1, 2006 to February 28, 2007. (Exhibits 22, 26-30)

(7) This was Respondent's first alleged 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. Departmental policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

The Family Independence Program (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 of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. 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.

FIP Only

The Aid to Families with Dependent Children (ADC) program was succeeded by the Family Independence Program (FIP). Treat these programs as interchangeable when applying IPV disqualification policy.

Example: Clients who committed an IPV while receiving ADC are to be disqualified under the FIP program. PAM, Item 720, p. 2.

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.

MA AND CDC ONLY

IPV exists when the client/AR or CDC provider:

- is found guilty of fraud by a court, **or**
- signs a DHS-4630 **and** the prosecutor or Office of Inspector General (OIG) authorizes recoupment in lieu of prosecution. PAM, Item 720, p. 2.

- is found responsible for the IPV by an administrative law judge conducting an IPV or Debt Establishment Hearing. PAM, Item 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.

FAP Trafficking

The OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by:

- the court decision, **or**
- the individual's admission, **or**
- documentation used to establish the trafficking determination. PAM 720, p. 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 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 has established that the Respondent was aware of the responsibility to report all changes in household circumstances to the Department within 10 days of such change. The Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities.

The Department's position is that Claimant's children either never lived with him or they did, but moved out to live with the children's mother at some point based on the Verification of Student Information documentation. At first glance, it seems obvious that the children could not possibly have been living with him at the time of application. Claimant's [REDACTED] residence

address and [REDACTED] mailing address are both crossed out on his Assistance Application and Homeless is written in the residence address so that is sort of a red flag on the issue of who was 'living' with him. Going further, however, the Notes section of the Assistance Application contains the following somewhat legible cursive notations "Legal Custody--must be determined," "Relocating from," "moving back to [REDACTED] and what appears to be 'homeless'". These notations suggest that Respondent and his wife were in the process of divorcing, Respondent moved out of the marital home, but had not yet found new housing and there was an issue as to at least the legal custody of the children.

The Verification of Student Information forms also provide less than perfect information and only apply to 2 of the 3 children. Both list Mom as the 'Responsible Person' with whom the student is residing, but the question is framed in the singular so it is still quite possible that the children were living with both parents at the time it was filled out. Also, I'm sure the forms were filled out based on school records from at least prior to school starting in [REDACTED], two months prior to Respondent's application, and very well could have been based on school records from previous school years that had never been updated.

With the above said, I do not find that the Department presented clear and convincing evidence of where Respondent's children were living during the time period in question.

DECISION AND ORDER

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

The Department has not established that Respondent committed an IPV of the FAP and FIP program nor has it established that it is entitled to recoup FAP and FIP benefits issued to

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Respondent. Accordingly, the Department's request for recoupment and disqualification is DENIED, it is SO ORDERED.

/s/

Steven M. Brown
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 30, 2009

Date Mailed: June 30, 2009

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.

SMB/db

cc:

