

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: 2009-26468

Issue No: 3005, 6052

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 14, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 October 14, 2009. 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 400.3187(5).

ISSUES

1. Whether respondent committed an IPV of the Child Day Care and Development (CDC) program and whether respondent received an overissuance of benefits that the Department is entitled to recoup?

2. Whether respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) 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 Department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of 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 was a recipient of CDC and FAP benefits during the period of March 6, 2003 through November 13, 2003.

3. Respondent signed Assistance Applications (DHS-1171) on August 18, 2003 and August 19 2003, acknowledging that she understood her failure to give timely, truthful, complete and accurate information about her circumstances could result in a civil or criminal action or an administrative claim against her.

4. Respondent was clearly instructed and fully aware of the responsibility to report any change in living arrangements to the Department within 10 days of the change by the DHS 1171 Assistance Application.

5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

6. Respondent was incarcerated for an offence that occurred February 8, 2003 and was sentenced on September 30, 2003.

7. Respondent did not report the incarceration to the Department.
8. As a result, the Department asserts that respondent received overissuances in the amount of \$1,891.68 under the CDC program and \$632 under the FAP program.
9. The Department has not established that respondent committed an IPV.
10. A notice of disqualification hearing was mailed to respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

The Child Development and Care program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (DHS or department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Food Assistance Program, 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), formally known as the Family Independence Agency, 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).

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.

The Department requested a disqualification hearing, in part, regarding CDC benefits. Under PAM 720 there is no authority to grant a disqualification hearing for CDC overissuances. Therefore the Department's request for disqualification for Intentional Program Violations under the CDC program is dismissed without prejudiced. The ALJ will still consider if an overissuance of the CDC benefits has been established as well as the IVP and overissuance for the FAP benefits.

In the present case, the Department is alleging a period of overissuance from March 6, 2003 through November 13, 2003. However, the only two DHS 1171 Assistance Applications submitted as evidence were dated August 18, 2003 and August 19, 2003. (Exhibits pgs. 9-24) The Department has not established that respondent was aware of the responsibility to report all

income and employment to the department prior to the August 18, 2003 Assistance Application. Accordingly, there can be no IPV prior to August 18, 2003.

Further, the Department has not presented sufficient proof of when Respondent was actually incarcerated. The Department submitted a Client Contact Sheet documenting a statement from Respondent's mother that Respondent was incarcerated since January 2003. (Exhibits pg. 28) However, there is no date recorded for the contact with Respondent's mother. An Evidence of Willfulness or Intent form submitted by the department states "mother reports subject was in jail 1/2003, got out briefly 8/2003" (Exhibits pg. 3) Given this statement, claimant may not have been incarcerated when she submitted the August 2003 Assistance Applications.

The Department also submitted a Department of Corrections OTIS report. (Exhibits pgs. 7-8) The OTIS report only documents claimant was incarcerated on the date it was printed, May 13, 2008 as her current status was listed as "prisoner" on that date. The OTIS report indicates the offence occurred on February 8, 2003, however, this does not mean that Respondent was actually incarcerated that date as she may not have been incarcerated until some time after the offence occurred. The OTIS report indicates respondent had a jury trial and was sentenced on September 30, 2003. A sentence date does not document when respondent actually entered a jail or prison.

At best the evidence of record suggests claimant was incarcerated prior to her sentencing in September 2003, but was released for at least some period of time around August 2003. Claimant may not have been incarcerated at the time she filed her applications and may not have expected to be convicted at her jury trial. It is not clear when claimant returned to being incarcerated. She may have been incarcerated prior to sentencing, on the date of sentencing or in some rare cases an individual does not begin the incarceration period until some date after the sentencing occurred. Without evidence of claimant's actual incarceration dates, the periods when

she received benefits that she was not entitled to can not be determined nor can the amount of an overissuance be properly determined.

Accordingly, the Department has not presented sufficient evidence of an IPV for the FAP program or to determine overissuances for the CDC and FAP benefits.

DECISION AND ORDER

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

1. The Department's request for disqualification for Intentional Program Violations under the CDC program is DISMISSED without prejudiced.
2. The Department has not established that Respondent committed an Intentional Program Violation of the FAP program.
3. The Department has not established an overissuance of CDC or FAP program benefits.

Accordingly, the department's request for disqualification and recoupment is denied.

/s/ _____
Colleen Lack
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 20, 2009

Date Mailed: October 21, 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.

CL/cv



