

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: 200931818

Issue No: 3055

Case No:

[REDACTED]

Load No:

Hearing Date:

February 17, 2010

Saginaw 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 February 17, 2010. A Notice of Disqualification Hearing was mailed to Respondent at her last known address and was not returned by the US Post Office as undeliverable. Respondent's last known address is [REDACTED]. Claimant and Dean Booms, Office of Inspector General, appeared and testified at hearing.

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 April 4, 2007 and April 27, 2006, Respondent signed DHS-1171 Assistance Application(s) acknowledging responsibility to report all changes in household circumstances to the Department within 10 days of such change. (Exhibits 1, 10)

(2) Claimant reported on both DHS-1171 Assistance Application(s) that she was living with her son and daughter at the time of application(s). (Exhibits 1, 10)

(3) Claimant's husband, [REDACTED], moved out of the home in April 2006 and lived in unknown various locations until he moved back into the home in January 2007.

(4) Claimant did not fail to report self-employment earnings with [REDACTED] Inc. beginning May 1, 2006.

(5) Claimant did not fail to report earnings from spouse [REDACTED] with [REDACTED] [REDACTED] beginning December 1, 2006.

(6) This is 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 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 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 (AR) 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. PAM 700, p. 2.

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.

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 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 IPV 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.

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.

FAP Only

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

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-4350 **and** the prosecutor or OIG authorizes recoupment in lieu of prosecution, **or**
- is found responsible for the IPV by an administrative law judge conducting an IPV or Debt Establishment Hearing. 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.

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. 6-7.

IPV Hearings

FIP, SDA, CDC, MA and FAP

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.

Exception: For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable.

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. PAM 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, p. 12-13.

Standard Disqualification Periods

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

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.

However, the Department has not established by clear and convincing evidence that Claimant has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Specifically, while the Department questioned whether [REDACTED] lived in the home with Claimant during the time period in question and believed Claimant derived income from a jointly owned business with [REDACTED], the evidence presented by the Department in regard to both theories falls far short of the clear and convincing standard.

DECISION AND ORDER

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

Claimant did not commit an IPV of the FAP program and the Department is not entitled to recoup the alleged overissuance of FAP benefits.

It is SO ORDERED.

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

Date Signed: March 18, 2010

Date Mailed: March 18, 2010

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:

