

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: 2009-12843

Issue No: 3055

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 6, 2009

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Tyra L. Wright

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 May 6, 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 400.3178(5).

ISSUE

Did Respondent commit a first Food Assistance Program (FAP) Intentional Program Violation (IPV)?

FINDINGS OF FACT

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

- (1) Respondent was a FAP recipient during the period of March 2006 through January 2007.
- (2) Respondent completed an application for public assistance on February 24, 2006, acknowledging her responsibility to report changes in income or resources to the Department within 10 days of the change.
- (3) Respondent was receiving earned income from employment at [REDACTED] [REDACTED] from [REDACTED] through [REDACTED].
- (4) Respondent failed to report her income to the Department in a timely manner.
- (5) Due to Respondent's failure to report her earned income, she received a [REDACTED] FAP overissuance for the period of March 1, 2006 through January 31, 2007.
- (6) The Department sent Respondent written notice of the IPV overissuance and a repayment agreement, which Respondent failed to sign.
- (7) This is Respondent's first intentional program violation or willful withholding of information needed to determine Respondent's eligibility for public assistance.

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 (formerly known as the Family Independence Agency) 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:

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). This item explains OI types and standards of promptness (SOP).

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 agency 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 that 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.

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.

A **Recoupment Specialist (RS)** is the specialist assigned to process OIs and act as liaison with OIG, Reconciliation and Recoupment Section (RRS), and other personnel involved with recoupment and collections. (PAM 700, p. 1).

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.

FAP Only

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

IPV FIP, SDA and FAP

The client/authorized representative (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 Hearing or DHS-830, 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 the office of inspector general (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, pg. 1-2)

OVERISSUANCE AMOUNT

FIP, SDA, CDC and FAP

The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive.

Estimate the OI amount pending OIG investigation results **if:**

- IPV is suspected, **and**
- You do **not** have enough information to determine the exact amount.

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.
- The individual's admission.
- Documentation used to establish the trafficking determination. (PAM 720, pg. 6-7).

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.

See PEM 400, 518, and 554 for treatment of the assets and income of disqualified group members.

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, pg. 12-13).

Clear and convincing evidence establishes that Respondent committed a first FAP Intentional Program Violation. Although Respondent was aware of her reporting responsibilities, she intentionally failed to report information that was needed to determine her eligibility for FAP benefits. There is no evidence on the record of any justifiable excuse for Respondent's failure to report.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides that Respondent committed her first FAP Intentional Program Violation, resulting in a FAP overissuance of [REDACTED].

Accordingly, the Administrative Law Judge ORDERS that Respondent shall be required to reimburse the Department in the amount of [REDACTED] for FAP benefits that were improperly received.

/s/ _____
Tyra L. Wright
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 05/11/09

Date Mailed: 05/11/09

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

TW/dj

cc:

[REDACTED]