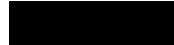


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Respondent

Reg. No: 2009-13576

Issue No: 3055, 6052

Case No:

Load No:



Hearing Date:

April 8, 2009

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 April 8, 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

Whether respondent committed an Intentional Program Violation (IPV) on the Food Assistance Program (FAP) and Child Development and Care (CDC) program, 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) Department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of FAP and CDC 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 FAP benefits.

(2) Respondent signed Assistance Application (1171) on September 7, 2006, acknowledging that she understood her failure to give timely, truthful, complete and accurate wage/employment information could result in a civil or criminal action or an administrative claim against her. (Department's Exhibit 1, pages 9-16).

(3) On January 11, 2007 respondent reported that she had started working at [REDACTED] Department computed a Family Independence Program (FIP) budget and determined respondent had excess income for this cash assistance. Department also computed a new FAP budget removing the FIP grant and counting respondent's newly started earnings. (Department's Exhibits 2 and 3, pages 17-19).

(4) In July, 2007 department received a Quarterly [REDACTED] report showing that respondent earned more income than she had reported. (Department's Exhibit 4, page 20).

(5) Department obtained a Verification of Employment form from respondent's employer. The form was received by the department on October 1, 2007 and contained dates and amounts of respondent's pay checks from December 29, 2006 to August 10, 2007, August 9, 2007 being the last day respondent worked for [REDACTED] (Department's Exhibit 5, pages 21-32).

(6) Respondent completed another Assistance Application (1171) on September 20, 2007 and reported new employment at [REDACTED] beginning September 4, 2007. (Department's Exhibit 6, pages 33-40).

(7) Respondent provided her first pay check from [REDACTED] on October 3, 2007. This check shows that the respondent earned [REDACTED] for the period ending September 16, 2007, that this was the year to date total, and that she worked 71.50 hours in that period. (Department's Exhibit 7, p. 41).

(8) Respondent was issued CDC payments for her three children for the pay periods of August 5, 2007 to August 18, 2007 and August 19, 2007 to September 1, 2007, at [REDACTED] each, for a total of [REDACTED]. These payments were issued to the respondent. Respondent however did not work from August 9, 2007 to September 4, 2007. (Department's Exhibit 8, p. 42).

(9) Department computed FAP overissuance budgets and determined that respondent received [REDACTED] overissuance. (Department's Exhibits 9 and 10, pages 43-56).

(10) Respondent failed to report her correct employment income and as a result of her failure to report received more FAP benefits than she was entitled to receive. Respondent was overissued [REDACTED] in FAP benefits from February 1, 2007 to July 31, 2007.

(11) Respondent also failed to report her job with [REDACTED] had ended at the beginning of August, 2007, and continued to claim day care need due to employment which did not exist. As a result of respondent's failure to report her employment ended, she received CDC payments in the amount of [REDACTED] ineligibly from August 1, 2007 to September 30, 2007.

(12) Office of Inspector General (OIG) staff interviewed the respondent on November 20, 2008. Respondent's position on not reporting increased earnings was that the department did not require her to report her wages every month, but only every six months, apparently referring to simplified reporting requirements. When reminded that when she signed the application she was agreeing to report all changes within 10 days of event and that included

an increase of income, respondent stated “You can shove your assistance”, and left. (OIG Investigation Report).

(13) Respondent was mailed the notice of this hearing at her last known address, [REDACTED]. Respondent did not appear for the hearing and no mail has been returned for her.

(14) Respondent was clearly instructed and fully aware of her responsibility to report all household income to the department.

(15) Respondent was physically and mentally capable of performing her reporting responsibilities.

(16) Respondent has not committed any previous intentional FAP program violations.

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. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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).

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.

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.

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.

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 established that respondent was aware of the responsibility to report all income and employment and changes to the same to the department. Respondent however failed to report that her income had increased, and then further failed to report that her job ended and continued to receive CDC payments for her children for alleged day care need that did not exist. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. This Administrative Law Judge therefore concludes that the department has shown, by clear and convincing evidence, that respondent committed a second intentional violation of the FAP program, resulting in a [REDACTED] overissuance from February 1, 2007 to July 31, 2007. Consequently, the department's request for FAP program disqualification and full restitution must be granted.

In addition, the Administrative Law Judge also concludes that the department has shown, by clear and convincing evidence, that respondent committed an intentional violation of the CDC program, resulting in a [REDACTED] overissuance from August 1, 2007 to September 30, 2007.

Department's request for full restitution of the CDC overissuance therefore also must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides respondent committed a second intentional FAP and CDC program violation.

Therefore it is ORDERED that:

(1) Respondent shall be personally disqualified from participation in the FAP program for two years, but the rest of the household may participate. This disqualification period shall begin to run immediately as of the date of this Order.

(2) Respondent is responsible for full restitution of the [REDACTED] FAP overissuance and [REDACTED] CDC overissuance caused by her Intentional Program Violation (IPV).

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 28, 2009

Date Mailed: April 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.

2009-13576/ir

IR/db

cc: S. Baker
K. Vaughn
J. Cushman
M. Sievert
I. Rairigh
Administrative Hearings (2)