

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant,

Reg No: 2009-33467
Issue No: 4060
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 21, 2009
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on October 21, 2009. The Respondent appeared and testified. Kristin Kerr, OIG representative appeared on behalf of the Department.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) and whether the respondent received an over-issuance of benefits that the Department is entitled to recoup?

FINDINGS OF FACT

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

1. The Department's Office of Inspector General (OIG) filed a hearing request to establish an over-issuance of benefits received by respondent as a result of respondent having committed an IPV. The OIG also requested that respondent be disqualified from receiving program benefits.

2. Respondent was a recipient of “Alleged Services Program SERV” benefits during the period of 4/05 – 7/31/08.
3. Respondent changed information on a Medical Needs form and forged the doctor’s signature.
4. As a result of this misrepresentation on the part of respondent, the OIG argues that respondent committed an IPV and received an over-issuance of benefits paid to providers in the amount of \$3,595.73 under the SERV program.
5. The Department has established that respondent committed an IPV.
6. In support of the over-issuance, the OIG provided the following:
 - a. Exhibit 1, p. 13 – Showing Proposed time & task assignments from [REDACTED] [REDACTED] totally \$385.39 with no dates provided.
 - b. Exhibit 1, p. 11 – Showing Care service dollar amounts most of which are in 2006 or 2007 prior to the IPV period.
7. The Department has not established that respondent incurred an over issuance.
8. The Department has not established that respondent can be disqualified for an over issuance of SERV benefits as a result of the IPV.
9. The Department has established that Claimant was notified of her reporting responsibilities.
10. This was respondent’s first Intentional Program Violation.

CONCLUSIONS OF LAW

The Independent Living Services (ILS) program is established pursuant to Title XX of the Social Security Act, 42 USC 1397, *et seq.* The department administers the ILS program under the provisions of MCL 400.14 in accordance with state and federal rules and the Services Manual (SM). The ILS program offers a range of payment and nonpayment related services to

individuals who require advice or assistance to support effective functioning with the home or other independent living arrangement.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). PAM 700, p. 1. An over-issuance (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). Id. DHS must inform clients of their reporting responsibilities and prevent OIs by following PAM 105 requirements informing the client of the requirement to promptly notify DHS of all changes in circumstances within 10 days. PAM 700, PAM 105. Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.

An Intentional Program Violation (IPV) is suspected when there is clear and convincing evidence that the client 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:

(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).

For FAP and other programs, the IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. PAM 720, p. 2. 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.

A FIP, SDA and FAP active or inactive recipient may be disqualified from receiving benefits when s/he 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.

In the present case, the Department has established that respondent committed an intentional program violation. Claimant testified that she changed the Medical Needs Form and then later forged the signature of her doctor on another form. As a result, the respondent did commit an IPV.

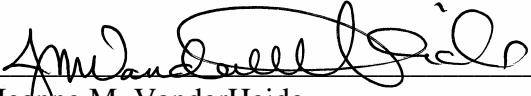
However, there was insufficient evidence to verify how much the Department paid during the time period in question. Therefore, an over issuance of SERV benefits paid to providers was not proved. The Department printed out some of the authorized payment history for Claimant, but the amounts shown do not total the requested recoupment. Nor are all of the amounts during the IPV period. Under Pam 720 the amount of the over-issuance is the amount of benefits the group actually received minus the amount the group was eligible to receive. The Department must use the actual income for the over-issuance month in determining the over-issuance. At the hearing the Department failed to provide information regarding the actual benefits paid out in each of the relevant months. Therefore this ALJ cannot make a finding regarding the over-issuance amount.

Finally, this Administrative Law Judge finds no authority under the regulations cited by the Department for a disqualification based on an IPV for SERV benefits. See PAM/BAM 700. Therefore, the Claimant is not disqualified from future receipt of benefits as a result of the IPV.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that respondent committed an IPV. However, the respondent is not disqualified from receipt of benefits for this IPV.

Furthermore, the department has not established conclusively the amount that respondent received in over-issuance of benefits. Accordingly, the department's request for recoupment is DENIED.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/10/09

Date Mailed: 12/11/09

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.

JV/dj

cc:

