

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 20108415

Issue No: 3055

[REDACTED]

Hearing Date:

November 4, 2010

Wayne County FIA

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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 Family Independence Agency's (agency's) request for a disqualification hearing. After due notice, a telephone hearing was held on November 4, 2010.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) and whether respondent received an overissuance of benefits that the agency 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 November 23, 2009, DELEG/SOHR received a hearing summary requesting a scheduling for a first FAP intentional program violation (IPV) against respondent. The department alleged respondent received [REDACTED] ineligibility in FAP benefits due to an IPV between the benefit period of [REDACTED] through [REDACTED]
2. Respondent wife and respondent husband personally appeared and testified at the administrative hearing.

3. The department alleges that respondent's wife failed to disclose respondent's husband's [REDACTED] benefits, other family member [REDACTED] benefits and [REDACTED] benefits on the 1171 signed April 25, 2005. The department included a copy of the application identified as Exhibit 24 which in fact does disclose all three amounts.
4. The department had no evidence of any previous 1171s during the alleged fraud time period and no evidence of having clearly and/or correctly having instructed respondents of their reporting responsibilities.
5. The department stipulated that it had no evidence that respondent did disclose or did not disclose but the definition of IPV allows for both and "it depends on how you look at it."
6. Respondent disclosed [REDACTED] income for all members of the household, and respondent's husband's [REDACTED] income. The department failed to correctly budget the amounts during the alleged overissuance period.
7. Respondent received [REDACTED] in FAP benefits due to agency error.
8. The DHS requested two separate hearings for respondent wife and respondent husband for the identical Findings of Fact and total amount owing indicating no authority for the jurisdiction other than being verbally informed by an individual outside the department.

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).

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.

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.

As noted above, the department has the burden of proof of showing the clear and convincing evidence that all three conditions identified with dingbats above existed.

A review of the facts in this case with regards to the first dingbat—that respondents failed to report the information or intentionally gave incomplete or inaccurate information is not supported by the evidence on the record. The only evidence of any 1171 on the record is one which is identified as Exhibit 24 which in fact includes a disclosure of [REDACTED] benefits for all members of the household, as well as [REDACTED] benefits.

With regards to the second dingbat, the department had no evidence of any previous 1171s. Thus, the department had no evidence of having instructed respondents clearly regarding their reporting responsibilities until the end of the overissuance period which was the 1171 submitted as evidence. In response to how the department understood this case to equal an intentional program violation, the department responded that there is no evidence that they did report the income; no evidence that they did not report it but that this is the definition of an IPV and “it depends on how you want to look at it.” This reading is simply not supported in the policy. The policy is quite specific. There must be evidence which shows a failure to report the information. In this case, the only evidence submitted clearly shows that the respondents clearly disclosed the information. Moreover, the evidence in this case clearly shows that there is no evidence that claimant was ever clearly given responsibilities regarding reporting. Thus, this Administrative Law Judge does not find that the facts here constitute an IPV.

Having determined that no IPV exists, the Administrative Law Judge is charged with the duty to still make a determination as to whether or not an overissuance occurred and whether it was due to respondent or agency error.

Agency error definition is found in BAM Item 705:

All Programs

An **agency error** OI is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) or the Department of Information and Technology staff or department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between department divisions (services staff, Work First! agencies, etc.).
- Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.).

If unable to identify the type of OI, record it as an agency error.

In this case, the evidence clearly shows that the information was available but was not correctly budgeted by the department. Thus, this constitutes a situation under the first dingbat cited above. This Administrative Law Judge finds agency error.

It is noted that respondent's husband's argument that some of his monies were garnished by [REDACTED] to pay off a debt is not relevant as respondent was issued the money and in fact used it to pay off the debt even though it was garnished. The department is required to count the gross amount.

DECISION AND ORDER

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

Respondents did not commit an intentional program violation of the FAP program during the time periods from [REDACTED] until [REDACTED]. On this part of the issue the department is partially REVERSED. The department is Ordered to remove any indication from respondents' case that there is an IPV.

Respondent ineligibility received FAP benefits: [REDACTED] for the time period from [REDACTED] to [REDACTED] due to agency error.

The department asked for two separate files and hearings for respondent wife and respondent husband. The conclusion in both hearing by the undersigned Administrative Law Judge is that there is an agency error overissuance. The department is not allowed to collect the total amount from each individual. It is Ordered to make a determination either against the case and/or divide up the amount as appropriate under DHS policy and procedure.

/s/

Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 9, 2011

Date Mailed: May 9, 2011

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.

JGS/db

cc:

[REDACTED]