

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201035561

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Kandra Robbins

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 Claimant's request for hearing. This matter was originally assigned to [REDACTED] Magyar. This matter was reassigned to [REDACTED] to complete the decision after complete review of the record. After due notice, an in person hearing was held on January 20, 2011. 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 400.3187(5).

ISSUE

Did the Department act properly trying to recover a Family Independence Program (FIP) overissuance that respondent received due to a Department error?

FINDINGS OF FACT

This Administrative Law Judge, based upon the evidence on the whole record, finds as material fact:

1. The Respondent has been a FIP recipient from May 2009 through February 2010. (Department Exhibit 1 pg 5-9).
2. The Respondent is a citizen of Egypt. (Decision and Order dated October 6, 2010).
3. The Respondent is in the United States on a Student Visa as he attends Western Michigan University. (Decision and Order dated October 6, 2010).

4. The FIS caseworker misapplied BEM 220 Residence Policy and found the Respondent eligible for FIP benefits in the amount of [REDACTED] (Department Exhibit 1 pg 5-9).
5. The Respondent was sent a DHS 4358 A Notice of Overissuance on February 11, 2010 indicating an overissuance of [REDACTED]. (Department Exhibit 1 pg 1).
6. On February 16, 2010, the Department received the Respondent's Request for Hearing.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - .951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1) An opportunity for a hearing shall be granted to an applicant who requests a hearing because of a denial. MAC R 400.903(2)

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), State Emergency Relief Manual (ERM) and the Bridges Reference Manual (BRM). Department policy states:

BAM 700 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).

Note: A client or CDC provider may voluntarily repay any program benefits even when there is no overissuance. Refer these situations to the local office fiscal unit.

Definitions The Benefit Recovery System (BRS) is the part of Bridges that tracks all FIP, SDA, CDC 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.

BAM 705 Definition 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.

BAM 705 AGENCY ERROR EXCEPTIONS FIP, SDA, CDC and FAP

Agency error OIs are not pursued if the estimated OI amount is less than \$125 per program.

OVERISSUANCE PERIOD

All Programs

OI Begin Date FIP, SDA, CDC and FAP

The OI period begins the first month (or first pay period for CDC) when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the OI was referred to the RS, whichever is later. To determine the first month of the OI period for changes reported timely and not acted on, Bridges allows time for:

- The full standard of promptness (SOP) for change processing, per BAM 220, and
- The full negative action suspense period.
See BAM 220, EFFECTIVE DATE OF CHANGE.

OI End Date

The OI period ends the month (or pay period for CDC) before the benefit is corrected.

OVERISSUANCE AMOUNT FIP, SDA, CDC and FAP

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

BEM 220 DEPARTMENT POLICY

All Programs USCIS refers to the U.S. Citizenship and Immigration Services, formerly, the Bureau of Citizenship and Immigration or Immigration and Naturalization Service.

To be eligible, a person must be a Michigan resident. Bridges uses the requirements in the Residence section in this item to determine if a person is a Michigan resident.

RESIDENCE

FIP, SDA and AMP A person is a resident if he:

- Is not receiving assistance from another state; **and**
- Is living in Michigan, except for a temporary absence, **and**
- Intends to remain in the state permanently or indefinitely.

Intent to Remain in Michigan

FIP and SDA

Accept an individual's statement of intent to remain in Michigan **unless** the statement is inconsistent or conflicts with known facts.

The Respondent was receiving FIP benefits in 2009 and 2010. The Respondent is a citizen of [REDACTED]. He is in the United States on a Student Visa. At the time of application, the Department caseworker found that the Respondent exhibit and intent to remain in Michigan and found the Respondent eligible. The Caseworker misapplied Department policy. Although the Respondent claims that he intends to stay in Michigan, his Visa expires on December 15, 2013. Therefore, the Respondent is not eligible to remain in Michigan beyond December 15, 2013. Department policy states that if the individual indicates intent to remain in Michigan, but his official USCIS documents indicate a temporary or time limited period to the visit, the individual does not meet the intent to remain requirements.

The Respondent had an Administrative Hearing before [REDACTED] in which the ALJ found that the Respondent was not eligible for FIP benefits because he does not meet the residency requirement as his official documents indicate a temporary or time limited period to the visit. Therefore, the Respondent was not eligible for the FIP benefits he received from May 2009 through February 2010. The Respondent received FIP benefits in the amount of [REDACTED]. The Respondent was not eligible to receive these FIP benefits. Department policy requires the Department to seek recoupment of any benefits issued as a result of Department error if the amount of issuance exceeds [REDACTED]. The Respondent received FIP benefits as a result of Department error. The amount of the benefits he received exceeds [REDACTED]. Therefore, the Department is required to seek recoupment.

Based on the evidence and testimony available during the hearing, the Department has established that Respondent received a [REDACTED] FIP overissuance which the Department is required to recoup.

DECISION AND ORDER

This Administrative Law Judge, based upon the above findings and conclusion of law, decides that the Department established that Respondent received a [REDACTED] FIP overissuance.

The Department acted properly in trying to recover a FIP overissuance that the Respondent received due to Department Error.

It is so ORDERED.

/s/

Kandra Robbins
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 3/14/11

Date Mailed: 3/14/11

NOTICE: The law provides that within 60 days from the mailing date of the above hearing Decision the Respondent may appeal it to the circuit court for the county in which he/she resides or has his or her principal place of business in this state, or in the circuit court for Ingham County. Administrative Hearings, on its own motion, or on request of a party within 60 days of the mailing date of this Hearing Decision, may order a rehearing.

[REDACTED]