

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

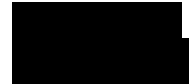
IN THE MATTER OF:



Reg. No: 201042739

Issue No: 3055

Case No:



Load No:

Hearing Date:

August 25, 2010

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 telephone hearing was held on November 4, 2009. The Respondent did not appear at the hearing and it was held in the Respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3187(5).

ISSUE

Whether the Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and whether the 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. The Department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of benefits received by the respondent as a result of the respondent having committed an Intentional Program Violation (IPV); the OIG also requested that the Respondent be disqualified from receiving program benefits.

2. The Respondent signed Assistance Applications (DHS-1171) on May 10, 2005 and October 25, 2007, acknowledging that he understood his failure to give timely, truthful, complete and accurate information about his circumstances could result in a civil or criminal action or an administrative claim against him.
3. The Respondent indicated on the May 10, 2005 and October 25, 2007 applications that he was not employed and had no income.
4. On March 4, 2008, the Department received a MESC Wage Match which showed that the Respondent had received earnings in the fourth quarter of 2006 and the first three quarters of 2007.
5. The Department verified, through an Employee Wage history by social security number, verified the Respondent's earnings from the second quarter of 2006 until the first quarter of 2008. The Department mailed the employer, [REDACTED], a Verification of Employment form (DHS-38) to verify the income. The form was completed and returned to the department on April 18, 2008, indicating that the Respondent began employment with them on January 7, 2008 and ended on March 16, 2008.
6. The Respondent received [REDACTED] in FAP benefits during the alleged fraud period of July 1, 2006 through September 30, 2007. If the income had been properly reported and budgeted by the department, the Respondent would only have been eligible to receive [REDACTED] in FAP benefits. The Respondent received [REDACTED] in FAP benefits during the alleged fraud period of February 1, 2008 through March 31, 2008. If the income had been properly reported and budgeted by the department, the Respondent would only have been eligible to receive [REDACTED] in FAP benefits. (Department Exhibit 4, pages 32 - 46)
7. The Respondent failed to report his employment income in a timely manner, resulting in a FAP overissuance for the months of July 1, 2006 through September 30, 2007, in the amount of [REDACTED]. The Respondent also failed to report his employment income in a timely manner, resulting in a FAP overissuance for the months of February 1, 2008 through March 31, 2008, in the amount of [REDACTED].
8. The Respondent was clearly instructed and fully aware of his responsibility to report all household income to the department.
9. The Respondent was physically and mentally capable of performing his reporting responsibilities.

10. A Notice of Disqualification Hearing was mailed to the Respondent at the last known address. The Respondent's last known address is:



CONCLUSIONS OF LAW

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 Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 (BAM), the Program Eligibility Manual (BEM) 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). BAM, 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. BAM 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 BAM 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. BAM, 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. BAM, Item 720, p. 1.

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. BAM, Item 720, p. 2.

FAP Only

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

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-4630 **and** the prosecutor or Office of Inspector General (OIG) authorizes recoupment in lieu of prosecution. BAM, Item 720, p. 2.
- . is found responsible for the IPV by an administrative law judge conducting an IPV or Debt Establishment Hearing. BAM, Item 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. BAM 720, p. 6.

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. BAM 720, pp. 6-7.

FAP Trafficking

The OI amount for trafficking-related IPV is the value of the trafficked benefits as determined by:

- . the court decision, **or**
- . the individual's admission, **or**
- . documentation used to establish the trafficking determination. BAM 720, p. 7.

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 \$500 or more, **or**
 - . The total OI amount is less than \$500, **and**
 - .. The group has a previous IPV, **or**

- .. The alleged IPV involves FAP trafficking, **or**
- .. The alleged fraud involves concurrent receipt of assistance (see BEM 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. BEM, 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. BAM 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 BEM 203). BAM 720, p. 13.

In this case, the Department has established that Respondent was aware of the responsibility to report all income and employment to the Department. The Department's policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within ten days. BAM, item 105, p. 7. The Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. The Respondent completed applications for assistance on May 10, 2005 and October 25, 2007. On these applications, the Respondent indicated that he was unemployed and had no income. There is no evidence that the Respondent ever reported starting work or earning income. The Verification of Employment information from all sources shows that the Respondent worked at [REDACTED] from the first quarter of 2005 until the third quarter of 2007 and then again from January 7, 2008 until March 16, 2008. However, the Respondent continued to have no earnings budgeted into his case. The notices generated to the Respondent would have shown that no earned income was being budgeted and should have alerted the Respondent that he had not reported his employment income.

This Administrative Law Judge therefore concludes that the department has shown, by clear and convincing evidence, that Respondent committed a first intentional violation of the FAP program, resulting in a [REDACTED] overissuance from July 1, 2006 through September 30 of 2007 and a [REDACTED] overissuance from February 1, 2008 through March 31, 2008. Consequently, the Department's request for FAP disqualification and full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides the Respondent committed a first intentional FAP violation.

Therefore, it is ORDERED that:

1. The Respondent shall be personally disqualified from participation in the FAP program, but the rest of the household may participate. The disqualification period shall begin to run immediately as of the date of this order.

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

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 3, 2010

Date Mailed: December 6, 2010

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.

GFH/vc

cc:

[REDACTED]