

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

IN THE MATTER OF:



Reg. No.: 2011 1240
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: November 2, 2011
County: Wayne County DHs (31)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on November 2, 2011 from Detroit, Michigan. The Department was represented by Agent [REDACTED] of the Office of Inspector General.

Participants on behalf of Claimant included:

Respondent did not appear at the hearing and it was held in respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3187(5).

ISSUES

Did the Respondent commit an Intentional Program Violation (IPV)?

Did the Respondent receive an overissuance (OI) of Family Independence Program (FIP) Food Assistance Program (FAP) State Disability Assistance (SDA) Child Development and Care (CDC) benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial 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 OI of benefits received by respondent as a result of respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC benefits during the period of 2/1/08, through 7/31/08.
4. Respondent was aware of the responsibility to advise the Department of changes in his circumstances and had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Office of Inspector General indicates that the time period they are considering the fraud period is 2/1/08 through 7/31/08.
6. During the alleged fraud period, the Respondent was issued \$2705 in FIP FAP SDA CDC benefits from the State of Michigan.
7. The Respondent was entitled to \$0 in FIP FAP SDA CDC during this time period.
8. As a result, Respondent did receive an OI in the amount of \$2705 under the FIP FAP SDA CDC program.
9. The Department has not established that Respondent committed an IPV.
10. This was Respondent's first second third IPV.
11. A notice of disqualification hearing was mailed to respondent at the last known address and was was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3001 through Rule 400.3015.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, Rule 400.3151 through Rule 400.3180.

The Child Development and Care (CDC) 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 provides services to adults and children pursuant to MCL 400.14(1) and 1999 AC, Rule 400.5001 through Rule 400.5015.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM 700.

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.

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. BAM 720.

The department's Office of Inspector General processes intentional program hearings for overissuance referred to them for investigation. The Office of Inspector General represents the department during the hearing process. The Office of Inspector General requests intentional program hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor.

- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is \$1000 or more, or
- the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance, or
 - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed an intentional program violation disqualifies that client from receiving program 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.

Clients that commit an intentional program violation are disqualified for a standard disqualification period except when a court orders a different period. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a concurrent receipt of benefits. BAM 720.

Additionally, the Department demonstrated that the Respondent used his food assistance, received during the period identified as the fraud period, in the state of South Dakota. There was no evidence that the Claimant knew, or was told, that he could not receive food assistance while out of state. Further the Department demonstrated that the Claimant's social security records listed his address in South Dakota, however, that evidence did not establish when the address was first used by the SSA. The SSA record introduced as evidence of the Claimant's address was dated in 2009, after the period in question.

The evidence did demonstrate that during the time the Respondent received and used the food assistance he did not reside in Michigan and thus received an overissuance of benefits as to be eligible to receive food assistance a person must be a resident of Michigan. PAM 220. However, the Department did not establish through clear and convincing evidence that the Respondent intentionally withheld or misrepresented his residency. The Department did establish by the preponderance of the evidence that during the period the Claimant was overissued FAP benefits in the amount of \$2705.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Respondent did did not commit an IPV and did did not receive an overissuance of program benefits in the amount of \$2705 from the following program(s) FIP FAP SDA CDC.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Respondent did not commit an IPV with regard to the FIP FAP SDA CDC program and did receive overissuances in program benefits.

The Department is ORDERED to delete the OI and cease any recoupment action.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ 2705 in accordance with Department policy.

The Department is ORDERED to reduce the OI to _____ for the period _____ in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FIP FAP SDA CDC for a period of 12 months. 24 months. a lifetime.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 7, 2011

Date Mailed: November 7, 2011

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request

2011-1240/LMF

P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/hw

cc:

