

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

IN THE MATTER OF:



Reg. No: 20111437
Issue No: 1052; 3055
Case No: [REDACTED]
Hearing Date: May 11& 12, 2011
Saginaw County DHS

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 Department of Human Services (department) request for an intentional program violation and disqualification hearing. After due notice, a hearing was held on May 11, 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). However, the respondent had requested to participate via 3-way telephone conference. The matter was reconvened on May 12, 2011. The respondent was present and provided testimony.

ISSUE

1. Whether respondent committed an Intentional Program Violation (IPV) on the Family Independence Program (FIP) and whether respondent received an overissuance of benefits that the department is entitled to recoup?
2. Whether respondent committed an Intentional Program Violation on the Medicaid Assistance Program (MA) and whether respondent received an overissuance of benefits that the department is entitled to recoup?
3. Whether respondent committed an Intentional Program Violation on 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. Department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of FIP 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 signed Assistance Application (1171) on June 16, 2008, acknowledging that she understood her failure to give timely, truthful, complete and accurate information could result in a civil or criminal action or an administrative claim against him (Department Exhibit 1, pages 18-35).
3. Respondent reported that she intended to stay in Michigan on the application. (Department Exhibit 1, pages 18-35).
4. The respondent made all EBT FIP purchases outside of the State of Michigan beginning in June 2008. (Department Exhibit 1, pages 37-40).
5. The OIG indicates that the time period they are considering the fraud period is May 1, 2008, through April 2009. (Department Hearing Summary).
6. During the alleged fraud period, the respondent was issued [REDACTED] in FAP benefits, [REDACTED] in FIP benefits and [REDACTED] in MA benefits from the State of Michigan (Department Exhibit 1 page 4).
7. The respondent began making Electronic Benefit Transfers in the State of Indiana in March of 2008 and made all Electronic Benefit Transfers in the State of Indiana beginning on June 5, 2008.
8. Respondent was clearly instructed and fully aware of her responsibility to report any changes in residency to the department.
9. Respondent was physically and mentally capable of performing her reporting responsibilities.
10. Respondent has not committed any previous intentional FAP program violations.
11. Respondent has not committed any previous intentional MA program violations.
12. Respondent has not committed any previous intentional FIP program violations.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

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).

In this case, the department has requested a hearing to establish an overissuance of benefits as a result of an Intentional program violation of the FAP program, FIP program and the MA program. 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:

**BAM 700 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 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. PAM, Item 720, p. 1.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. PAM 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. PAM 720, p. 6.

**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:

FAP trafficking OIs that are not forwarded to the prosecutor. 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 \$1,000 or more, **or**

. The total OI amount is less than \$1,000, **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 PEM 203). BAM 720, p. 13.

BAM 710 DEPARTMENTAL POLICY MA ONLY

Initiate recoupment of an overissuance (OI) due to **client error or intentional program violation (IPV)**, **not** when due to **agency error** (see BAM 700 for definitions). Proceed as follows:

Determine the OI period and amount.

Determine the OI Type (client error or suspected IPV).

Initiate recoupment of an OI due to client error.

If IPV is suspected, refer the case to the Office of Inspector General (OIG), if appropriate, by completing a DHS-834, Fraud Investigation Request.

OIs due to IPV are recouped by OIG working directly with the local office fiscal unit.

Do **not** recoup OIs resulting from hearing decisions upholding DHS regarding the level of long-term care.

Reminder: After OI discovery and during recoupment processing, **you must file certain documents in the Incorrect Issuance Packet** of the case record. See BAM 300.

PROCEDURES

Document your decisions and actions on the application form. Your manager must review the case record.

For changes unreported by ongoing recipients, the OI period begins the first day of the month **after** the month in which the standard reporting period **plus** the negative action period would have ended.

Overissuance Determination

When you receive the amount of MA payments, determine the OI amount.

For an OI due to unreported income or a change affecting need allowances:

If there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) **or** the amount of MA payments, whichever is less.

If there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts **or** the amount of MA payments, whichever is less.

For an OI due to **any other** reason, the OI amount is the amount of MA payments.

OIG Referral

The **minimum** OI amount for OIG referral is **\$500 unless** the local prosecutor sets a lower amount. OIG through regular channels informs affected local offices of lower amounts.

You may refer an IPV that is **under** the set minimum **if** the group's actions are repetitious or flagrant. The local office director or designee must approve the referral.

Recoupment

Before you initiate recoupment, your manager or a designee must review the MA case. After review, notify the client (or legal guardian) in writing that:

DHS must seek recoupment, **but Refusal to repay will not** cause denial of current or future MA if the client is otherwise eligible.

If recoupment is agreed to, complete a DHS-4358B, Recoupment Agreement, have the client/guardian sign it, then forward the original to the local office fiscal unit for collection. If he **refuses** to sign it, inform the fiscal unit in writing.

A delinquent OI balance can be referred to Treasury for collection **if: The client signed a DHS-4358B, or Recoupment is court ordered.**

In this case, the department has established that respondent was aware of the responsibility to report any changes in circumstances that might affect eligibility for services. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. Respondent received FAP, FIP and MA benefits beginning in January 2008 from the State of Michigan. Beginning in March 2008, the respondent began using her FAP, FIP and MA benefits in the State of Indiana. From June 5, 2008 and continuing through May 2009, the respondent used her FAP, FIP and MA benefits solely in the State of Indiana, indicating that she was residing in the State of Indiana. Department policy indicates that clients must report all changes that could potentially affect eligibility or benefits amount within ten days of when the client is aware of the change. BAM, item 507, p. 7. This would include any change in residency. Department policy indicates that a resident is a person living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. BEM, item 220, p. 1. In this case, the respondent was clearly not residing in the State of Michigan as her benefits were used solely in the State of Indiana. She enrolled her children in school in Indiana. Thus, it is apparent she was a resident of Indiana. The fact that she intended to return to Michigan at some time does not establish residency. She was residing in the State of Indiana. She relocated to Indiana to take care of her mother.

Department policy indicates that the overissuance amount is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. BAM, item 720, p. 6. The respondent was issued the [REDACTED] in FAP benefits from May 2008 until April 2009. She received [REDACTED] in FIP benefits from May 1, 2008 until April 2009. She received [REDACTED] in MA benefits from May 2008 thru April 2009.

All of the benefits issued during this period were in error as the respondent was residing in Indiana and would not have been eligible to receive benefits if she had reported this. 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. Consequently, the department's request for FAP disqualification and full restitution must be granted. She committed a first violation of the FIP program, resulting in a [REDACTED] overissuance. Consequently, the department's request for FIP disqualification and full restitution must be granted. She committed a first intentional violation of the MA program, resulting in a [REDACTED] overissuance.

Based on clear and convincing evidence, it is found that the respondent intentionally committed the program violation as she continued to receive benefits from the State of Michigan while she was residing in the State of Indiana.

DECISION AND ORDER

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

Therefore it is ORDERED that:

- (1) Respondent shall be personally disqualified from participation in the FAP and FIP for one year. This disqualification period shall begin to run immediately as of the date of this Order.
- (2) Respondent is responsible for full restitution of the [REDACTED] FAP overissuance, [REDACTED] FIP overissuance, and [REDACTED] MA overissuance caused by her Intentional Program Violation (IPV).

/s/

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

Date Signed: May 23, 2011

Date Mailed: May 23, 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.

KKR/ds

cc:

[REDACTED]