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

IN THE MATTER OF:



July 27, 2011 Wayne #17 County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

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 disqualification hearing. After due notice, telephone hearing was held on July 27, 2011. Respondent did not appear. Notice of hearing was sent to respondent June 23, 2011 and was not returned as undeliverable . This case proceeded in respondent's absence.

<u>ISSUE</u>

Whether Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and whether Respondent rece ived an over-issuance of benefits that the department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and conv incing evidence on the whole record, finds as material fact:

- The department's Office of Inspector General (OIG) filed a hearing request to establis h an over-issuance of benef its received by Respondent as a result of Respondent having committed an Intentional Program Violation (IPV); the OIG also requested that Respondent be disqualified from receiving program benefits.
- 2. Respondent signed <u>Assistance Application</u> (DHS-1171) on 2/09/05, acknowledging that he underst ood that fa ilure to give timely, truthful,

complete and accurate information about circumstances could result in a civil or criminal action or an administrative claim against respondent.

- 3. Respondent applied for FAP benefits in the State of Michigan but cashed the FAP benefits in the State of between between the state of the state o
- 4. Respondent failed to report the change of State of Residency as required.
- 5. Respondent received an over-issuance of Food Assistance Benefits in the amount of **\$ for the period from**
- 5. Respondent was clearly instructed and fully aware of the resp onsibility to report all employment and income to the department.
- 6. Respondent has no apparent physica I or mental impairment that would limit the understandi ng or ability to fulfil I the income reporting responsibilities.
- 7. Respondent had not committed any previous intentional program violations of the FAP program.

CONCLUSIONS OF LAW

The Food Assistanc e Program (FAP) (formerly known as the Food Stamp (FS) program) is establis hed by the Food St amp Act of 1977, as amended, and is implemented by the federal r egulations 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 ar e found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

In this cas e, the department has requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV and the depar tment has asked that respondent be disqualified from receiving b enefits. The department's manuals provide the following relevant policy statements and instructions for department caseworkers:

BENEFIT OVERISSUANCES

DEPARTMENT POLICY

All Programs

When a c lient 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, SD A and FAP OIs and payments, issues automated collection notices and triggers automated benefit reductions for active programs.

A **claim** is the resulting debt creat ed by an overissuance of benefits.

The **Discovery Date** is determined by the Recoup ment Specialist (RS) for a client or department error. This is the date the OI is known to exist an d there is evidence available to determine the OI type. For an Intentional Program Violation (IPV), the Office of Inspector General (OIG) determines the discov ery date. This is the date the r eferral 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 s ent notifying the client when the disqualification and recoupm ent will start. In CIMS the "establishment date" has been renamed "notice sent date."

An **overissuance (OI)** is the amount of benefits iss ued to the client group or CDC provider in excess of what they were eligible to receive. For FAP benefits, an OI is al so the amount of benefits trafficked (traded or sold).

Overissuance T ype identifies the cause of an overissuance.

Recoupment is a DHS action to identify and rec over a benefit OI. BAM 700, p. 1.

PREVENTION OF OVERISSUANCES

All Programs

DHS must inform clients of t heir reporting responsibilities and act on the information r eported within the Standard of Promptness (SOP). .

.

.

During eligibility determination a nd 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 fo Ilowing BAM 1 05 requirements and by inf orming 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 ar e required by law to promptly notify DHS of al I changes in circ umstances within 10 days. FAP Simpli fied Reporting (SR) groups are required to report only when the group's actual gross monthly income exceeds the SR inco me limit for their group size.
- Incorrect, late reported or omitted information caus ing an OI can result in cash repayment or benefit reduction.
 - A timely hearing request c an 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 f**ailed to report information **or intentionally** gave incomplete or inaccur ate 2011-16630/LYL

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 convinc ing ev idence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or prev enting reduction of program benefits or eligibility. BAM, Item 720, p. 1.

The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Pro gram Violation. Intentional Program Violati on 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, t he Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, posse ssing 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) Crite ria for dete rmining in tentional program violation. The hearing authority shall ba se the determination of intentional program violat ion on clear and convincing evidence which demonstrates that the hous ehold member(s) committed, and intended to c ommit, intentional program violation as defined in paragraph (c) of th is section. 7 CF R 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 Cons ent Agreement, or other rec oupment and disqualific ation 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 und er the FIP program. BAM, Item 720, p. 2.

FAP Only

IPV exists when an administrative hearing decis ion, 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 Establis hment 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.

IPV Hearings

FIP, SDA, CDC, MA and FAP Only

OIG represents DHS during t he hearing process for IPV hearings.

OIG requests IPV hearings for cases when no signed DHS-826 or DHS-830 is obtained, and correspondence t o the client is not returned as undel iverable, 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 F AP 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 invo lves c oncurrent receipt of assistance (see PEM 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 addr ess is obtained. BEM, Item 720, p. 10.

DISQUALIFICIATON

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 peri od is used in all inst ances except when a **court** orders a different period (see **Non-Standard Disqualification Periods**, in this item).

Apply the following disqualific ation 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

In this case, the department has estab lished that Respondent was aware of the responsibility to report all income and em ployment to the department. Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within ten days. BAM, Item 105, p. 7. Respondent has no apparent physical or mental impairment that limits the und erstanding or ability to fulfill t he reporting responsibilities.

This Administrative Law Judg e 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 \$ over-issuance from FAP program disqual ification and full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, decides that Respondent committed an Intentional Program Violation by failing to report income while r eceiving F ood Assistance Program benefits for the period of time from The department is entitled to recoup the over-issuance of benefits Respondent ineligibly received.

Therefore, the Department is ORDERED to:

- 1. Disqualify Respondent from participation in the FAP program for one year, but the rest of the household may participate. This dis qualification period s hall begin to run <u>immediately</u> as of the date of this order.
- 2. Initiate collection of in accordance with departmental policy.

/s/

Landis Y. Lain Administrative Law Judge for Maura Corrigan, Director Department of Human Services

Date Signed: August 12, 2011 _____

Date Mailed: August 12, 2011

NOTICE: The law pr ovides 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.

LYL/alc

