

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

IN THE MATTER OF:



Reg. No.: 201135498
Issue No.: 1052, 3055, 6052
Case No.: [REDACTED]
Hearing Date: October 26, 2011
County: Wayne County DHS (41)

ADMINISTRATIVE LAW JUDGE: Andrea J. Bradley

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 October 26, 2011, from Detroit, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

Participants on behalf of Respondent 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

1. Did Respondent receive an overissuance (OI) of

- | | |
|---|--|
| <input checked="" type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input checked="" type="checkbox"/> Child Development and Care (CDC) |

benefits that the Department is entitled to recoup?

2. Did Respondent commit an Intentional Program Violation (IPV)?

3. Should Respondent be disqualified from receiving

- | | |
|---|---|
| <input checked="" type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input checked="" type="checkbox"/> Child Development and Care (CDC)? |

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 OIG filed a hearing request on May 13, 2011 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC benefits during the period of alleged OI.
4. Respondent was was not aware of the responsibility to report household changes in group composition and changes in income to the Department that would affect benefit eligibility.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period they are considering the fraud period is for CDC: November 25, 2007 through January 19, 2008 and July 08, 2008 through August 30, 2008; for FIP: July 1, 2008 through August 31, 2008; and for FAP: July 1, 2008 through September 30, 2008.
7. During the alleged fraud period, Respondent was issued \$5,357 in CDC benefits, \$404 in FIP benefits, and \$1,845 in FAP benefits from the State of Michigan.
8. The Respondent received an OI in CDC benefits in the amount of \$1,957 for the period of November 25, 2007 through January 19, 2008.
9. The Department has 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, the Department must attempt to recoup the 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 OIG requests IPV hearings for cases when:

- benefit overissuances 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,
 - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed an IPV 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 who commit an IPV 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 OIG presented documentary evidence and testimony regarding the Respondent's intent to commit an Intentional Program Violation with respect to the CDC program. Specifically, the OIG testified that the Respondent married in October of 2007, and that her spouse ended his employment on November 17, 2007. The Department policy will not allow payment for CDC benefits if a parent or substitute parent does not have a valid need reason. BEM 703. Therefore, CDC payments would not be authorized after the end of the spouse's employment. The Respondent did not timely report that her spouse's employment ended. Allowing for the 10-day period for clients to report changes and the 15-day change processing period for the CDC program, the first CDC payment period that would be affected by the November 17, 2007 work stoppage would be December 23, 2007. Therefore the applicable OI period is December 23, 2007 through January 19, 2008. The evidence in the record shows that the OI of CDC benefits for that time period is \$1,029.80.

With respect to the remaining claims of OI for CDC benefits, FIP, and FAP benefits, the Department failed to present clear and convincing evidence of the intent to commit an IPV as well as the OI amount. Moreover, the Department could not clearly state

whether it considered the Respondent's spouse to have been working at the time of the alleged OI. The evidence suggests that the Respondent was unemployed, and when it came to the CDC benefits that were issued during the period of June 8, 2008 through August 30, 2008, the Department initially testified that the Respondent's spouse was not employed and that was the basis for seeking an OI of CDC benefits for that time period. But when the Department presented budgets for the time period for the FAP and FIP programs, the Department continued to count earnings for the Respondent's spouse, which it just argued were not actually earned. Therefore, the Department sought an OI of FAP and FIP benefits based on the alleged failure of the Respondent to report child support income which would put her over the income limit, but at the same time refused to reduce the earned income by the amount that was clearly not earned by the Respondent's spouse. When pressed on the issue, the Department took the position that the Respondent's spouse was in fact working at that time because they had not reported the work stoppage. This was clearly inconsistent testimony and in light of this there is no clear and convincing evidence that an OI existed for the FAP program, the FIP program, or for the CDC program from June 8, 2008 through August 30, 2008. As such, these claims are DISMISSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. Respondent did did not commit an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$1,029.80 from the following program(s) FIP FAP SDA CDC.

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 \$ _____ in accordance with Department policy.

The Department is ORDERED to reduce the OI to \$1,029.80 for the period December 23, 2007 through January 19, 2008, in accordance with Department policy.



Andrea J. Bradley
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 27, 2012

Date Mailed: January 27, 2012

201135498/AJB

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.

AJB/hw

cc:

