

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201152563
Issue No.: 3055
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
 Family Independence Program (FIP) Food Assistance Program (FAP)
benefits that the Department is entitled to recoup?
2. Did Respondent commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 Family Independence Program (FIP) Food Assistance Program (FAP)

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 to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, 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 FAP FIP benefits during the alleged OI and fraud period.
4. On the Assistance Application signed by Respondent on September 28, 2006, Respondent reported that she intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using FAP FIP benefits outside of the State of Michigan beginning in February of 2007.
8. The Office of Inspector General indicates that the time period they are considering the fraud period is March 1, 2007 through June 30, 2007.
9. During the alleged fraud period, Respondent was issued \$1,632.00 in FAP FIP benefits from the State of Michigan.
10. The Department has has not established that Respondent committed an IPV.
11. This was Respondent's first second third alleged IPV.
12. 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.

When a client group receives more benefits than they are entitled to receive, DHS 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 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,
 - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed 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 that 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 agent testified regarding the Respondent's intent to commit an Intentional Program Violation. The only evidence of intent was that the Respondent reported on her September 28, 2006 Assistance Application that she had an intention to remain in the State of Michigan and that she would notify the Department of changes. This is not clear and convincing evidence of an intent to commit IPV.

The evidence shows that the Respondent left Michigan for a period of time, but after a few months, she returned. The Department policy states that in order to be eligible for program benefits, a person must be a Michigan resident. BEM 220. A person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220. Therefore, Respondent received an OI for any month that she was not a Michigan resident but still received program benefits.

The evidence in this case established that the Respondent began using State of Michigan FAP benefits in Missouri on February 9, 2007 and then in Nevada on February 12, 2007 and continued using the FAP benefits in [REDACTED] until June of 2007. There were no purchases made by Respondent in Michigan during that time, and there is simply no evidence that the Respondent was a Michigan resident during that time period. Further, the OIG agent presented documentary evidence that the Respondent was issued a drivers license from the State of Nevada, however, there was no issuance date, so it is unclear whether the license was issued during the OI period.


The OIG agent presented credible testimony and documentary evidence that the Respondent received \$1632.00 in program benefits during the period in which Respondent was ineligible based on residency. Based on the foregoing, the evidence

established that the Respondent was issued an OI in the amount of \$1632.00, but there was insufficient evidence to hold that the Respondent committed an IPV.

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 \$1632.00 from the following program(s) FAP FIP.
- 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 \$1632.00 in accordance with Department policy.
- The Department is ORDERED to reduce the OI to \$ _____ for the period _____, and initiate recoupment procedures 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. lifetime.


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

Date Signed: 12/7/11

Date Mailed: 12/7/11

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:

