

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

IN THE MATTER OF:



Reg. No.: 201255748
Issue No.: 3052; 6052
Case No.: [REDACTED]
Hearing Date: September 27, 2012
County: Macomb (20)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 September 27, 2012, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent; [REDACTED], Regulation Agent; and [REDACTED], Lead Agent, Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent.

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 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) |
| <input type="checkbox"/> Medical Assistance (MA) | |

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)
 State Disability Assistance (SDA) 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 June 1, 2012 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 FAP program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits during the alleged fraud period.
4. Respondent was was not aware of the responsibility to report changed circumstances in her home.
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 September 1, 2008 through March 31, 2011 for FAP and January 1, 2010 to April 9, 2011 for CDC.
7. During the alleged fraud period, Respondent was issued \$11,349 in FAP benefits from the State of Michigan and eligible to receive \$0.
8. During the alleged fraud period, Respondent was issued \$11,658.35 in CDC benefits from the State of Michigan and eligible to receive \$0.
9. Respondent did did not receive an OI in the amount of \$23,007.35 under the FIP FAP SDA CDC MA program.
10. The Department has has not established that Respondent committed a FAP IPV.
11. A notice of 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 Department of Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services, Program Administrative Manuals (PAM), Program Eligibility Manual (PEM), and Reference Schedules Manual (RFS).

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 Mich Admin Code, R 400.3101 through R 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 Mich Admin Code, R 400.3001 through R 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 Mich Admin Code, R 400.3151 through R 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 Mich Admin Code, R 400.5001 through R 400.5015.

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

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. [BEM 720 (August 1, 2012), p 10.]

Intentional Program Violation

Suspected IPV means an overissuance (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. [BAM 720, p 1 (emphasis in original).]

An IPV requires that the Department establish by 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, p 1 (emphasis in original).

In this case, the Department alleged that [REDACTED], the father of Respondent's children, lived with Respondent and the children and that Respondent committed an IPV of the FAP program by failing to include [REDACTED] in her FAP group and his income in the household's income. Parents and their children under 22 years of age who live together must be in the same FAP group. BEM 212 (April 1, 2012), p 1. Each person's income is included in the FAP budget. See BEM 556 (July 1, 2011), pp 2-3.

However, in order to establish an IPV, the Department must establish the amount of overissued benefits by clear and convincing evidence. BAM 720, p 1. The Department contended at the hearing that [REDACTED] income, if considered in the calculation of Respondent's FAP eligibility, would have made Respondent ineligible on the basis that her group's income would exceed the FAP income limit. However, the Department did not present any FAP OI budgets showing the amount of FAP benefits Respondent received and the amount she would have been eligible to receive if [REDACTED] had been included as a member of her FAP group and if his income had been budgeted into her FAP budget. While the Department presented quarterly wage match information showing [REDACTED] quarterly income between the third quarter of 2008 and the first quarter of 2011, the quarters during which the alleged fraud period of September 2008 and March 2011 fell, and [REDACTED] actual income for several pay periods in 2011, only one which fell within the alleged fraud period, this documentation did not provide clear and convincing evidence that [REDACTED] income would have resulted in Respondent's ineligibility

for FAP benefits. Because the Department did not establish that there was an overissuance of FAP benefits to Respondent, it could not establish the Respondent committed an IPV concerning those benefits.

Disqualification

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, p 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to MA. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (October 1, 2009), p 2. 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, p 13.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV. Therefore, Respondent is not subject to a disqualification under the FAP program.

Recoupment of Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (December 1, 2011), p 1. The amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p 6; BAM 715 (December 1, 2011), pp 1, 5; BAM 705 (December 1, 2011), p 5.

The Department alleges that Respondent was overissued FAP and CDC benefits. As discussed above, the Department has failed to establish an overissuance of FAP benefits. Thus, the Department is not entitled to recoup any FAP benefits issued to Respondent between September 1, 2008, and March 31, 2011.

The Department also sought to recoup CDC benefits issued on Respondent's behalf between January 1, 2010, and April 9, 2011. At the hearing, the Department established that \$11,658.35 in CDC benefits were issued by the State of Michigan on Respondent's behalf during this period. The Department alleges that Respondent was not eligible for any CDC benefits because C.D., the father of her children, lived in the home with her and the children and was available to care for the children while she worked. Parents and their children who live together must be included in the same CDC group. BEM 205 (January 1, 2009), p 1. In order to be eligible for CDC benefits, each parent in the group must have a need for such benefits during the time the child care is requested and each need reason must be verified by the Department. BEM 703 (January 1, 2010), pp 1, 3, 11-12, 13.

In support of its allegation, the Department presented (i) evidence from its investigation showing that [REDACTED] was present at Respondent's home on several different occasions between February 15, 2011, and March 2, 2011, and a year later on March 27, 2012, and that he appeared at home in the residence and stated that he lived there, (ii) a lease Respondent and [REDACTED] had signed on July 3, 2009, and the move-out sheet both signed on August 25, 2010, showing that the rented an apartment together, and (iii) an insurance application dated June 11, 2009, where [REDACTED] listed Respondent as his girlfriend and beneficiary of his insurance policy. Respondent denied that [REDACTED] lived in the home with her and the children, explaining that he occasionally watched the children while she was in school. Respondent's testimony failed to counter the Department's abundant testimony showing that [REDACTED] lived in the home with her and the children.

Because [REDACTED] lived in the home with Respondent, in order for Respondent to receive CDC benefits for her children, [REDACTED] was required to establish a valid need. Because no need was verified by the Department for [REDACTED], Respondent was not eligible for CDC benefits during the alleged fraud period between January 1, 2010 and April 9, 2011. Thus, the Department is entitled to recoup the entire \$11,658.35 in CDC benefits issued on Respondent's behalf during this period.

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 a FAP IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$11,349 from the following program(s) FIP FAP SDA CDC MA.
3. Respondent did did not receive an OI of program benefits in the amount of \$11,658.35 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- delete the FAP OI and cease any recoupment action.
- initiate recoupment procedures in accordance with Department policy for the amount of \$11,658.35 for the CDC OI.
- reduce the OI to _____ for the period _____, in accordance with Department policy.


Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

201255748/ACE

Date Signed: 10/17/2012

Date Mailed: 10/17/2012

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.

ACE/hw

cc:

