

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

IN THE MATTER OF:



Reg. No.: 201260699
Issue No.: 1052; 3052
Case No.: [REDACTED]
Hearing Date: August 22, 2012
County: Wayne (17)

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 August 22, 2012, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the 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 checked="" type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input 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

- | | |
|---|---|
| <input checked="" type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> 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 February 28, 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 program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits during the period of October 2005, through July 2008.
4. Respondent was was not aware of the responsibility to report income.
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 October 2005 through July 2008.
7. During the alleged fraud period, the OIG alleged that Respondent was issued \$6005 in FIP FAP SDA CDC MA benefits from the State of Michigan and entitled to \$49.
8. Respondent did did not receive an OI in the amount of \$5956 under the FIP FAP SDA CDC MA program.
9. During the alleged fraud period, the OIG alleged that Respondent was issued \$6615 in FIP FAP SDA CDC MA benefits from the State of Michigan and entitled to \$1630.
10. Respondent did did not receive an OI in the amount of \$4985 under the FIP FAP SDA CDC MA program.
11. The Department has has not established that Respondent committed an IPV.
12. 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).

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.

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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 attempted to establish that Respondent had failed to report her employment and periods she received unemployment compensation and had underreported employment income. Respondent appeared at the hearing and credibly testified that she had reported changes in her employment, her income and her receipt of unemployment compensation to her worker. Respondent credibly testified, and the evidence supported, that she worked on temporary assignments, first with [REDACTED] (which, based on the evidence presented, is affiliated with [REDACTED]), and then with [REDACTED], a temporary agency that hired all of [REDACTED] employees. [REDACTED], another employer identified by the Department, was actually staffed by [REDACTED]. The evidence presented by the Department also showed that it was in possession of a Verification of Employment Claimant signed on August 19, 2007, which identified [REDACTED] as her employer beginning July 27, 2007. The foregoing established that Claimant had identified her employers to the Department. The evidence did not clearly and convincingly establish that Claimant had underreported her earned income or her receipt of unemployment benefits.

Under the foregoing facts, the Department has failed to present clear and convincing evidence that Respondent intentionally withheld or misinformed the Department concerning her employment and income for the purpose of maintaining or preventing reduction of her FIP or FAP benefits. Thus, the Department has failed to establish that Respondent committed an IPV concerning her receipt of FAP or FIP 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.

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. 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.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning her receipt of FAP or FIP benefits. Therefore, Respondent is not subject to a disqualification under either the FAP or FIP programs.

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 715 (December 1, 2011), pp 1, 5; BAM 705 (December 1, 2011), p 5.

At the hearing, the Department established that \$6615 in FAP benefits were issued by the State of Michigan to Respondent for the periods (i) from October 2005 to November 2005, (ii) from February 2006 through November 2006, and (iii) from August 2007 through July 2008. The Department alleges that Respondent was eligible to receive \$1630, resulting in an OI of \$4985.

The Department presented FAP OI budgets for each of the months at issue, showing the FAP benefits Respondent was eligible to receive when her earned and unearned income that was not previously budgeted in her FAP budget was included in the budget. A review of each of the budgets at issue shows that the Department properly calculated the overissuance for all the months except for July 2006, August 2006, and September 2006, where the Department included CDC benefits purportedly paid to Respondent as unearned income but was unable to explain at the hearing its basis for including these benefits in the budgets. When the FAP benefits allegedly overissued for those months are excluded from the overissuance amount, the amount of the OI is reduced to \$4343.

The Department also established that the \$6005 in FIP benefits were issued by the Department to Respondent for the periods (i) from October 2005 to November 2005, (ii) from September 2006 through November 2006, and (iii) from August 2007 through July 2008. The Department alleges that Claimant was eligible to receive \$49, resulting in an OI of \$5956. The Department presented FIP OI budgets for each of the months at issue, showing the FIP benefits Respondent was eligible to receive when her earned and unearned income that was not previously budgeted in her FIP budget was included

in the budget. A review of each of the budgets at issue shows that the Department properly calculated the overissuance for all the months at issue. Thus, the Department is entitled to recoup the entire alleged FIP overissuance of \$5956.

The total OI that the Department is entitled to recoup for the overissued FAP and FIP benefits is \$10,299.

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 \$10,299 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- delete the OI and cease any recoupment action.
- initiate recoupment procedures for the amount of \$ _____ in accordance with Department policy.
- reduce the OI to \$10,299 for the FIP and FAP benefits issued during the periods identified above, in accordance with Department policy.



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

Date Signed: September 10, 2012

Date Mailed: September 10, 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:

