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

### IN THE MATTER OF:



 Reg. No.:
 2012-63718

 Issue No.:
 3052

 Case No.:
 Image: County and the second second

# 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 Departm ent of Human Servic es' (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 Regulation Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included:

Respondent did not appear at the hearing and it was he ld 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)
  State Disability Assistance (SDA)
  Child Devel
  Medical Assistance (MA)
- ⊠ Food Assistance Program (FAP)
  - 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

Family Independence Program (FIP)

Food Assistance Program (FAP)

State Disability Assistance (SDA)

# FINDINGS OF FACT

The Administrative Law Judge, based on t he competent, material, and substantial evidence on the whole record, finds as material fact:

- 1. The Department's OIG filed a hearing request on July 17, 2012 to establish an OI of benefits received by Respondent as a result of Respondent thaving allegedly committed an IPV.
- 2. The OIG 🖂 has 🗌 has not requested that Resp ondent be dis qualified fr om receiving program benefits.
- 3. Respondent was a recipient of FIP K FAP SDA CDC MA benefits during the period of April 2007, through January 2008.
- 4. Respondent 🖾 was 🗌 was not aware of the respons ibility to report employment and income.
- 5. Respondent had no apparent physical or m ental 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 May 2007 through January 2008.
- 8. The OIG alleges that Respondent was entitled to \$1264 in  $\Box$  FIP  $\boxtimes$  FAP  $\Box$  SDA  $\Box$  CDC  $\Box$  MA during this time period.
- 10. The Department  $\Box$  has  $\boxtimes$  has not established that Respondent committed an IPV.
- 11. This was Respondent's  $\boxtimes$  first  $\square$  second  $\square$  third alleged 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 Service s Bridges Administrative Manual (BAM), B ridges Elig ibility 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 purs uant to the Personal Responsibility and W ork Opportunity Reconc iliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq*. The Department (formerly k nown as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq*., and Mich Admin Code, R 400.3101 t hrough R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Food Assistanc e Program (FAP) [form erly known as the Food Stamp (FS) program] is establis hed by the Food St amp Act of 1977, as amend ed, and is implemented by the federal r egulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independenc e 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 D epartment 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 establis hed by Titles IVA, IVE and XX of the Soc ial Security Act, the Ch ild Care and Developm ent 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 Fede ral Regulations, Parts 98 and 99. The Depart ment provides servic es to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

☐ The Medical Ass istance (MA) program is es tablished by the Title XIX of the Soc ial 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 Independ ence Agency) administers the MA pr ogram pursuant to MCL 400.10, *et seq*., and MC L 400.105.

The Department's OIG requests IPV hearings for cases when:

- benefit overissuances are not forwarded to the prosecutor,
- prosecution of welfar e 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 previ ous intentional program violation, or
  - the alleged IPV involves FAP trafficking, or
  - the alleged fraud involves c oncurrent 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 overis suance (OI) exis ts for which all t hree of the following conditions exist:

- The client **intentionally** failed to report information **or intentionall y** gave incomplete or inaccurate informati on needed to make a correct benefit determination, **and**
- The client was clearly and correctly in structed regarding h is 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 r eduction of program benefits or eligibility. BAM 720, p 1 (emphasis in original).

In this case, the Department alleged that Respondent failed to report her husband's employment and inc ome. The Department presented Respondent's FAP application which Respodent signed on April 2, 2007 and a redet ermination completed and signed by Respondent on January 18, 2008, neither of which included any earned income by Respondent's husband. Howev er, the evidence presented showed that Respondent's husband was not working at the time t he application and redetermination were submitted. A Verification of Employment (VOE) from received by the Department on February 19, 2008, in response to its subpeona, showed that at the time Respondent submitted the April 2, 2007 ap plication, her husband had la st worked for in December 2006, when he rece ived \$3.50. Thus, Res pondent's application accurately reflected that the household had no earned income as of the April 2, 2007, date when it was signed. The VOE also showed that Respondent's husband's employment with ended on December 20, 2007. Therefore, Respondent's failure to include any earned income in the January 18, 2008, redetermination accurately reflected her circumstances at that time.

The Department pointed out t hat there were no change r eports on file showing that Respondent had reported her husband's inco me which the VOE showed the husband began receiving on April 27, 2007. However, the absence of a change report does not establish that Respondent fa iled to report her husband's em ployment, only that the

Department did not have a chang e report on file. Therefore, the Department has failed to establis h by clear and convincing ev idence that Respondent in tentionally withheld information for the purposes of maintaining or preventing reduction of her FAP benefits. Although the Department al so pointed out that Respon dent did not identify he r husband's employment for the 60 days preceeding the redetermination date as required on the redetermination form, because Res pondent's past income did not affect her future eligibility for benefits, this fact wa s not sufficient to establish that Respondent intended to defraud the Department. Thus, t he Department has failed to establish that Respondent committed an IPV with respect to her receipt of FAP benefits.

### **Disgualification**

A court or hearing decision that finds a client committed an IP V 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 gr oup members may continue to receive benefits. BAM 720, p 12.

Clients who commit an IPV are disqualified for a standard di squalification period except when a court orders a diffe rent 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 otherwis e eligible. BAM 710 (October 1, 2009), p 2. Cli ents are disqua lified for pe riods of on e year for the first IPV, two years for the sec ond IPV, lifetime disqualification for the third IPV, and ten years for a concurrent receipt of benefits. BAM 720, p 13.

In this case, because the Department has fail ed to s atisfy its burden of showing that Respondent committed an IPV, 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 70 0 (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.

At the hearing, the Department established that \$3336 in F AP benefits were issued by the State of Michigan to Res pondent from May 2007 through January 2008. The Department alleges that Respon dent was eligible to receive \$1264 during this period. The Department presented OI FAP budget s for eac h of the relevant months at issue showing the FAP benefits Resp ondent was eligible to receive if the earned income had been properly budgeted. A review of t he budgets es tablishes that Respondent was s overissued FAP benefits totaling \$2072. Thus, the Department is entitled to recoup this amount.

### **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 prog ram benefits in the amount of \$2072 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 procedur es for the amount of \$2072 in accordance with Department policy. 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

Date Signed: October 8, 2012

Date Mailed: October 8, 2012

**<u>NOTICE</u>**: 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.

ACE/ctl

