

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

IN THE MATTER OF:



Reg. No.: 2012-51169
Issue No.: 6052
Case No.: [REDACTED]
Hearing Date: July 9, 2012
County: Wayne (82-43)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

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 July 9, 2012, from Detroit, Michigan. The Department was represented by [REDACTED]

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 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

- | | |
|---|---|
| <input type="checkbox"/> Family Independence Program (FIP)? | <input 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 June 6, 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 June 1, 2008, through September 30, 2008.
4. Respondent was was not aware of her responsibility to report.
5. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period they are considering the fraud period is June 1, 2008-September 30, 2008.
7. During the alleged fraud period, Respondent was issued \$1,195 in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. Respondent was entitled to \$1,195 in FIP FAP SDA CDC MA during this time period.
9. Respondent did did not receive an OI in the amount of \$1,195 under the FIP FAP SDA CDC MA program.
10. The Department has has not established that Respondent committed an IPV.
11. This was Respondent's first second third 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 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 AAC, 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.

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.

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 certain 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 OI 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.

Additionally, the Department's allegation in this case is that Respondent intentionally failed to report a reduction in her hours at the Michigan Works program over a four-month period. The Department alleges that this intentional failure caused Respondent to receive CDC benefits to which she was not entitled.

Respondent disputes the Michigan Works! record of hours worked. She states that the hours listed are incorrect and the Department would have taken her out of the program and held a triage conference with her under these circumstances. She also states she

contacted the Department to get the 2008 records of her participation and was told that they were too old and could not be retrieved.

In order to prove an IPV, the BAM 720 three-step analysis must be followed. The first step is to determine whether the respondent had the requisite intent to give incomplete or inaccurate information needed to make a correct determination.

Before this question can be answered, the factfinder must move to Step 2 to determine if the Department clearly instructed the respondent regarding her reporting responsibilities. It is found and determined that, in this case, there is insufficient evidence to establish that the Department clearly and correctly instructed Respondent about her reporting responsibilities.

This conclusion is based upon the lack in proof of what the instructions were regarding procedures for childcare billing. The record contains a billing payments summary showing the amounts paid to Respondent's childcare provider. This summary indicates that the provider billed 100 hours every two weeks, and the Department authorized payment for ninety hours every two weeks. This record presents the history of what was paid, but it does not explain whether Respondent was clearly and correctly instructed as to whether to report every change of her hours worked. If the Department accepted an average or general number of hours from Respondent as a matter of routine, then the Department had no expectation of accuracy in reporting the hours worked.

The Department submitted the Michigan Works timesheets to establish that Respondent worked less hours per week than the number of hours for which payment was requested. The number of hours reported on the timesheets is less than 100 hours biweekly. However, this juxtaposition of work hours with childcare hours does not establish that there was an IPV, because it does not show what Respondent's intent was. And, in order to establish intent, there must be knowledge of responsibility on the part of Respondent. This is the element the Department failed to establish in this case.

In conclusion, based on all of the evidence taken as a whole, it is found and determined that the Department failed to establish by clear and convincing evidence that Respondent committed an IPV of the CDC program. The Department's request for a finding of IPV is denied.

The next consideration is whether an OI has occurred in this case for which recoupment procedures would be appropriate. A finding of OI is appropriate when a client group receives more benefits than those to which it is entitled.

In this case, the Department failed to establish what the correct monthly amount of CDC benefits Respondent was entitled to. The Department did not present monthly budgets showing the varying amounts per month, making it impossible to establish what her correct CDC benefits were.

Also, as discussed above, the Department failed to show what the correct reporting procedure was for childcare services. There is no evidence to indicate what hours were actually reported other than the number 100.

Therefore, it is found and determined, based on all the evidence presented, that the Department failed to establish an OI in this case.

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 \$1,195 from the following program(s) FIP FAP SDA CDC MA.
- The Department is ORDERED to delete the OI and cease any recoupment action.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 11, 2012

Date Mailed: July 11, 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.

JL/pf

cc: 