

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

**IN THE MATTER OF:**



Reg. No.: 2012-51711  
Issue No.: 1052; 3052; 6052  
Case No.: [REDACTED]  
Hearing Date: September 27, 2012  
County: Wayne (43)

**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 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 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 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 May 14, 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 FIP and FAP program benefits.
3. Respondent was a recipient of  FIP  FAP  SDA  CDC  MA benefits during time periods when the alleged fraud arose.
4. Respondent  was  was not aware of the responsibility to report changes in household size, employment and 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 November 1, 2004 to January 31, 2005 for FIP; December 1, 2003 to January 31, 2005 for FAP; and December 28, 2003, to November 13, 2004 for CDC.
7. During the alleged fraud period, the Department alleges Respondent was issued \$1377 in FIP benefits from the State of Michigan and eligible to receive \$0.
8. During the alleged fraud period, the Department alleges Respondent was issued \$2165 in FAP benefits from the State of Michigan and eligible to receive \$570.
9. During the alleged fraud period, the Department alleges Respondent was issued \$3286 in CDC benefits from the State of Michigan and eligible to receive \$0.
10. Respondent  did  did not receive an OI in the amount of \$6258 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). 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 Respondent committed an IPV with respect to the FIP and FAP programs. However, the Department did not present any overissuance budgets to show that Respondent was overissued FIP or FAP benefits. Because the Department must establish an overissuance of benefits in order to establish an IPV, the Department has failed to establish that Respondent committed an IPV with respect to her receipt of FIP and FAP 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, because the Department has failed to satisfy its burden of showing that Respondent committed an IPV, 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 720, p 6; BAM 715 (December 1, 2011), pp 1, 5; BAM 705 (December 1, 2011), p 5.

As discussed above, the Department did not present any FAP OI budgets or FIP OI budgets for the months at issue showing the calculation of overissued benefits to Respondent. Therefore, the Department is not entitled to recoup any FAP or FIP benefits issued to Respondent during the alleged fraud period applicable to each respective program.

The Department also alleges that Respondent received an overissuance of \$3286 in CDC benefits issued on her behalf between December 28, 2003 and November 13, 2004. The Department contends that Respondent's son, [REDACTED], was not in her care during this period but she continued to collect CDC benefits on his behalf.

In support of its case, the Department relies on an affidavit signed by [REDACTED] father on November 9, 2007, in which the father swears that [REDACTED] had been in his care since November 2003 to the date of the affidavit. Statements made by others offered into evidence to prove the truth of the matter asserted are hearsay and are generally inadmissible in a trial or hearing. MRE 801; MRE 802. The statements made by the father of Respondent's child in the affidavit are hearsay. Administrative hearings are subject to the same rules used in circuit court to the extent these rules are practical in the case being heard although an administrative law judge may be more lenient in deciding what evidence may be presented. BAM 600 (August 1, 2012), p 28. Thus, the statements in the affidavit by [REDACTED] father have limited evidentiary value. This is especially true in this case where Respondent appeared at the hearing and testified that she and the father had a very acrimonious relationship. Respondent credibly testified that both her children had remained in her care since their birth, and the Department did not present any evidence other than the affidavit to counter Respondent's testimony. The evidence presented was not sufficient to establish that Respondent's son [REDACTED] was not in Respondent's care. Because the Department's case seeking to recoup CDC benefits was based on its contention that [REDACTED] was not in Respondent's home, the Department has failed to establish its right to recoup the \$3286 in CDC benefits issued on Respondent's behalf for [REDACTED] care between December 28, 2003, and November 13, 2004.

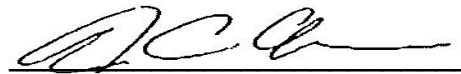
**DECISION AND ORDER**

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 FIP or FAP IPV.
2. Respondent  did  did not receive an OI of program benefits in the amount of \$6258 from the following program(s)  FIP  FAP  SDA  CDC  MA.

The Department is ORDERED to

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



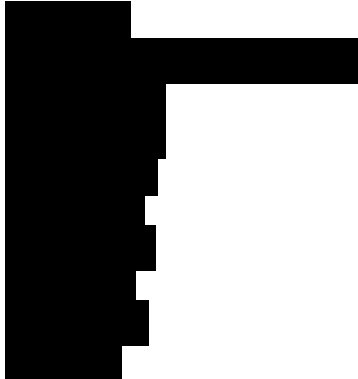
**Alice C. Elkin**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: October 8, 2012

Date Mailed: October 8, 2012

**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/ctl

cc: 



A.

Elkin