

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

IN THE MATTER OF:



Reg. No.: 201259615
Issue No.: 3052; 6052
Case No.: [REDACTED]
Hearing Date: August 1, 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 1, 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 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

- | | |
|--|---|
| <input 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)? |

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 18, 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 period of April 2006, through October 2008.
4. Respondent was was not aware of the responsibility to report changes in 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 fraud period for CDC is April 2006 through October 2008 and the fraud period for FAP is May 2006 through April 2007.
7. During the alleged fraud period, the OIG alleges that Respondent was issued CDC benefits from the State of Michigan totaling \$29,276 and entitled to \$0 in CDC benefits.
8. During the alleged fraud period, the OIG alleges that Respondent was issued FAP benefits from the State of Michigan totaling \$3725 and entitled to \$413 in FAP benefits.
9. Respondent did did not receive an OI in the amount of \$29,276 under the FIP FAP SDA CDC MA program.
10. Respondent did did not receive an OI in the amount of \$3312 under the FIP FAP SDA CDC MA program.
11. The Department has has not established that Respondent committed a FAP 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) (2012), the Bridges Eligibility Manual (BEM) (2012), and the Reference Tables Manual (RFT) (2012). Department policies .

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 AACS, 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.

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.

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.

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 700 (emphasis in original); BAM 720.

At the hearing, the Department alleged that Respondent had falsified her employment in order to receive CDC benefits and had consequently committed a FAP IPV. In establishing the FAP IPV, the Department contended that Respondent failed to report her CDC benefits as unearned income for her FAP budget and, as a result, received greater FAP benefits than she was entitled to receive. Even assuming that Respondent falsified her employment, the Department has failed to establish, by clear and convincing evidence, that Respondent intended to defraud the Department by withholding or misrepresenting information concerning her lack of employment for the **purpose** of maintaining or preventing reduction of her FAP benefits. Furthermore, as discussed below, the FAP OI budgets presented by the Department do not establish an overissuance. In the absence of such evidence, the Department has failed to establish that Respondent committed a FAP IPV.

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. 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. In this case, the Department alleges that it is entitled to recoup \$32,588 in benefits issued to Respondent, consisting of \$29,276 in CDC benefits and \$3312 in FAP benefits.

Recoupment of CDC Overissuance

At the hearing, the Department established that \$29,276 in CDC benefits were issued on behalf of Respondent from April 30, 2006, through October 25, 2008. The Department contends that during this period Respondent was eligible for \$0 in CDC benefits.

In establishing that Respondent was not eligible for CDC benefits, the Department alleges that Respondent misrepresented that she was employed during the period at issue and therefore did not have a need for CDC benefits. Where the Department authorizes care and care is provided by and paid to the provider but the client was ineligible, this would be considered a CDC client error. BAM 700. Therefore, if the Department can establish that Respondent was not eligible for CDC benefits, it can recoup such benefits from Respondent.

In this case, the Department contends that Respondent falsified her employment and, because she was not employed and presented no other need basis for CDC benefits, she was not eligible for such benefits. BEM 703. In support of its case, the Department presented several documents. In the first, on the application she signed on March 20, 2006, Respondent stated that she was not employed. However, in the application she signed on April 25, 2006, Respondent identified her employer as [REDACTED] and indicated that she began employment on March 15, 2006 for 45 hours per week at \$7.90 per hour. Respondent also identified [REDACTED] as her employer on applications she signed on November 8, 2006 and August 31, 2007.

While Respondent submitted a Verification of Employment (VOE) from [REDACTED] signed April 25, 2006, purportedly verifying her employment, the Department sent a subpoena to [REDACTED] on February 5, 2009, at the address indicated in the VOE, requesting information concerning Respondent's employment with the company between January 1, 2006, and February 5, 2009, and in response received a fax indicating on the subpoena "no record of employee on file" signed by [REDACTED]. Although [REDACTED] did not identify her position at [REDACTED], it appears that she was the same person identified as

having signed the VOE Respondent originally submitted. Furthermore, although the VOE listed Respondent's paychecks and indicated the amounts withheld for taxes, the wage match the Department produced showing employer-reported income to the State from 2001 through 2006 did not identify [REDACTED] as Respondent's employer at any time.

Respondent's file also contained a Verification of Employment Respondent submitted to the Department on August 14, 2006 identifying [REDACTED] as her employer. [REDACTED] responded to the Department's subpoena and stated that Respondent had not worked for that organization. The Department presented evidence that there was no [REDACTED] located at the address identified on the VOE. Furthermore, in the applications she signed on November 8, 2006 and August 31, 2007, Respondent continued to identify [REDACTED] as her employer.

Based on this evidence, the Department established that Respondent had falsified her employment at [REDACTED]. Accordingly, she was not eligible for CDC benefits on the basis of employment from April 30, 2006, through October 25, 2008. Thus, the Department is entitled to recoup the \$29,276 in CDC benefits issued on behalf of Respondent.

Recoupment of FAP Overissuance

At the hearing, the Department established that \$3725 in FAP benefits were issued by the State of Michigan to Respondent from May 1, 2006 through April 30, 2007. The Department contends that during this period Respondent was eligible for \$413 in FAP benefits, and has presented OI FAP budgets for May 2006 through September 2006 and December 2006 through April 2007. The CDC benefits Respondent was not eligible to receive are identified as unreported unearned income in the FAP OI budgets.

Based on the discussion above, Respondent improperly received CDC benefits and the income from those improperly received benefits were not included in the original FAP budget. However, the Department's OI FAP budgets fail to establish an overissuance in FAP benefits for any of the months at issue. The FAP OI budget for September 2006 shows unreported unearned income of \$2142.80 but the evidence of CDC benefits issued to Respondent does not support this calculation. For the remaining FAP OI budgets, the Department calculated the correct benefit amount Respondent was eligible to receive for each month at issue but then failed to subtract this properly calculated amount from the actual FAP benefits issued to her. Accordingly, the overissuance amount calculated in each FAP OI budget is incorrect. Because the Department has failed to properly calculate the overissuance in FAP benefits for any of the months at issue, the Department is not entitled to recoup any FAP benefits from Respondent.


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 received an OI of CDC program benefits in the amount of \$29,276 but did not receive an OI of FAP program benefits.

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 \$29,276 to recoup the CDC benefits issued to Respondent between April 30, 2006, and October 25, 2008, in accordance with Department policy.


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

Date Signed: August 23, 2012

Date Mailed: August 23, 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: 