

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

IN THE MATTER OF:

[REDACTED]

Reg. No.:

Issue No.:

Case No.:

[REDACTED]

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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 [REDACTED] from Lansing, Michigan. The Department was represented by [REDACTED] 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 400.3178(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of

Family Independence Program (FIP)

Food Assistance Program (FAP)

State Disability Assistance (SDA)

Child Development and Care (CDC)

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 FIP, FAP and/or MA.

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on [REDACTED] to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed IPV's.
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 [REDACTED].
4. The department failed to present clear and convincing evidence that Respondent was aware of her responsibility to report changes. The beginning of the time period at issue herein involved Respondent's "re-determination." Under policy and procedure, at re-determination, the department is required to give individuals a pamphlet instructing them of their responsibilities to report change(s) in circumstance(s). There is no evidence presented at the administrative hearing that this pamphlet was given to Respondent. Nor did the department have any evidence of Respondent having signed/reaffirmed an application for assistance (DHS1171). There is no clear and convincing evidence that Respondent was made aware of her responsibility to report changes.
5. The Department's OIG indicates that the time period they are considering the fraud period is [REDACTED] for the FAP program; [REDACTED] through [REDACTED] for the MA program.
6. During the alleged fraud period, Respondent was issued \$548 in FIP benefits; \$3,988 in FAP benefits and \$3,869.40 in MA benefits from the State of Michigan, totaling \$8,405.40.
7. Respondent was entitled to \$0 in FIP FAP SDA CDC MA during this time period.
8. Respondent did did not receive an OI in the amount totally \$8,405.40 under the FIP FAP SDA CDC and MA programs.
9. The Department has has not established that Respondent committed an IPV.
10. 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 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.

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 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.

As noted above, the definition of an IPV is a finding that the department meets its definition based upon clear and convincing evidence. In the three components of the definition, one states that the department is to inform the client: "...clearly and correctly instructing his/her reporting responsibilities." BAM 720.

In this case, as the department testified at the administrative hearing, the case was processed as a re-determination. At re-determination, the department typically gets the Respondent to reaffirm on the application for assistance that they understand their responsibilities including the responsibility to report change(s) in circumstance(s).

Specifically at re-determination, the department is required to issue a pamphlet to individuals which clearly informs them of their duties to report such changes in circumstance(s) within 10 days, including a change of address. Such a pamphlet would further inform individuals of the fact that they can be prosecuted for fraud for failure to report changes.

In this case, the department stipulated that it did not have an Application for Assistance reaffirmed by respondent as applied to the facts herein. Nor did the department have evidence of having issued a pamphlet to Respondent. While the department may very well have issued the same, the department did not have any 1171's and/or evidence of the pamphlet. As such, this ALJ finds that there is not clear and convincing evidence that would fall under the IPV definition and thus, no IPV can be found under the clear and convincing standard.

When an ALJ finds no IPV, the ALJ is further charged with a duty to make a determination if there is an OI and whether it is due to client or department error. An OI due to the agency error includes a situation where there is an incorrect action that was caused by a number of possible scenarios. One is: "policy was misapplied." BAM 700, p3. There are also instances where an ALJ can find client error where an individual fails to report changes. BAM 700 p4.

In this case, this ALJ will rule the ambiguities in Respondent's favor and find that the error herein was agency error as the department has an affirmative duty to clearly instruct individuals as to any responsibilities. The evidence herein does not reflect the same. Nevertheless, Respondent did receive benefits that she was not eligible to receive under federal and state law. Thus, Respondent received more benefits than she was entitled to receive. These must be recouped under federal and state law. However, under a preponderance of evidence standard, Respondent ineligibly received \$8,405.40 due to agency error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Facts and Conclusions of Law and for the reasons stated on the record, concludes that:

1. Respondent did did not commit an IPV of the FIP, FAP or MA programs.
2. Respondent did did not receive an OI of program benefits due to agency error in the amount of \$548 for the FIP program; \$3,988 for the FAP program; and \$3,869.40 for the MA program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$8,405.40 if in accordance with Department policy and procedure as to all three programs if policy and procedure allows the department to do so

It is so ORDERED.

/s/ _____
Janice G. Spodarek
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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.

JGS/jk

cc: [REDACTED]

MAHS