

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

IN THE MATTER OF:



Reg. No.: 201260871
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: August 22, 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 22, 2012, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG), and [REDACTED], translator.

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 checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input 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) |
|--|---|

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 February 28, 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 December 2005, through February 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 time period they are considering the fraud period is March 2005 through June 2005 and December 2005 through September 2006.
7. During the alleged fraud period, Respondent was issued \$5324 in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. The OIG alleges that Respondent was entitled to \$1282 in FIP FAP SDA CDC MA during this time period.
9. Respondent did did not receive an OI in the amount of \$4042 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 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 Bridges Administrative Manual (BAM), the 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.

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.

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.

In this case, the Department alleged that Respondent had failed to report his end of employment with [REDACTED] and had underreported his income with [REDACTED]. Although the Department alleged that it was not aware of Respondent's employment with [REDACTED] until September 2006, in his application signed December 7, 2005, Respondent identified his employer as [REDACTED]. At the hearing, Respondent testified, and the Department agreed, that [REDACTED] and [REDACTED] were the same entity. (Respondent also credibly testified that [REDACTED], the entity that filed a Verification of Employment (VOE) with the Department on August 24, 2006, was also another name for [REDACTED].) The file also contained a VOE signed by [REDACTED] marked as received by the Department on October 17, 2005. While the employer is not identified, it appears to be [REDACTED].

The Department presented income detail print-outs from Respondent's FAP budgets for the months from March 2005 through June 2005 to show that Respondent had failed to report his end of employment with [REDACTED] and his new employment with [REDACTED]. However, the print-outs show a reliance on January 2005 income from [REDACTED] to prospect future income but do not indicate when the information used to prepare those budgets was provided. They also do not establish that Respondent failed to notify the Department of a change in employment. Furthermore, the May 2005 budget, although identifying the employer as [REDACTED], uses income figures consistent with those provided by [REDACTED] in the October 17, 2005 VOE. This indicates that the

Department was aware of Respondent's employment with [REDACTED] prior to the September 2006 date it alleges it was aware of this information.

The Department also alleged that Respondent underreported his income with [REDACTED]. Respondent explained that he worked for [REDACTED] on a commission basis, and when the Department worker told him she could not prepare a FAP budget based on commissions, his employer agreed to identify his earning as weekly payments in order to make it easier for the worker to process Respondent's case. Respondent's explanation of the circumstances in this case was credible.

Under these facts, the Department has failed to present clear and convincing evidence that Respondent intended to defraud the Department with respect to his receipt of FAP benefits. Furthermore, as discussed below, the Department has failed to establish, by clear and convincing evidence, the amount of any overissuance of FAP benefits. Thus, the Department has failed to establish that Respondent committed an IPV with respect to his receipt of 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.

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 (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 715 (December 1, 2011), pp 1, 5; BAM 705 (December 1, 2011), p 5.

At the hearing, the Department established that \$1833 in FAP benefits were issued by the Department to Respondent from March 2005 through June 2005 and \$3491 in FAP benefits were issued by the Department to Respondent from December 2005 and September 2006. The Department alleges that Respondent was eligible to receive only

\$389 between March 2005 and June 2005 and only \$893 between December 2005 and September 2006. The Department therefore seeks to recoup an OI of \$4042.

If improper reporting or budgeting of income cause the OI, the Department must use *actual income for the OI month for that income source*. PAM 720 (October 1, 2004), p 8; PAM 720 (October 1, 2005), p 8; BAM 720 (August 1, 2012), p 7 (emphasis added). In this case, in support of its case for recoupment, the Department presented FAP OI budgets for each of the months at issue. A review of the budgets shows that the Department used quarterly wage match income information to calculate Respondent's earned income from [REDACTED]. However, the Department had actual income information from [REDACTED] in responses to Verifications of Employment Kareem/Hamlin signed on September 13, 2006 and September 19, 2006. Because the Department had actual income information, it was inappropriate to rely on the quarterly wage match income information, particularly in this case, where Respondent's income was commission-based and varied widely from month to month. Furthermore, in calculating Respondent's April 2005 and May 2005, the Department included Respondent's income from [REDACTED] that had been previously budgeted in his FAP budget even though Respondent did not have any actual income from that source during those months. For these reasons, the Department has failed to establish an overissuance of FAP benefits based on the FAP OI budgets provided.


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 \$4042 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 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

201260871/ACE

Date Signed: September 11, 2012

Date Mailed: September 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.

ACE/hw

cc:

