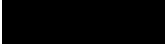


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**


IN THE MATTER OF:



Reg. No.: 201261028
Issue No.: 3052
Case No.: 
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 request by the Department of Human Services (Department) for a hearing. After due notice, a telephone hearing was held on August 22, 2012 from Detroit, Michigan. The Department was represented by , 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
 Family Independence Program (FIP) Food Assistance Program (FAP)
 Medical Assistance Program (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
 Family Independence Program (FIP) Food Assistance Program (FAP)
benefits?

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 FAP FIP MA benefits during the period of June 2006 through September 2007.
4. On the Assistance Application signed by Respondent on September 7, 2006, Respondent reported that she intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The OIG indicates that the time period they are considering the fraud period is January 1, 2007 through September 30, 2007.
8. During the alleged fraud period, Respondent was issued \$1026 in FAP FIP MA benefits from the State of Michigan.
9. The Department alleges that Respondent was entitled to \$0 in FIP FAP SDA CDC benefits from the State of Michigan during this time period.
10. As a result, the OIG alleges that Respondent received an OI in the amount of \$1026 under the FIP FAP SDA CDC program.
11. The Department has has not established that Respondent committed an IPV.
12. This was Respondent's first second third alleged IPV.
13. 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 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.

Subsequent to the scheduling of the current hearing and prior to the hearing date, the Notice of Hearing and accompanying documents (which established due notice) were mailed to Respondent via first class mail at the last known address and were returned by the United States Postal Service as undeliverable. Department policy dictates that when correspondence sent to Respondent concerning an intentional program violation (IPV) is returned as undeliverable, the hearing cannot proceed with respect to any program other than Food Assistance Program (FAP). BEM 720 (August 1, 2012), p 10. Thus, the hearing proceeded with respect to the alleged FAP IPV.

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor, or
- 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, p 10.]

Intentional Program Violation

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. [BAM 720, p 1 (emphasis in original).

An IPV requires 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 evidence showed that Respondent received FAP benefits issued by the State of Michigan between January 1, 2007 and September 31, 2007, the alleged fraud period. A PARIS match identified Respondent, based on birthdate and social security number, as having received food assistance benefits in [REDACTED] beginning November 1, 2006. However, there was no evidence that Respondent continued to receive food assistance benefits in [REDACTED] during the alleged fraud period. Further, there was no evidence that Respondent continued to use her Michigan-issued FAP benefits during the alleged fraud period. In the absence of such evidence, the Department has failed to establish, by clear and convincing evidence, that Respondent intentionally misrepresented information concerning her residence for the *purpose* of maintaining her Michigan FAP benefit eligibility. Because there is insufficient evidence that Respondent intended to defraud the Department, the Department has failed to show that Respondent committed a FAP IPV.

Disqualification

A court or hearing decision that finds a client committed 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

Even though the Department has failed to establish an IPV, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700. 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 \$1026 in FAP benefits were issued by the State of Michigan to Respondent from January 1, 2007 through September 30, 2007. However, the Department was unable to establish that Respondent was living in [REDACTED] and receiving FAP benefits from the State of Missouri during this period. The PARIS match, which identified Respondent, based on her social security number and birthdate, as having applied for food assistance benefits in [REDACTED] in November 2006, while she was receiving FAP benefits issued by the State of Michigan. However, it does not indicate that her [REDACTED] case was active during the January 1, 2007 through September 30, 2007 fraud period alleged by the Department. In the absence of such evidence that Respondent was receiving food assistance benefits issued by the State of [REDACTED] between January 1, 2007 and September 30, 2007, the Department has failed to establish that Respondent was not eligible for FAP benefits issued by the State of Michigan during that time period. Thus, the Department has failed to establish an overissuance of FAP benefits to which it is entitled to recoup.

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 \$1026 from the following program(s) FAP FIP 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 _____, and initiate recoupment procedures in accordance with Department policy.



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

Date Signed: September 13, 2012

Date Mailed: September 13, 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:

