

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-66933
Issue No.: 3020; 3055
Case No.: [REDACTED]
Hearing Date: January 17, 2013
County: Calhoun

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, an in person hearing was held on January 17, 2013, from Battle Creek Michigan, Calhoun County DHS. The Department was represented by [REDACTED], OIG [REDACTED], APS and [REDACTED] ES worker.

Participants on behalf of Respondent included: Respondent and [REDACTED] MSW.

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

- | | |
|--|---|
| <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) | <input checked="" type="checkbox"/> State Emergency Relief (SER) |
- benefits that the Department is entitled to recoup?

2. Did Respondent commit an Intentional Program Violation (IPV) of the FAP and SER programs?

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 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 August 8, 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 and SER during the periods of January 1, 2007 through June 30, 2007 for the FAP program and January 1, 2007 through January 31, 2007 for the SER program. Respondent was also a recipient of FAP benefits in 2009 during an alleged fraud period from April 1, 2009 thru September 30, 2009; for the SER program from February 1, 2009 through February 28, 2009.
4. Respondent was was not aware of the responsibility to report changes in household composition and changes in 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 January 1, 2007 through June 30, 2007 for the FAP program and January 1, 2007 through January 31, 2007 for the SER program. OIG initially filed for this hearing for an additional fraud period in 2009 for the FAP program from April 1, 2009 through September 30, 2009; for the SER program from February 1, 2009 through February 28, 2009.
7. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits and \$ [REDACTED] in SER benefits totaling \$ [REDACTED] from the State of Michigan.
8. Respondent did receive an OI for the FAP and the SER programs in 2007 - \$ [REDACTED] for the FAP program and \$ [REDACTED] for the SER program. Claimant was lawfully entitled to receive \$ [REDACTED] for the FAP program.
9. At the administrative hearing, Respondent submitted a notice of overissuance due to agency error for the FAP program during the time period of January 1, 2009 through May 31, 2010. Claimant contends that

the DHS already engaged in recoupment for this time period of an agency error overissuance.

10. The department stipulated that it withdraws any alleged IPV or alleged overissuance for the FAP and SER programs for 2009.
11. The Department has has not established that Respondent committed an IPV of the FAP program for the time period from April 1, 2009 through September 30, 2009, but did commit an IPV from January 1, 2007 through June 30, 2007 for the FAP program. The Department also has not established that Respondent committed an IPV of the SER program for the time period from February 1, 2009 through February 28, 2009, but did commit an IPV from January 1, 2007 through January 31, 2007 for the SER program.
12. This was Respondent's first second third IPV.

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.

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Department of Human Services (DHS or department) policies are found in the State Emergency Relief Manual (SER).

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.

Credible evidence on the record indicates that there is no IPV and no overissuance for the FAP and SER programs during the time period from April 1, 2009 through September 30, 2009; and for the SER programs from February 1, 2009 through February 28, 2009. The department withdrew any alleged IPV and/or overissuance for 2009.

Clear and convincing evidence on the record indicates that an IPV of the FAP program was committed from January 1, 2007 through June 30, 2007 for \$ [REDACTED]. Clear and convincing evidence supports finding that an IPV was committed for the SER program from January 1, 2007 through January 31, 2007 in the amount of \$ [REDACTED].

DECISION AND ORDER

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

1. Respondent did did not commit IPV's of the FAP and SER programs.
2. Respondent did did not receive an OI of program benefits for the FAP program during the time period of January 1, 2007 through June 30, 2007 totaling \$ [REDACTED] and for the SER program from January 1, 2007 through January 31, 2007 totaling \$ [REDACTED].

The Department is ORDERED to initiate recoupment procedures for the amount of \$1,306 and \$129.58 – totaling \$1,435.58 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from

FIP FAP SDA CDC for a period of
 12 months. 24 months. lifetime.

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

Date Signed: February 20, 2013

Date Mailed: February 21, 2013

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:

