

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

IN THE MATTER OF:



Reg. No.: 2012 78449
Issue No.: 3052
Case No.:
Hearing Date: February 19, 2013
County: Oakland DHS (04)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 February 19, 2013, 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

- | | |
|--|---|
| <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) |
| <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 September 10, 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 relevant periods at issue.
4. Respondent was was not aware of the responsibility to report changes in circumstances, including address changes, to the Department.
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 December 1, 2011 through April 30, 2012.
7. During the alleged fraud period, Respondent was issued \$835 in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. The OIG alleges that Respondent was entitled to \$0 in FIP FAP SDA CDC MA during this time period.
9. Respondent did did not receive an OI in the amount of \$835 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 Department of Human Services Bridges Administrative Manual (BAM), 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. [BEM 720 (August 1, 2012), p 10.]

Subsequent to the scheduling of the current hearing and 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). BAM 720, p 10. Thus, the hearing proceeded with respect to the alleged FAP IPV.

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

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 720, p 1 (emphasis in original). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department that she no longer resided in Michigan but continued to receive and use Michigan-issued FAP benefits while out of state. To be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (July 1, 2009 and January 1, 2012), p 1. A person is considered a resident while living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. BEM 220, p 1. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212 (October 1, 2008), pp 2-3.

The Department established that from November 5, 2011 through May 4, 2012, Respondent used her FAP benefits issued by the State of Michigan exclusively out of state in [REDACTED] and [REDACTED]. While this evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP benefits, to establish an IPV the Department must present clear and convincing evidence that Respondent **intentionally** withheld or misrepresented information for the purpose of maintaining benefits.

The fact that the Claimant removed herself from the State of Michigan shortly after applying for benefits and at no time reported a change of address and used the majority of FAP benefits almost exclusively outside of Michigan, such actions by Respondent would be indicative of an intent to defraud.

In conclusion however it is determined that the threshold amount of \$1,000 has not been met and thus the Department is not entitled to a finding of an IPV against the respondent.

In this case the Department has not established the threshold amount of \$1,000 in over-issuance in order to establish the requirements to seek an IPV. The Department clearly seeks an Overissuance of only \$835 and thus the requirements of BAM 720, pp10 are not met.

Additionally none of the following requirements were met:

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. [BEM 720 (August 1, 2012), p 10.]

In this case the Department has not established the threshold amount of \$1,000 in over-issuance in order to establish the requirements to seek an IPV. The Department clearly seeks an Overissuance of only \$835 and thus the requirements of BAM 720, pp10 are not met.

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 720, p 6; BAM 715 (December 1, 2011), pp 1, 5; BAM 705 (December 1, 2011), p 5.

At the hearing, the Department established that \$835 in FAP benefits were issued by the State of Michigan to Respondent from December 1, 2011 through April 30, 2012. The Department alleges that Respondent was eligible for \$0 in FAP benefits during this period.

In support of its FAP OI case, the Department presented Respondent's FAP transaction history showing use of FAP benefits issued by the State of Michigan exclusively out of state beginning November 30, 2011. Respondent became ineligible for FAP benefits once her FAP transaction history showed that she was using her Michigan-issued FAP benefits outside Michigan for more than 30 days. See BEM 212, pp 2-3. Therefore, she became ineligible for FAP benefits on December 1, 2011. However, in situations where reliable information indicates that the group left the state, BAM 220 provides that the action must take effect no later than the month after the change. BAM 220 (January 1, 2011), p 4. Therefore, the OI period began December 1, 2011.

Therefore, the Department is entitled to recoup \$835 in FAP benefits it issued to Respondent between December 1, 2011 and April 30, 2012.

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 \$835 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 \$835 in accordance with Department policy.
- reduce the OI to \$ for the period 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.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 6, 2013

Date Mailed: March 6, 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.

LMF/cl

cc:

