

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

IN THE MATTER OF:



Reg. No.: 2012-78934
Issue No.: 6052
Case No.: [REDACTED]
Hearing Date: November 28, 2012
County: Wayne (82-55)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 November 28, 2013, from Detroit, Michigan. The Department was represented by [REDACTED]

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 type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input checked="" 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 type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input checked="" 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 20, 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 May 10, 2009, through February 13, 2010.
4. On an assistance application (DHS-1171) signed January 2, 2009, Respondent certified that she understood her duty to report changes and had not given false information.
5. The Department's OIG indicates that the time period they are considering the fraud period is May 10, 2009, through February 13, 2010.
6. During the alleged fraud period, Respondent was issued \$11,957.83 in FIP FAP SDA CDC MA benefits from the State of Michigan.
7. This was Respondent's first second third IPV.
8. 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, DHS 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 overissuance is 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, or
 - the alleged fraud is committed by a state/government employee.

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 OI 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.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that Respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV with regard to the CDC program. Thus, the Department must not only prove that Respondent committed an act, but that there was intent to commit the act.

In this case, the Department has established that Respondent was aware of the responsibility to report all changes to the Department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. Additionally, the undersigned is convinced that the Department has met its burden of proof in providing clear and convincing evidence that Respondent intended to defraud the Department with regard to her CDC eligibility.

The burden of proof that the Department must meet in order to prove IPV is very high. It is not enough to prove that Respondent was aware of the requirements to report at some point, nor is it enough to prove that Respondent did not report in a timely manner. The Department must prove in a clear and convincing manner that, not only did Respondent withhold critical information, but also Respondent withheld this information with the intent to commit an IPV.

In other words, the Department must prove that Respondent did not simply forget to meet her obligations to report but, rather, actively sought to defraud the Department.

The Department has proven that in the current case. Respondent initially applied for CDC benefits in Michigan on May 11, 2009. At this time, Respondent reported employment as a need reason for CDC. However, the evidence in the case shows that Respondent was not employed, at least where Respondent said she was employed.

First, an OIG site visit to the location of the alleged employer revealed a vacant house, with no indications of a business ever being there.

Second, Respondent submitted employment verifications having signatures in two different handwriting styles for the same name, which indicates a clear forgery of at least one employment verification, if we ignore the incredibly unlikely possibility that Respondent had two different employers with the same name and business.

Third, when asked to submit a verification letter in November 2009 from her employer, Respondent instead photocopied a previously submitted letter, left off the heading, and then crossed out the word "July" and wrote in "November," making for a brash, if not particularly competent, forgery.

Fourth, this isn't the first time that Respondent has been the subject of a CDC fraud investigation. Respondent had a previous case that ended up as a felony prosecution in April 2010 for the amount of \$36,605.93. While previous bad acts don't automatically imply current bad acts, they certainly merit a certain amount of healthy skepticism regarding Respondent's subsequent behavior.

When all these facts are considered, the Administrative Law Judge believes that the pattern and totality of the evidence indicates clear and convincing proof that Respondent intended to commit an IPV.

Furthermore, the undersigned has reviewed the evidence and determined that the Department has established a proper CDC OI in the amount of \$11,957.83.

While Respondent may have had other, legitimate needs for CDC, Respondent's failure to appear results in a waiver of Respondent's ability to present those needs to the Administrative Law Judge. As such, lacking other evidence, the undersigned holds that all CDC benefits received during the time period indicated were unlawfully issued.

Therefore, the undersigned holds that Respondent unlawfully received \$11,957.83 in CDC benefits and was, therefore, overissued for the period of May 10, 2009, through February 13, 2010, when the OI in question was stopped.

As Respondent intended to defraud the Department for the purposes of receiving benefits, Respondent has committed an IPV.


Because Respondent committed an IPV, the Department has properly requested a recoupment of the \$11,957.83 in CDC benefits that were unlawfully issued.

There is no disqualification period for a CDC IPV.

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 \$11,957.83 from the following program(s) FIP FAP SDA CDC MA.
- The Department is ORDERED to delete the OI and cease any recoupment action.
- The Department is ORDERED to initiate recoupment procedures for the amount of \$11,957.83 in accordance with Department policy.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 11, 2013

Date Mailed: February 12, 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.

RJC/pf

cc:

