

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

IN THE MATTER OF:



Reg. No.: 2012-55816
Issue Nos.: 3052, 6052
Case No.: [REDACTED]
Hearing Date: December 13, 2012
County: Wayne (82-43)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

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 December 13, 2012, from Detroit, Michigan, before Administrative Law Judge Michael Bennane. The Department was represented by [REDACTED]

On March 5, 2013, the case was reassigned to Administrative Law Judge Jan Leventer, for preparation of the Decision and Order.

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 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

- Family Independence Program (FIP) 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 November 13, 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 two periods, January-February 2006 and July 2006-April 2007.
4. Respondent was was not aware of the responsibility to report income and employment changes accurately.
5. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time periods they are considering the fraud periods are January-February 2006 and July 2006-April 2007.
7. During the alleged fraud period, Respondent was issued \$10,823 in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. Respondent was entitled to \$10,823 in FIP FAP SDA CDC MA during this time period.
9. Respondent did did not receive an OI in the amount of \$10,823 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 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).

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, 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, or
 - 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 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.

Additionally, it is now necessary to determine if the Department has proved by clear and convincing evidence that all three elements of IPV are present. The first part of the first IPV element is whether Respondent intentionally failed to present accurate information to the Department. In order to determine Respondent's intent, it is first necessary to

determine what responsibility Respondent undertook when she applied for public assistance benefits. If the Department informed her of her duty to present accurate information, then Respondent was aware of her responsibility to report information. If the Department failed to inform Respondent of her duty to present accurate information, then it cannot be presumed that any duties were explained to Respondent. BAM 720.

Considering all of the evidence in this case in its entirety, there is nothing to show that Respondent was informed of her duty to present accurate information. There is no Application form in evidence. The Application form requires Respondent's signature agreeing that she received an Information Booklet with her rights and responsibilities described in it. This is not in evidence, and it cannot be presumed what papers were signed and what statements were made during Respondent's application process.

Also, while the Department refers to a false Employment Verification that Respondent submitted, this document is not in evidence. Based on the evidence of record, it is impossible to know what information Respondent gave the Department as to her employer and, therefore, it cannot be determined whether or not it was accurate information.

Having considered all of the evidence in this case as a whole, it is found and determined that the Department failed to present clear and convincing evidence that Respondent knew of her responsibility to provide accurate information to the Department. Without knowledge of her responsibility, there can be no intentional failure to perform her responsibility. Accordingly, the Department's request for an IPV order is denied.

The next question before the factfinder is whether, while IPV did not occur in this case, an OI of benefits occurred by virtue of a Department or client error. BAM 700. All of the evidence presented in this case has been considered in its entirety. The first item of evidence is a Subpoena issued June 21, 2007, to the employer. Department Exhibit 1, pp. 8-10. The Subpoena was returned and was marked undeliverable. The fact that a Subpoena was sent in 2007 and was returned undeliverable does not support a conclusion that Respondent was not employed prior to that time. This item of evidence does not prove the conclusion for which it is submitted.

Looking at the second item of evidence, this is a Department summary record of Respondent's quarterly wages for 2004-2005. *Id.*, pp. 21-22. The document shows no wages in 2006-2007, and, the information in the documents was updated (refreshed) June 21, 2007. This document is insufficient to prove Claimant was not working, as the Department's own documents are not pay records, they may contain errors, and the Respondent may have been paid wages in cash and was expected to pay her own taxes to the IRS. As proof of OI, this document does not contain sufficient trustworthiness and completeness to prove the issue for which it is presented. Therefore, it is found and determined that the Department has not established that there was an OI in this case.

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 \$10,823 from the following program(s) FIP FAP SDA CDC MA.
- The Department is ORDERED to delete the OI and cease any recoupment action.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 21, 2013

Date Mailed: March 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.

JL/pf

cc:

