

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-72375
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: November 28, 2012
County: Wayne (82-43)

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: [REDACTED]

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 August 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 the period of March 1, 2008, through May 30, 2008.
4. The Department's OIG indicates that the time period they are considering the fraud period is March 1, 2008, through May 30, 2008.
5. During the alleged fraud period, Respondent was issued \$878 in FIP FAP SDA CDC MA benefits from the State of Michigan.
6. This was Respondent's first second third alleged IPV.
7. 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 federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:

- (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).
- (6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section.

7 CFR 273.16(c)(6).

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

- benefit overissuance 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 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.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV with regard to the FAP program. Thus, the Department must not only prove that the 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. However, the undersigned is not 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 his FAP 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 his obligations to report, but rather, actively sought to defraud the Department.

The undersigned believes that if any information was misreported, it was unintentional. Respondent completed a DHS-1171 on March 3, 2008, that reported no current income. However, an employment verification (DHS-38) requested in May 2008 revealed that Respondent's wife had been employed at the [REDACTED] since November 2007. Normally, the undersigned would call this a serious misrepresentation. However, Respondent's credible testimony in the case leads credence to some alternate theories. Furthermore, the evidence shows discrepancies that cannot be fully reconciled with the theory that this was a case of intentional fraud.

First, the evidence is still unclear as to why a verification of employment was requested in the first place, leading to the ultimate discovery of the unreported income. The Department testified that the discovery was through "agency records," but there seems to be no indication as to what agency records were used to discover this. Furthermore, if the agency records in question refer to the DHS-38 in the case file, the question becomes one of what caused the agency to request the DHS-38 in the first place. The most obvious explanation is a self-report by Respondent, as a wage match request

would have shown up in the case record. This lends weight towards the failure to report being unintentional.

Second, Respondent did report on his DHS-1171 that his wife had income, from a different source, in January 2008. However, per the DHS-38, Respondent's wife was employed by the [REDACTED] during this time period as well. The undersigned is unsure as to why Respondent would report one job, but not the other job.

Respondent testified, credibly, that he had never heard of the [REDACTED] did not know his wife well and, in fact, separated from his wife in [REDACTED] due to the fact that his wife was keeping secrets from him. Per Respondent's testimony, the undersigned finds it likely, especially considering Respondent's reporting of one of his wife's jobs, that Respondent was actually unaware of the job with the [REDACTED] and, thus, any failure to report was unintentional. Therefore, the Administrative Law Judge holds that the evidence in this case does not meet the clear and convincing standard showing that the failure to report was intentional; at the very least, there are enough remaining questions that render a finding of IPV impossible under the current evidence threshold.

Additionally, even if the Administrative Law Judge found that Respondent intentionally misreported income, the undersigned cannot find an IPV.

The prerequisite for an IPV, client error, or Department error, is proof of an actual OI of benefits. Even if the Department presents clear and convincing evidence that the respondent intended to defraud the Department, without proof of an actual OI, there can be no IPV and recoupment of benefits. The same standard holds for Department error and client error; there can be no error or recoupment without first proving, through clear and convincing evidence, the amount of that recoupment.

Therefore, the Department must first establish, by clear and convincing evidence, that an OI occurred and the amount of that OI. Where the Department is unable or fails to prove the amount of OI, no IPV can be said to have occurred, even in the most blatant of cases.

In the present case, the Department has supplied no evidence of an OI.

While the Department supplied records showing the amount of FAP benefits Respondent received in the current case, the mere receipt of benefits does not in any way prove an OI of benefits. The Department must show how much in FAP benefits Respondent was actually entitled to in order to show that Respondent received more benefits than allowed.

Additionally, the Department did not present any recoupment budgets to establish the exact amount of the recoupment. If the Department believes a recoupment is proper, the Department should submit budgets that explain exactly how a recoupment is proper.

Even a clear act of fraud cannot give rise to a recoupment and IPV if the Department did not issue any benefits that Respondent was not entitled to. As such, if there is no evidence submitted regarding the proper amount of recoupment, the Administrative Law Judge cannot sustain a recoupment and hold that an OI occurred.

For those reasons, the undersigned must hold that the Department has failed to prove through clear and convincing evidence the amount of the OI or whether recoupment is proper.

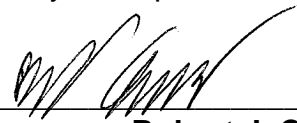
The Administrative Law Judge acknowledges that when there is some attempted fraud, there could be some degree of benefit OI; this is not always the case, however. The Department must provide clear and convincing evidence to establish the OI and the amount of OI that it seeks to recoup. Without an OI, there can be no IPV, client error, or Department error.

Failure to fulfill this evidentiary requirement must, therefore, result in a finding of no error. Thus, the undersigned must hold that there is no clear and convincing evidence that Respondent committed an IPV, and the Department has failed to prove a proper recoupment amount.

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 \$878 from the following program(s) FIP FAP SDA CDC MA.
- The Department is ORDERED to delete the OI and cease any recoupment action.



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

Date Signed: February 11, 2013

Date Mailed: February 11, 2013

2012-72375/RJC

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:

