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

IN THE MATTER OF:

[redacted]

Reg. No.: 2012 72460
Issue No.: 3052
Case No.: [redacted]
Hearing Date: January 23, 2013
County: Oakland (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 January 23, 2013, from Detroit, Michigan. The Department was represented by [redacted] Regulation Agent, of the Office of Inspector General (OIG).

☐ Participants on behalf of Respondent included: the.

☒ 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

   ☐ Family Independence Program (FIP)
   ☐ State Disability Assistance (SDA)
   ☐ Medical Assistance (MA)
   ☒ Food Assistance Program (FAP)
   ☐ Child Development and Care (CDC)

   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)
   ☐ State Disability Assistance (SDA)
   ☒ Food Assistance Program (FAP)
   ☐ Child Development and Care (CDC)?

FINDINGS OF FACT

The Administrative Law Judge, based on t he competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on August 27, 2012 to establish an OI of benefits received by Respondent as a result of Responden t having alleged ly committed an IPV.

2. The OIG ☒ has ☐ has not requested that Resp ondent be dis qualified fr om receiving program benefits.

3. Respondent was a recipient of ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits during the period of 9/1/11 through 2/1/12.

4. Respondent ☒ was ☐ was not aware of the responsibility to advise the Department of his moving out of state.

5. Respondent had no apparent physical or m ental 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 9/1/11 through 2/29/12.

7. During the alleged fraud period, Respondent was is sued $1,002.44 in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA benefits from the State of Michigan.

8. The Claimant began using his Michigan FAP benefits in Missouri in Se ptember 2011, at which time he also applied for F AP benefits in Missouri. The Claimant did not use his FAP benefits on his Michigan Bridge Card after September 8, 2011.

9. Respondent was entitled to $0 in ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA during this time period.

10. Respondent ☒ did ☐ did not receive an OI in the amount of $1,002.44 under the ☐ FIP ☒ FAP ☐ SDA ☐ CDC ☐ MA program.

11. The Department ☐ has ☒ has not established that Respondent committed an IPV.

12. This was Respondent's ☒ first ☐ second ☐ third alleged IPV.

13. 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,
    - 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.

Additionally, the evidence presented did not demonstrate an intentional program violation, as even though the Claimant's Bridge Card continued to be loaded with monthly FAP benefits which were available, the Claimant did not use the benefits and

they were not spent except for expenditures through 9/8/11. There was no evidence of intent to defraud presented or established.

Thereafter, on September 16, 2011 the Claimant applied for benefits in Missouri. Technically the Claimant did receive benefits but did not spend them. Based upon these facts, it is determined that the Claimant did receive an overissuance of FAP benefits issued after 9/1/11 and thus the Department is entitled to recoup those benefits in the amount of $1,002.44. However it should be noted that a remedy is provided to the Department to obtain the funds in the Claimant's FAP account through expungement of benefits, which would allow the Department to access (remove) the FAP benefits still contained in the account and to clear the Bridge Card through the end of January 2012. At the end of February 2013 the Department may expunge the remaining FAP benefits for the month of February 2012.

Bridges Administrative Manual, (BAM) 401E provides the following with regards to EXPUNGEMENT
Benefits in FAP or cash accounts that have not been accessed for 365 days will be expunged and not available to the client. BAM 401E pp. 8, (12/1/2011).

As the Claimant had not spent the funds posted to his Bridge Card at the time of the hearing for the period after 9/8/12 the funds may still be available for expungement. If so the Department should use expungement to recoup the funds.

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 $1002.44 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 $1002.44 in accordance with Department policy and shall use the method of expungement (BAM 401E) to collect and recoup the over issued FAP benefits and then may seek further debt collection remedies for any remaining benefits, if any, which are not recouped by expungement,

☐ The Department is ORDERED to reduce the OI to for the period , 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.

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

Date Signed: February 13, 2013

Date Mailed: February 13, 2013

NOTICE: The law pr ovides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court fo r the county in which he/she lives.

LMF/cl

cc: [redacted]