

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

IN THE MATTER OF:



Reg. No.: 201315681
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: April 15, 2013
County: Wayne (17)

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 hearing was held on April 15, 2013 at Detroit, Michigan. The Department was represented by Barbette Cole, Lead Agent, Office of the Inspector General (OIG).

Participants on behalf of Respondent included: the Respondent.

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

- 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 December 21, 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 February 1, 2010, through July 31, 2010.
4. Respondent was was not aware of the responsibility to report changes of address 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 February 1-July 31, 2010.
7. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. Respondent was entitled to \$0.00 in FIP FAP SDA CDC MA during this time period.
9. Respondent did did not receive an OI in the amount of \$1 [REDACTED] 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 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.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance (OI). Department of Human Services Bridges Administrative Manual (BAM) 700 (2013).

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. Department of Human Services Bridges Administrative Manual (BAM) 720 (2013).

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. *Id.*

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. Department of Human Services Bridges Administrative Manual (BAM) 710 (2009). 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, at the hearing Respondent presented credible and un rebutted testimony that in November, 2009, he made at least two phone calls to the Department advising them that he was going to Texas to provide home care assistance. Also, on February 28, 2010, Respondent signed a Redetermination form indicating that he moved, and that the reason for the move was that he could not afford the rent. Dept. Exh. 1, pp. 11-14. Respondent's testimony is accepted and it is found as fact that on at least three occasions Respondent notified the Department that he was changing his address.

Applying BAM 720 to the facts in evidence, it is found and determined that the Department's assertion that Respondent intentionally failed to report a change of address, is unfounded. The Department cannot establish IPV without a showing of intentional behavior. Accordingly, as the Department has failed to establish the element of intent, the Department's request for a finding of IPV must be denied.

The next issue to be considered in this case is whether an overissuance (OI) of FAP benefits was paid out in this case. The Department's records of FAP purchases indicate that Respondent made FAP purchases exclusively in Texas from February-July, 2010. Respondent does not dispute this information. *Id.*, p. 19.

Having considered this evidence as well as all of the evidence in this case as a whole, it is found and determined that an overissuance occurred in this case, and that it was a result of Department and not client error. Based on Respondent's testimony and the Redetermination application, the Respondent told the Department three times that he was moving, but the Department failed to consider the information. Instead, the Department continued to provide FAP benefits to Respondent at the benefit level he was previously entitled to.

Pursuant to BAM 700, "Benefit Overissuances," cited above, the Department is required to pursue recoupment in a case where overissuance has occurred. The Department has this duty whether the OI was its own error or the Respondent's error. Department of Human Services Bridges Administrative Manual (BAM) 700 (2013), p. 1.

Accordingly, having considered all of the evidence as a whole, it is found and determined that an overissuance of FAP benefits occurred in this case, and the Department's request for a finding to that effect is granted.

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 [REDACTED] from the following program(s) FIP FAP SDA CDC MA.
- The Department is ORDERED to initiate recoupment procedures for the amount of \$1 [REDACTED] in accordance with Department policy.



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

Date Signed: April 16, 2013
Date Mailed: April 16, 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/tm

cc:

