

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

IN THE MATTER OF:



Reg. No.: 2013-2106
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: December 20, 2012
County: Wayne (82-57)

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 20, 2012, from Detroit, Michigan, by Administrative Law Judge Michael Bennane. The Department was represented by [REDACTED]

On March 12, 2013, the case was reassigned to Administrative Law Judge Jan Leventer for preparation of a 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 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 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 August 1, 2010, through October 30, 2011.
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 his understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period they are considering the fraud period is August 1, 2010-October 30, 2011.
7. During the alleged fraud period, Respondent was issued \$2,446 in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. Respondent was entitled to \$1,646 in FIP FAP SDA CDC MA during this time period.
9. Respondent did did not receive an OI in the amount of \$800 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 overissuance (OI). 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. 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. 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, the Department must first prove that an act of IPV occurred. IPV is an intentional failure to report information for the purpose of receiving unlawful benefits. BAM 720. In this case, the Department submitted Respondent's Application for benefits, which is signed and dated June 14, 2011, in evidence to establish that

Respondent knew of his responsibility and, therefore, acted intentionally Department Exhibit 1, p. 18. Respondent gave an address on [REDACTED]. *Id.*, p. 2. Respondent's signature appears underneath a statement indicating that all of his statements in the Application are true.

However, the Department presented no evidence to show that Respondent was informed of his responsibility at any time prior to June 14, 2011. Therefore, with regard to the Department's allegation that Respondent committed an IPV prior to June 14, 2011, it is found and determined that the Department failed to establish by clear and convincing evidence that Respondent had the required intent prior to June 14, 2011. Accordingly, no IPV is established prior to June 14, 2011.

The remaining allegation period is June 15, 2011-October 30, 2011, a time period of 3.5 months. It is found and determined that the Application is clear and convincing evidence that Respondent knew of his responsibilities on June 14, 2011.

Next, the Department submitted in evidence a record of Respondent's FAP purchases from January 3, 2010-April 11, 2012. *Id.*, pp. 28-37. The purchase record indicates that Respondent made FAP purchases exclusively in the State of Virginia from July 6, 2010-March 22, 2011, and for a second period from July 1, 2011-October 8, 2011. There are no purchases from March 22-July 1, 2011, a period of over three months. This includes the date of June 14, 2011, when Respondent applied for FAP benefits. *Id.*, p. 35.

It is found and determined that the evidence in this case establishes that Respondent truthfully gave a Detroit address on June 14, 2011. Then, on or about July 1, 2011, Respondent moved to Virginia and failed to report a change of address even though he knew of his responsibility to do so.

The Department next asserts that Respondent failed to report the change of address in order to obtain unlawful benefits. The Respondent did not appear at the hearing to explain his actions to the factfinder. Based on Respondent's regular usage of the FAP card in Virginia for the July-October 2011 period, it is logical to conclude that he failed to report a change of address for the purpose of obtaining benefits to which he was not entitled. It is therefore found and determined that the Department has proved by clear and convincing evidence that Respondent knew he had a reporting responsibility based on the Application, and intentionally failed to fulfill his responsibility for the purpose of obtaining unlawful benefits. The first IPV element, or requirement, is established.

Next, the Department must establish that it clearly and correctly informed Respondent of his responsibility to report changes of address. Respondent's signature on the Application appears beneath a certification statement that the signer has received an Information Booklet explaining his responsibilities and that he accepts them. *Id.*, p. 18. Based on the Application, it is found and determined that Respondent knew of his responsibility to report changes of address as of June 14, 2011. The second element of IPV has been established.

The third and final element of IPV is that it must be established that Respondent had no physical or mental impediment that would prevent him from fulfilling his responsibilities. There is nothing in the file to indicate any physical or mental impairment of Respondent. Accordingly, based on all of the evidence in its entirety, it is found and determined that Respondent did not have a physical or mental impairment that would prevent him from fulfilling his reporting responsibilities. The third IPV element is established.

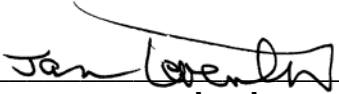
In conclusion, the Department has established by clear and convincing evidence that Respondent committed an IPV from July 1-October 30, 2011, a four-month period, in the FAP program. The Department failed to establish IPV prior to July 1, 2011. The Department's request for an IPV from August 1, 2010-October 30, 2011 is granted in part and denied in part.

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 \$2,446 from the following program(s) FIP FAP SDA CDC MA.
- The Department is ORDERED to reduce the OI to \$800 for the period July 1-October 30, 2011, in accordance with Department policy.
- The Department is ORDERED to initiate recoupment procedures for the amount of \$800 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.



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

Date Signed: March 21, 2013

2013-2106/JL

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:

