

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

IN THE MATTER OF:



Reg. No.: 2013-211
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: November 28, 2012
County: Wayne (35)

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 November 28, 2012, from Detroit, Michigan, before Administrative Law Judge Michael Bennane. The Department was represented by [REDACTED] Agent, Office of the Inspector General (OIG).

On March 18, 2013, the case was reassigned to Administrative Law Judge Jan Leventer for preparation of a decision and order.

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

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|--|---|
| <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 October 29, 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 July 1, 2011, through October 31, 2011.
4. Respondent was was not aware of the responsibility to report truthful, accurate and complete information to the Department, to report changes of information, and to use FAP benefits in a particular manner.
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 period they are considering the fraud period is July-October, 2011.
7. During the alleged fraud period, Respondent was issued \$520 in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. Respondent was entitled to \$520 in FIP FAP SDA CDC MA during this time period.
9. Respondent did did not receive an OI in the amount of \$520 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, a finding of IPV by the factfinder must be based on consideration of whether the evidence is clear and convincing as to all three elements of the IPV action. The first element has three features, all of which must be present. There must be a demonstrated violation, an intent to commit the violation, and, the intent must be for the purpose of obtaining benefits unlawfully. BAM 720.

The first consideration shall be whether the Department's evidence establishes that a violation occurred. The Department's evidence consists of Department FAP benefit and purchase records, and a store description and pictures provided by the U.S. Food and Nutrition Service. Having considered this evidence in its entirety, it is found and determined that the evidence is insufficient to establish clearly and convincingly that a violation occurred. Dept. Exh. 1, pp. 14-25.

The Department's evidence does not indicate what was purchased on any particular date. The purchase records show only the dollar amount of the Respondent's purchases. The Department makes an erroneous and unwarranted assertion from this evidence that an unlawful act occurred. In fact, the evidence shows only that FAP purchases were made. This evidence is circumstantial at best, and may present a reason for further investigation. Standing by itself, however, this evidence presents a mere suspicion that an illegal act occurred. It would be speculation to presume from this limited, circumstantial evidence, that Respondent committed IPV.

In conclusion, having considered all of the evidence as a whole in this case, it is found and determined that the Department failed to present clear and convincing evidence

that Respondent committed an IPV. The evidence is insufficient to establish IPV clearly and convincingly. The Department's request for a finding of IPV is denied.

Next, the Department's request for a finding of overissuance will be considered. An overissuance involves an overpayment of benefits as a result of Department or client error. Department of Human Services Bridges Administrative Manual (BAM) 700 (2013). In this case the Department admits to no error, and, the Department fails to identify an error on the part of the Respondent. Having reviewed the evidence in its entirety, it is found and determined that no Department or Respondent error occurred in this case. Accordingly, the Department's request for a finding of overissuance is denied.

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 \$520 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 25, 2013

Date Mailed: March 26, 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:

