

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20132168
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: January 3, 2013
County: Isabella

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 3, 2013 from Lansing, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Carrol Wolicki.

ISSUES

1. Did Respondent receive an overissuance (OI) of Family Independence Program (FIP), Food Assistance Program (FAP), 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)?

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 2, 2012, to establish an OI of benefits received by Respondent as a result of Respondent having received concurrent program benefits and, as such, 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 FAP FIP benefits during the period of May 1, 2011, through December 31, 2011.
4. On the Assistance Application signed by Respondent on November 28, 2008, Respondent reported that she/he intended to stay in Michigan.
5. Respondent was aware of the responsibility to report changes in her/his residence to the Department.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. Respondent began using FAP FIP benefits outside of the State of Michigan beginning in May of 2011.
8. The Office of Inspector General indicates that the time period they are considering the fraud period is May 1, 2011, through December 31, 2011.
9. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP FIP benefits from the State of Michigan.
10. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP FIP benefits from the State of Virginia.
11. The Department has has not established that Respondent received concurrent benefits and thus committed an IPV.
12. This was Respondent's first second third IPV.
13. A notice of disqualification 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.

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 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 \$ [REDACTED] or more, or
- the total overissuance amount is less than \$ [REDACTED] 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 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 that commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. 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.

The Respondent argued that her absence from the State of Michigan was temporary and that she considered herself to remain a Michigan resident during the alleged fraud period. The Respondent argued that she was not aware of the requirements of the Food Assistance Program (FAP) program and that she did not intentionally violate any rules.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

This Administrative Law Judge finds that the Department established an intentional program violation of the Food Assistance Program (FAP) involving the concurrent receipt of benefits.

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) FAP FIP.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

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It is FURTHER ORDERED that Respondent be personally disqualified from participation in the FAP program for 10 years. This disqualification period shall begin immediately as of the date of this Order.

/s/
Kevin Scully
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 4, 2013

Date Mailed: January 7, 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.

KS/tb

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