

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

IN THE MATTER OF:



Reg. No.: 2013-22728
Issue Nos.: 3052, 6052
Case No.: [REDACTED]
Hearing Date: April 10, 2013
County: Wayne (82-17)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 April 10, 2013, from Detroit, Michigan. The Department was represented by [REDACTED]

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 checked="" 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

- | | |
|--|---|
| <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)? |

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 January 9, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed a FAP 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 relevant periods at issue.
4. Respondent was was not aware of the responsibility to report changes in income and employment 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 August 2005 through January 2007 for CDC and September 2005 through January 2007 for FAP (the "fraud period").
7. The Department alleges that from August 21, 2005, through December 24, 2005; January 8, 2006, through December 23, 2006; and January 7, 2007, through January 20, 2007, Respondent was issued \$13,930 in FIP FAP SDA CDC MA benefits from the State of Michigan and was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$13,930.
9. The Department alleges that from September 1, 2005, through January 31, 2007, Respondent was issued \$5,770 in FIP FAP SDA CDC MA benefits from the State of Michigan and was entitled to \$3,210 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$2,560.
11. This was Respondent's first second third alleged FAP 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 Department of Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services, Program Administrative Manuals (PAM), Program Eligibility Manual (PEM), and Reference Schedules Manual (RFS).

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 Mich Admin Code, R 400.3001 through R 400.3015.

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 Mich Admin Code, R 400.5001 through R 400.5015.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor,
- prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
- the total OI amount is \$1000 or more, or
- the total OI amount is less than \$1000, and
 - the group has a previous IPV, 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.

BEM 720 (February 1, 2013 and October 1, 2009), p. 10.

Intentional Program Violation

Suspected IPV means (i) a client is alleged to have trafficked FAP benefits or (ii) 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.

BAM 720, p. 1 (emphasis in original).

An IPV requires that the Department establish by 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, p. 1 (emphasis in original). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Department alleged that Respondent committed an IPV of her FAP benefits by falsifying her employment in order to receive CDC benefits which she then failed to report as unearned income for purposes of her FAP budget. As a result, the Department contends that Respondent received greater FAP benefits than she was entitled to receive. However, as discussed below, the Department has failed to establish that Respondent received CDC benefits she was not eligible to receive. Because the Department's FAP IPV case is contingent on a finding that Respondent improperly received CDC benefits she was ineligible to receive, the Department cannot establish by clear and convincing evidence that Respondent committed a FAP IPV.

Disqualification

A court or hearing decision that finds a client committed an 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, p. 12.

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 (October 1, 2009), p. 2. 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, p. 13.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program.

Recoupment of Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (February 1, 2013), p. 1. The amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 6; BAM 715 (February 1, 2013), pp. 1, 5; BAM 705 (February 1, 2013), p. 5.

In this case, the Department alleges that it is entitled to recoup \$16,490 in benefits issued to Respondent, consisting of \$13,930 in overissued CDC benefits and \$2,560 in overissued FAP benefits.

Recoupment of CDC Overissuance

At the hearing, the Department established that \$13,930 in CDC benefits were issued on behalf of Respondent during the CDC alleged fraud period: \$4,822.20 from August 21, 2005, through December 24, 2005; \$8,572.80 from January 8, 2006, through December 23, 2006; and \$535.80 from January 7, 2007, through January 20, 2007. The Department contends that during this period, Respondent was eligible for \$0 in CDC benefits.

CDC client error OIs occur when customers receive more than they are entitled to receive because they gave incorrect or incomplete information to the Department. PAM 730 (April 1, 2005), p. 1; PAM 700 (April 1, 2007), p. 5. To be eligible for CDC benefits, unless the client is categorically eligible, the client must have a valid need reason during the time child care is requested, which includes employment. PEM 703 (April 1, 2005, and April 1, 2007), p. 3. Therefore, if the Department can establish that Respondent was not eligible for CDC benefits during the periods at issue, it can recoup such benefits from Respondent.

In establishing that Respondent was not eligible for CDC benefits, the Department alleges that Respondent falsified her employment and, because she was not employed and presented no other need basis for CDC benefits, she was not eligible for such benefits. In support of its case, the Department presented several documents, including an employee wage match history that did not show any significant earned income during the periods at issue and subpoenas from the employers identified on the wage match that further established that she had limited employment with those employers. However, during the periods at issue, Respondent claimed that she was a private aide for two different individuals, neither of them being employers identified on the wage match, and provided verifications, including paystubs, at the time her CDC case opened. The Department conceded that Respondent's wages would not be listed on

the wage match if Respondent received cash payments and the private aide employers did not report these payments to the State. There was no significant attempt by the Department to contact or subpoena Respondent's identified employers. The Department's evidence fails to establish that Respondent misrepresented her employment. Therefore, the Department is not eligible to recoup the \$13,930 in CDC benefits it alleges were overissued.

Recoupment of FAP Overissuance

At the hearing, the Department established that \$5,770 in FAP benefits were issued by the State of Michigan to Respondent from September 1, 2005, to January 31, 2007. The Department contends that during this period, Respondent was eligible for \$3,210 in FAP benefits, and has presented OI FAP budgets for each month during the alleged OI period. The FAP OI budgets include the CDC benefits the Department alleged Respondent was not eligible to receive as unreported and unearned income and remove any earned income previously used to calculate Respondent's FAP benefits.

Based on the discussion above, the Department failed to establish that Respondent improperly received CDC benefits. Because the Department's FAP OI case is contingent upon a finding that Respondent improperly received CDC benefits, the Department is not entitled to recoup any FAP benefits from Respondent.

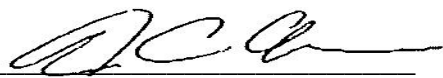
Based on the foregoing, the Department is not eligible to recoup any CDC or FAP benefits during the periods alleged as fraud periods for each program.

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 \$16,490 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to
 delete the OI and cease any recoupment action.


Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 1, 2013

2013-22728/ACE

Date Mailed: May 2, 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.

ACE/pf

cc:

