

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-7258
Issue Nos.: 2052, 3052
Case No.: [REDACTED]
Hearing Date: December 13, 2012
County: Wayne (82-17)

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 telephone hearing was held on December 13, 2012, from Detroit, Michigan, before Administrative Law Judge Michael Bennane. The Department was represented by [REDACTED]

On March 5, 2013, this case was reassigned to Administrative Law Judge Jan Leventer for preparing 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 checked="" type="checkbox"/> Family Independence Program (FIP) | <input type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> Child Development and Care (CDC) |
| <input checked="" 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 13, 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 FAP, but not MA, program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits from June 2010 through September 2011.
4. Respondent was was not aware of her responsibility to report changes of address within ten (10) days.
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 IPV period is November 1, 2010-September 30, 2011, for FAP and MA.
7. During the alleged IPV period, Respondent was issued \$5,786 in FIP FAP SDA CDC and \$7,669 in MA benefits.
8. Respondent was entitled to \$7,669 in FIP FAP SDA CDC MA during this time period.
9. Respondent did did not receive an OI in the amount of \$5,786 under the FIP FAP SDA CDC MA program.
10. The Department has has not established that Respondent committed an IPV in the FAP and MA programs.
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 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 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. BAM 720.

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. 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, it is now necessary to determine if all three IPV elements are present in this case. The first part of the first element is the requirement that Respondent knew of her responsibility to report changes of address. If Respondent did not know she had this duty, she cannot be found to have failed to do it with the intention not to do it.

The Department's evidence in support of the conclusion that Respondent knew of her responsibility is a Redetermination application signed August 3, 2010, in which she

reported a change of address to the Department. *Id.*, pp. 20-23. This item of evidence does not contain instructions telling customers they must report changes within ten days. The Redetermination form refers to a handout entitled "DHS Publication 1010, Important Things About Programs & Services," but this document is not in evidence. Having taken all of the evidence in this case into consideration as a whole, it is found and determined that the Department has not proved by clear and convincing evidence that Respondent was aware of her responsibility to report changes.

As the Department cannot prove intent, which is part of the first element of IPV, and the Department is required to prove all three IPV elements, it is found and determined that IPV has not occurred in this case. The Department's request for IPV of the FAP and MA programs is denied.

The second question before the factfinder in this this case is whether OIs of FAP and MA benefits occurred. BAM 700; BAM 710 (2009). As established above in the IPV analysis, there was a Department error in this case, i.e., a failure to inform Respondent of her reporting duties. As a result of Department error in the FAP program, it is found and determined that OI occurred. The Department's request for a finding of FAP OI is appropriate and shall be granted.

However, with regard to the MA program, BAM 710 states that when the Department has committed error, no recoupment is permitted. BAM 710, p. 1. Accordingly, the Department's request for a finding of OI and a recoupment order in the MA program are 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 \$5,786 from the following program only: FIP FAP SDA CDC MA.
- The Department is ORDERED to delete the OI of the MA program, and cease any recoupment action.
- The Department is ORDERED to initiate recoupment procedures for the amount of \$5,786 in accordance with Department policy.



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

Date Signed: March 21, 2013

2013-7258/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:

