

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-7316
Issue Nos.: 1052, 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, the case was reassigned to Administrative Law Judge Jan Leventer for writing and Opinion 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 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 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 program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits during the period of February 2010 through August 2011.
4. Respondent was was not aware of her responsibility to report changes of address within ten (10) days of the change.
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 periods they are considering the fraud periods are February 1, 2010-June 30, 2010 (FAP and FIP), and December 1, 2010-August 31, 2011 (FAP only).
7. During the alleged fraud periods, Respondent was issued \$13,330 in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. Respondent was entitled to \$0.00 in FIP FAP SDA CDC MA during this time period.
9. Respondent did did not receive an OI in the amount of \$13,330 under the FIP FAP SDA CDC MA programs.
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 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. 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. *Id.*

Additionally, in order to establish an IPV, the Department must prove by clear and convincing evidence that all three elements of IPV in BAM 720 are present in this case. The first element requires that there be an act of IPV, which is the intentional failure to provide information for the purpose of obtaining benefits unlawfully. Looking first at

whether Respondent had intent, because she was aware of her responsibility to report changes, this question is answered in the affirmative. Respondent signed the application indicating she knew her responsibilities, she filed a Change Report when her baby was born in December 2009, and she reported an address change in July 2010 to the Department. Department Exhibit 1, pp. 24, 26-27, 32. It is found and determined by clear and convincing evidence that Respondent knew of her responsibility to report changes to the Department and intentionally failed to fulfill it.

The first IPV element also requires that Respondent must have done so for the purpose of receiving more benefits than she was entitled to. The Department's evidence on this point consists of a summary of Respondent's expenditures by state (Item 4, Department Exhibit 1, p. 33), nineteen transaction reports showing purchases in the State of Georgia (Item 5, pp. 34-53), a Comprehensive Person Report showing all known addresses for Lisa Massey (Item 6, pp. 53-54), a record of FIP and FAP benefits paid to Respondent (Item 7, pp. 55-62), and a record of FAP purchases made by the Respondent from January 11, 2010-September 17, 2011 (Item 8, pp. 63-71).

This evidence establishes that Respondent made FAP purchases in Georgia from January 11, 2010-May 27, 2010, with the exception of one day when she made FAP purchases in Florida. *Id.*, pp. 33, 63-65. The evidence further establishes that Respondent made FAP purchases primarily in Georgia from November 11, 2010-September 17, 2011. *Id.*, pp. 33, 67-71. The third item of evidence, the Comprehensive Person Report, is dated September 28, 2011. *Id.*, pp. 53-54.

The Comprehensive Person Report indicates a Georgia address for Respondent for August 2009 to the present (September 28, 2011), and a Florida address for March-May 2011. *Id.*, p. 53. It also shows four Michigan addresses during the alleged IPV period of February-June 2010 and three Michigan addresses for the second alleged IPV period, December 2010-August 2011. This report indicates Respondent had several residences at the times in question and does not prove any specific point in this case.

The FAP purchase records, however, do establish a consistent use of FAP benefits from a location not in Michigan. Accordingly, it is found and determined that Respondent did intentionally fail to report a change of address.

The Department has fulfilled the first of the three requirements of BAM 720, and now the second element will be reviewed. For the second element, the Department must prove that it clearly and correctly instructed Respondent about her responsibilities. It is found and determined that this is proved by the Respondent's signature on the benefit Application. Department Exhibit 1, p. 24. Respondent's signature appears underneath an Affidavit statement that she has read the Affidavit, she has received the Information Booklet, and that she has reviewed it and understands it. The Booklet contains clear and correct information regarding reporting requirements. It is, therefore, found and determined that the Department has fulfilled the second requirement of IPV.

Next, the third and final element of IPV, is that the Respondent must not have had a physical or mental impediment that would prevent her from fulfilling her responsibility to report changes of address. In this case, there is no evidence whatsoever to indicate that Claimant had a physical or mental impairment that would impair her from fulfilling her responsibility. On the contrary, Claimant successfully completed an Application form, a Change Report and a Redetermination form. Having taken into consideration all of the evidence in this case as a whole, it is found and determined that there is no physical or mental impairment that would prevent Respondent from fulfilling her responsibilities to report changes of address.

Having reviewed all of the evidence in this case in its entirety, it is found and determined that the Department has met its burden of proving by clear and convincing evidence all three of the required elements of IPV. The Department's request for a ruling of FAP IPV is granted.

As the IPV proof is the same in this case for both FIP and FAP programs, the Department's request for a finding of IPV for both programs is granted.

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 \$13,330 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to initiate recoupment procedures for the amount of \$13,330 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

2013-7316/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:

