

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-8614
Issue No.: 6052
Case No.: [REDACTED]
Hearing Date: December 13, 2012
County: Wayne (82-17)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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. 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 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 type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input checked="" 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 October 15, 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 August 17, 2008, through April 11, 2009.
4. The Department's OIG indicates that the time period they are considering the fraud period is August 17, 2008, through April 11, 2009.
5. During the alleged fraud period, Respondent was issued \$5,510.98 in FIP FAP SDA CDC MA benefits from the State of Michigan.
6. This was Respondent's first second third alleged IPV.
7. 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, 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 is 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 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 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.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that Respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV with regard to the CDC program. Thus, the Department must not only prove that Respondent committed an act, but that there was intent to commit the act.

In this case, the Department has established that Respondent was aware of the responsibility to report all changes to the Department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. However, the undersigned is not convinced that the Department has met its burden of proof in providing clear and convincing evidence that Respondent intended to defraud the Department with regard to her CDC eligibility.

The sole evidence the Department presented of a lack of need for CDC eligibility is the fact that a wage history by Social Security number and a Work First Participant history turned up no CDC need. This is not proof; first, a failure to participate in the Work First program would be understandable if Respondent were employed. Employed Jobs, Education and Training (JET) participants do not need to participate in Work First classes, per BEM 233A. With regard to the lack of a wage history by Social Security number, a lack of a wage history is just that: a lack of wage history. It is irrelevant to whether a person is actually employed. Respondent's job may not report to the wage history reporting service (as roughly 2/3 of all jobs do not, per recent news reports), Respondent could be paid under the table, self-employed or there could be a mistake in

the database. To attribute a gap in the Social Security number wage history as evidence of a lack of a job is a jump to a conclusion that the undersigned cannot make.

The Department also pointed to Respondent reporting self-employment at an address that was the subject of a tenancy dispute the month before; however, per the court documents, the dispute was not yet an eviction and, when Respondent reported the self-income, the current status of the case was that Respondent was to vacate or the landlord could begin eviction proceedings—not that Respondent had actually moved. Therefore, there is no evidence that this report was actually false or that Respondent had actually moved at the time of this self-employment report.

The evidence as presented does not indicate that Respondent was unemployed or had no need and, thus, the undersigned cannot find IPV.

Additionally, the Department attempted to prove that the provider in question did not actually provide child care.

Respondent stated that the name of the provider was [REDACTED] and was the children's grandfather. There is no dispute as to that fact.

As evidence that the father of the children was still in the home, the Department pointed out that the tenancy dispute was against Respondent and [REDACTED]. The Department asserted that this [REDACTED] was the children's father. This allegation is unsubstantiated. While it is possible that there is an [REDACTED] and an [REDACTED] no name suffixes have been attached to any name in any legal document or court order. The [REDACTED] on the tenancy court papers could just as easily be the children's grandfather and CDC provider as it could be the children's father. The undersigned cannot assume that the name is the children's father without proof. In fact, the Department has not provided any evidence that there is an [REDACTED] as that name appears nowhere on any application, and there is no document that shows the legal name of the children's father.

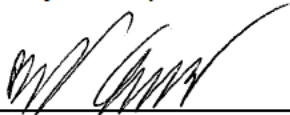
Finally, the Department pointed to a statement where the CDC provider stated that he did not provide childcare for the children in question—his son, who was the children's father, did. However, this statement lacks a temporal context. It is unclear from the source statement (which, incidentally, is hearsay at best, and is not clear as to whether this statement constitutes admissible hearsay) whether this means that the CDC provider no longer provided child care, or whether the CDC provider never provided child care. At most, the statement can be read to say that at that moment in time, he did not provide child care. This would mean that CDC should rightfully close at that point, but does not mean that one can automatically leap to the conclusion that this provider never provided child care. Certainly, clarification of the statement is needed, and this ambiguity means that one cannot hold this statement to constitute the clear and convincing evidence needed to find IPV.

As such the undersigned holds that the Department has failed to provide clear and convincing evidence of a lack of need for CDC. Furthermore, there is no clear and convincing evidence to show intent to commit an IPV. Therefore, the undersigned must hold that any recoupment in this case would be improper. With regard to a disqualification, the Department did not seek a CDC disqualification period in the current case.

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 \$5,510.98 from the following program(s) FIP FAP SDA CDC MA.
- The Department is ORDERED to delete the OI and cease any recoupment action.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 11, 2013

Date Mailed: February 12, 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.

RJC/pf

cc: 