

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

IN THE MATTER OF:



Reg. No.: 2013-9549
Issue Nos.: 2052, 3052
Case No.: [REDACTED]
Hearing Date: December 20, 2012
County: Wayne (57)

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 20, 2012, from Detroit, Michigan, before Administrative Law Judge Michael Bennane. The Department was represented by [REDACTED], Agent, Office of the Inspector General (OIG).

On March 12, 2013, this case was reassigned to Administrative Law Judge Jan Leventer for the purpose of 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 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 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 20, 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 June, 2011, through July, 2012.
4. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time period they are considering the fraud period is June, 2011-July, 2012.
6. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FIP FAP SDA CDC MA benefits from the State of Michigan.
7. Respondent was entitled to \$0.00 in FIP FAP SDA CDC MA during this time period.
8. Respondent did did not receive an OI in the amount of \$ [REDACTED] under the FIP FAP SDA CDC MA program.
9. The Department has has not established that Respondent committed an IPV.
10. This was Respondent's first second third IPV.
11. 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 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 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 overissuance (OI). Department of Human Services Bridges Administrative Manual (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. Department of Human Services Bridges Administrative Manual (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. Department of Human Services Bridges Administrative Manual (BAM) 710 (2009). 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, there are three required elements to prove in an IPV case. If any one of the three elements cannot be proven, then a request for a finding of IPV must be denied.

The first IPV element is that there must be an IPV act, i.e., an intentional failure to report a change of address for the purpose of obtaining unlawful benefits. The adjective "intentional" requires the Department to prove that the failure occurred in order to cause the Department to provide unlawful benefits.

In this case the Department presented no evidence to prove Respondent's intent. The Department's evidence establishes the fact that at least three changes of address occurred within the benefit period. This is shown by the FAP purchase record. However, the changes in and of themselves do not establish why the changes were not reported. This requires additional proofs, which the Department failed to provide. Dept. Exh. 1, pp. 50-52.

The Department presented evidence that the Respondent admitted to the OIG Agent that she lives in Cincinnati and she failed to report a change of address. However, these admissions by themselves do not establish that Respondent had the purpose of obtaining unlawful benefits. Respondent's statements are admissions as to certain facts, but they are not clear and convincing evidence of intent in this case.

Even if it were found and determined that Respondent intentionally failed to report a change for the purpose of obtaining unlawful benefits, and the first IPV element was established, it is found and determined that the Department failed to prove that the second IPV element has been established. The second element is that the Department clearly and correctly instructed Respondent about her responsibilities. There is nothing in the record to establish this fact. In fact, as there is insufficient evidence to establish it, it is found and determined that the Department failed to instruct Respondent clearly and correctly as to her reporting responsibilities.

Having taken all of the evidence under consideration as a whole, it is found and determined that the Department failed to prove by clear and convincing evidence that Respondent committed IPV. The Department's request for a finding of IPV is denied.

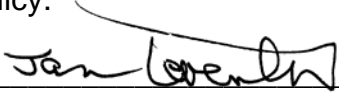
The other issue in this case is whether an overissuance has occurred. Based on the above finding that the Department failed to instruct the Respondent clearly and correctly as to her responsibilities, it is found and determined that Department error caused an overissuance in this case, and the Department is entitled to recoup it. The Department is required to seek FAP recoupment whether the error is the Department's or the Respondent's error. However, as a Department error is involved in this case, the Department may not seek MA recoupment. Department of Human Services Bridges Administrative Manual (BAM) 710 (2009). Accordingly, the Department's request for a finding of overissuance is granted as to both FAP and MA programs, and recoupment authority is granted with regard to FAP only..

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] the following program(s) FIP FAP SDA CDC MA.

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



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

Date Signed: March 21, 2013
Date Mailed: March 21, 2013

2013-9549/JL

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/tm

cc:

