

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

IN THE MATTER OF:



Reg. No.: 2013-978
Issue Nos.: 1052, 3052, 6052
Case No.: [REDACTED]
Hearing Date: December 20, 2013
County: Wayne (82-57)

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]

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 checked="" 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

- 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 2010 through December 2011.
4. Respondent was was not aware of the responsibility to report changes of address to the Department within ten days.
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 June 2010-December 2011.
7. During the alleged fraud period, Respondent was issued \$20,370 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 \$14,499 under the FIP FAP SDA CDC MA program.
10. The Department has has not established that Respondent committed an IPV under the FAP program only, but not in the FIP or CDC 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 overissuance (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 (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, the Department must first prove that an intentional failure to report has occurred and that it was for the purpose of obtaining unlawful benefits. It is insufficient to establish merely that a failure occurred; it must be an intentional, or knowing, failure, and it must be for a specific purpose.

The Department, in this case, alleges that Respondent failed to report a change of address from Michigan to Georgia in June 2010. However, the Department failed to present evidence that Respondent was ever instructed as to her duty to report changes. There is no application in evidence to indicate she was given an Information Booklet explaining that she must report changes within ten days. However, there are other items of evidence presented, and they also must be considered in order to answer the question of intent.

The next items of evidence presented by the Department on this issue are two Redetermination forms signed by Respondent, the first in May 2010 and the second in May 2011, one before and one during the alleged IPV period. The Redetermination forms request changes of address, but they do not contain a specific statement as to the Respondent's continuing duty to report. The Redeterminations are signed under a penalty paragraph by which the signator states that all of the information in the Redetermination is true. Department Exhibit 1, pp. 1-8.

On the May 4, 2010, Redetermination, Respondent wrote that her address had not changed. *Id.*, p. 2. Comparing this information with the FAP purchase report, it appears that as of May 4, 2010, Respondent did live on [REDACTED] and her address had not changed. Thus, her statement on the May 2010 Redetermination is found to be truthful. She also listed her employer as [REDACTED]. *Id.*, pp. 2, 21.

However, for the twenty months from May 18, 2010-January 16, 2012, Respondent, or another person, made FAP purchases exclusively in Georgia with Respondent's FAP Electronic Bridge Transaction (EBT) card. *Id.*, pp. 21-27. During this period, on May 23, 2011, she signed a Redetermination form indicating that her address was still the [REDACTED] and that she still worked at [REDACTED]. This gives rise to a conclusion that Respondent remained at the Detroit address with three other family members. *Id.*, p. 6-8.

The contradiction in the evidence here is that Respondent provided a Michigan address and employer, but there are twenty months of FAP purchases in Georgia on her EBT card. The simplest conclusion that can be drawn from the Department's evidence is that Respondent lived and worked in Michigan, but she shared her card with a person living in Georgia. Respondent did not report a lost or stolen EBT card.

Respondent did not appear at the hearing. Respondent failed to disprove the conclusion that she transferred her FAP EBT card to another. Without such refutation, the Department's evidence is found and determined to be clear and convincing evidence that Respondent misused her FAP card in that she permitted the card to be used in another state by an unauthorized person. It is found and determined that Respondent knew she was the sole authorized recipient of FAP benefits, yet she transferred the card to another person for the purpose of obtaining benefits to which they were not entitled. It is further found and determined that Respondent did not

advise the Department of this arrangement, nor did she seek approval of it. It is found and concluded that this is for the obvious reason that it was unlawful.

Accordingly, with regard to the FAP program, it is found and determined that Respondent committed an IPV. The Department's request for a finding of FAP IPV is granted.

The Department's second and third allegations of IPV are for the FIP and CDC programs. The Department's evidence on this point is that for twenty months, there are FAP purchases in Georgia. However, while it is found that Claimant unlawfully transferred her FAP card to a person living in Georgia, it is not necessarily the case that Respondent herself lived and worked in Georgia.

The Department failed to present employment information regarding Respondent. The Department in this case failed to investigate whether Preferred Cleaners was, in fact, Respondent's employer. If Respondent held a job in Michigan, as she stated, in 2011 for twenty-four hours per week, she would be entitled to FIP and CDC benefits. Therefore, it cannot be said that there is clear and convincing evidence that Respondent committed an IPV of either the FIP or CDC programs. It should also be noted in this context that the Department mailed the IPV hearing notice for all three programs to Respondent's Detroit address, and it was not returned.

Accordingly, it is found and determined that the Department failed to prove by clear and convincing evidence that Respondent committed IPV's of the FIP and CDC programs. The requests for IPV in these programs is denied.

The last question to be considered is whether Respondent received an OI of FIP and CDC benefits, in other words, an OI which was caused by a Department or Respondent error. The evidence in this case taken as a whole supports a conclusion that Respondent lived in Detroit, worked in [REDACTED], and required childcare services in order to go to work. Respondent consistently reported the same address and employer, and there is nothing in the record to establish that she herself physically moved. Again, the Department's Hearing notice sent to the Detroit address was not returned as undeliverable. It is found and determined that Respondent was entitled to FIP and CDC benefits and no OIs occurred with regard to these programs.

Having reviewed all of the evidence of the FIP and CDC programs, it is found and determined that the Department has not established by clear and convincing evidence that an error occurred in the provision of FIP and CDC benefits to Respondent. The Department's request for a finding OIs in these programs is 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 in the FAP program, but not in the FIP and CDC programs.

2. Respondent did did not receive an OI of program benefits in the amount of \$14,499 from the following program(s): FIP FAP SDA CDC MA.

The Department is ORDERED to delete the FIP and CDC overissuances and cease any recoupment actions.

The Department is ORDERED to initiate recoupment procedures for the amount of \$14,499 in FAP benefits 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

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:

