

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

IN THE MATTER OF:



Reg. No.: 2013-988
Issue Nos.: 1052, 3052
Case No.: [REDACTED]
Hearing Date: November 28, 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 November 28, 2012, from Detroit, Michigan. The Department was represented by [REDACTED].

On March 12, 2013, the case was reassigned to Administrative Law Judge Jan Leventer for preparation of 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 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 October 29, 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 January 2006 through October 2006.
4. Respondent was was not aware of the responsibility to report changes in employment and income.
5. Respondent had no apparent physical or mental impairment that would limit his understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period they are considering the fraud period is January-June 2006 for the FIP program, and January-October 2006 for the FAP program.
7. During the alleged fraud period, Respondent was issued \$2,923 in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. Respondent was entitled to \$237 in FIP FAP SDA CDC MA during this time period.
9. Respondent did did not receive an OI in the amount of \$2,523 under the FIP FAP SDA CDC MA program.
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 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 first fact the Department must prove is that an act of IPV occurred in this case. IPV is defined as an intentional failure to disclose information for the purpose of obtaining unlawful benefits. BAM 720. IPV is not the same as an OI of benefits, which occurs when there is a Department or a customer error without the intent to

obtain unlawful benefits. The element of intent is not present when an OI occurs. The question of intent will be addressed first in this analysis of whether IPV occurred in this case.

In order for Respondent to intentionally fail to do something, it must be shown that Respondent knew she had a responsibility to do something. Otherwise, if she did not know she had a responsibility, it would be impossible for her to fail to do it intentionally. In this case, the Department submitted two items of evidence to prove Respondent had the intent to conceal information for the purpose of obtaining unlawful benefits.

The Department's first item of evidence is Respondent's Application, which she signed on April 20, 2005. Department Exhibit 1, p. 17. However, the Application in and of itself does not explain Respondent's responsibility to report income. The Application refers to an item entitled Acknowledgments. The Acknowledgments material explains "additional information about applying for and receiving assistance benefits." *Id.* The Acknowledgments document was not submitted in evidence in this case.

Because the Acknowledgments document is not in evidence, it is impossible to determine if Respondent was informed of her reporting responsibility. The factfinder cannot presume what inrequirements were explained in the Acknowledgments, which is a document in use in 2005, and which is no longer in use by the Department. As a result, it is unknown whether Respondent was informed of her reporting responsibilities.

Accordingly, having considered all of the evidence in this case as a whole, it is found and concluded that the Department failed to prove by clear and convincing evidence that Respondent had the requisite intent to conceal information for the purpose of obtaining unlawful benefits. The Department's request for an IPV finding is denied.

Next, the factfinder must determine if an OI of benefits occurred in this case. OI can occur because of a Department error or a customer error. In either situation, the Department is required to seek recoupment of the overpayment. BAM 700.

The evidence in this case supports a conclusion that the Department erred, in that it failed to inform Respondent about her reporting responsibility. As a result, she continued to receive benefits to which she was not entitled. The Department's request for a finding of OI is granted. The next step is to review the Department's calculations of the FIP and FAP OIs in order to determine the correct amount of the overpayment.

Looking first at the FIP OI, the Department alleges an OI of \$2,286. Department Exhibit 1, p. 31. This amount is based on the Department's determination that based on her income, Respondent was not eligible for FIP benefits from January-June 2006. The Department used income data from its own documents and not from the employer's report, but the result would have been the same regardless of which figures were used. *Id.*, pp. 20, 24.

The Department averaged the income information from quarterly wage history data retrieved by Social Security Number, and this resulted in earned income of \$958 per month for January-March 2006 and \$1,144 per month in April-June 2006. *Id.*, p. 24. However, the Department is required to use actual income, and not averages, in OI cases. BAM 705 (2013), p. 5.

The information provided by the employer states that Respondent earned \$260 every two weeks. Using a 4.3-weeks-per-month multiplier, this results in a monthly income of \$559. *Id.*, p. 20-21. The Department erred in its calculations of the FIP OI. However, the income eligibility limit for a family group of two persons is \$403. Regardless of which income information is used, the Respondent's net countable income is more than \$403. RFT 210 (2009). It is found and determined that the Department's error, therefore, was a harmless one which does not affect the amount of the FIP OI.

Having considered all of the evidence regarding FIP OI in this case as a whole, it is found and determined that there was an OI of \$2,286 from the FIP program. The Department is entitled to a finding of OI of \$2,286 from the FIP program. The Department's request for a finding of FIP OI is granted.

Looking next at the FAP OI, the Department seeks a finding of FAP OI of \$637 for the seven months of January-March and July-October 2006. Department Exhibit 1, Hearing Summary, p. 31.

For the month of January 2006, the Department used \$958 as Respondent's unreported income. *Id.*, p. 32. However, using income information from the employer, Respondent's income is only \$559. *Id.*, p. 20.

Using \$559 as Respondent's January 2006 income, and adding to it her unearned income of \$371, Respondent's gross income is \$930. Deducting the \$125 standard deduction, Respondent's adjusted gross income is \$805. Respondent received no other deductions. Based on a family group size of two persons with a countable income of \$805, Respondent is entitled to \$125 FAP benefits for January 2006. RFT 260 (2012), p. 7 of 35.

The amount Respondent actually received in January 2006 was \$204, but according to this calculation, she was entitled to \$125, and the OI was \$79, not \$194. This is also correct for February and March. *Id.*, pp. 32, 36, 40.

The Department seeks no recoupment for the months of April and May 2006 and presented no OI calculations for these months. *Id.*, p. 31.

In June 2006, the Department issued \$10 in FAP benefits to Claimant. *Id.*, p. 48. The Department does not claim OI for June 2006. Having reviewed the Department's calculations, they are determined to be correct, and no recoupment is appropriate for June 2006.

Summarizing the OI for January-March 2006 at \$79 per month, the OI that is established at this point is \$237. As in April-June 2006, no OI occurred, the sole remaining issue is whether OI occurred in August-October 2006.

In this case, the Department used quarterly income information to create income figures. BAM 700 requires that actual income figures be used. The quarterly figures are from a Department document which is not an actual pay record of the employer or the employee. It is a Department report of a Social Security report. It does not reflect individual monthly earnings but instead presents three-month summaries. It does not reflect the dates of employment at each job during the three-month period. Also, the Department designated one-half of Respondent's earned income as reported and one-half as unreported. *Id.*, p. 24.

The Department's calculations are general and are not sufficiently accurate to be a basis of recoupment amounts. BAM 700 requires monthly budgets of OIs based on real income data and not general information such as summaries. BAM 700, p. 6. Accordingly it is found and determined that the Department has failed to present sufficient evidence to prove the correct amount of recoupment for July-October 2006.

To summarize, having reviewed all of the recoupment information, the Department's request for a finding of OI in the FAP program is granted in part and denied in part. The finding of FAP OI is granted, but the recoupment amount is reduced from \$637 to \$237.

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 \$2,523 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to reduce the FAP OI to \$400 for the period January-March 2006 in accordance with Department policy.

The Department is ORDERED to initiate recoupment procedures of the FIP and FAP OI in the amount of \$2,523 in accordance with Department policy.



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

Date Signed: March 21, 2013

2013-988/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:

