

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-28448
Issue No: 3055
Case No: [REDACTED]
Hearing Date: May 8, 2013
Genesee #2 County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

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 disqualification hearing. After due notice, a telephone hearing was held on May 8, 2013. Respondent personally appeared and testified. The department was represented by Regulation Agent [REDACTED] of the Office of Inspector General and Eligibility Specialist [REDACTED].

ISSUES

Whether Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?

Whether Respondent received an overissuance of FAP benefits that the department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. The department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of benefits received by Respondent as a result of Respondent having committed an Intentional Program Violation (IPV); the OIG also requested that Respondent be disqualified from receiving program benefits.
2. Respondent signed Assistance Application (DHS-1171) on November 17, 2011, acknowledging that she understood that her failure to give timely, truthful, complete and accurate information about her circumstances could result in a civil or criminal action or an administrative claim against her. (Department Exhibit 5-15).
3. Respondent indicated on the application that she was receiving "\$ [REDACTED] week" in Workman's Compensation benefits in response to the question "Expected a one time payment (such as worker's compensation, lottery

winnings, insurance settlement, lawsuit, etc.) within the last 60 months'. (Department Exhibit #11).

4. The department did not count claimant's Worker's Compensation benefits when it calculated claimant's eligibility for Food Assistance Program benefits.
5. Claimant was determined eligible for Unemployment Compensation Benefits (UCB) in the amount of \$ [REDACTED] per week from September 11, 2011 forward.
6. On November 14, 2012, claimant filed a redetermination application for FAP benefits which indicated that respondent received Unemployment Compensation Benefits biweekly from September 2011 through December 2012. (Department Exhibit # 17)
7. The department determined that Respondent received an overissuance of \$ [REDACTED] in Food Assistance benefits and that Respondent committed an Intentional Program Violation from February 1, 2012-November 30, 2012. (Department Exhibit #1).
8. Respondent had committed no previous Intentional Program Violations of the FAP program. (Department Hearing Request).

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

In this case, the department has requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV and the department has asked that respondent be disqualified from receiving benefits for 12 months. The department's manuals provide the following relevant policy statements and instructions for department caseworkers:

BENEFIT OVERISSUANCES

DEPARTMENT POLICY

All Programs

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM, Item 700, p. 1.

Definitions

The **Automated Recoupment System (ARS)** is the part of CIMS that tracks all FIP, SD A and FAP OIs and payments, issues automated collection notices and triggers automated benefit reductions for active programs.

A **claim** is the resulting debt created by an overissuance of benefits.

The **Discovery Date** is determined by the Recoupment Specialist (RS) for a client or department error. This is the date the OI is known to exist and there is evidence available to determine the OI type. For an Intentional Program Violation (IPV), the Office of Inspector General (OIG) determines the discovery date. This is the date the referral was sent to the prosecutor or the date the OIG requested an administrative disqualification hearing.

The **Establishment Date** for an OI is the date the DHS-4358A-D, Repay Agreement, is sent to the client and for an IPV, the date the DHS-4357 is sent notifying the client when the disqualification and recoupment will start. In CIMS the "establishment date" has been renamed "notice sent date."

An **overissuance (OI)** is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold).

Overissuance Type identifies the cause of an overissuance.

Recoupment is a DHS action to identify and recoup over a benefit OI. BAM 700, p. 1.

PREVENTION OF OVERISSUANCES

All Programs

DHS must inform clients of their reporting responsibilities and act on the information reported within the Standard of Promptness (SOP).

During eligibility determination and while the case is active, clients are repeatedly reminded of reporting responsibilities, including:

- . Acknowledgments on the application form, **and**
- . Explanation at application/ redetermination interviews, **and**
- . Client notices and program pamphlets.

DHS must prevent OIs by following BAM 1.05 requirements and by informing the client or authorized representative of the following:

- . Applicants and recipients are required by law to give complete and accurate information about their circumstances.
- . Applicants and recipients are required by law to promptly notify DHS of all changes in circumstances within 10 days. FAP Simplified Reporting (SR) groups are required to report only when the group's actual gross monthly income exceeds the SR income limit for their group size.
- . Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.
- . A timely hearing request can delete a proposed benefit reduction.

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.

Intentional Program Violation (IPV) is suspected when there is clear and convincing evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM, Item 720, p. 1.

The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:
 - (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).

The federal Food Stamp regulations read in part:

- (6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

IPV

FIP, SDA AND FAP

IPV exists when the client/AR is determined to have committed an Intentional Program Violation by:

- . A court decision.
- . An administrative hearing decision.
- . The client signing a DHS-826, Request for Waiver of Disqualification or DHS-83, Disqualification Consent Agreement, or other recoupment and disqualification agreement forms. BAM, Item 720, p. 1.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 720, p. 2.

OVERISSUANCE AMOUNT

FIP, SDA, CDC and FAP Only

The amount of the OI is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 6.

FAP Only

When the OI involves two or more FAP groups which should have received benefits as one group, determine the OI amount by:

- . Adding together all benefits received by the groups that must be combined, **and**
- . Subtracting the correct benefits for the one combined group. BAM 720, pp. 6-7.

IPV Hearings

FIP, SDA, CDC, MA and FAP Only

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings for cases when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**
 - . The total OI amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, **or**
 - . The total OI amount is less than \$500, **and**
 - .. The group has a previous IPV, **or**
 - .. The alleged IPV involves FAP trafficking, **or**
 - .. The alleged fraud involves concurrent receipt of assistance (see PEM 222), **or**
 - .. The alleged fraud is committed by a state/government employee.

Excluding FAP, OIG will send the OI to the RS to process as a client error when the DHS-826 or DHS-830 is returned as undeliverable and no new address is obtained. BEM, Item 720, p. 10.

DISQUALIFICATION

FIP, SDA and FAP Only

Disqualify an active **or** inactive recipient who:

- . is found by a court or hearing decision to have committed IPV, **or**
- . has signed a DHS-826 or DHS-830, **or**
- . is convicted of concurrent receipt of assistance by a court, **or**
- . for FAP, is found by SOAHR or a court to have trafficked FAP 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, pp. 12-13.

Standard Disqualification Periods

FIP, SDA and FAP Only

The standard disqualification period is used in all instances except when a **court** orders a different period (see **Non-Standard Disqualification Periods**, in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:

- . One year for the first IPV
- . Two years for the second IPV
- . Lifetime for the third IPV

In this case, the department has established that Respondent was aware of the responsibility to report all income and employment to the department. Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within ten days. BAM, Item 105, p. 7. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities.

Respondent alleges that she did not have the requisite intent to commit an Intentional Program Violation. Respondent stated that she did not receive UCB benefits on the date of application, but was still receiving Worker's Compensation which she acknowledged on the application. She further testified that she wasn't certain that she was going to receive UCB because she had to go to a hearing to establish her eligibility. Once she was approved for UCB, she received a retroactive payment in December 2011 and notified her caseworker in December 2011 that she had started to receive UCB. Respondent stated that she contacted her caseworker [REDACTED] and left a telephone voice message in December 2011 to let her know that she began receiving UCB benefits. Respondent stated that she also contacted [REDACTED] via telephone again in April 2012 and left her a message that her shelter expense increased from \$[REDACTED] to \$[REDACTED] per month. [REDACTED] was not present to testify at the hearing. In July 2012, Respondent received a new caseworker, [REDACTED]

In November 2012 a redetermination was held. On the redetermination papers, Respondent indicated that she had eligibility for UCB benefits in the amount of \$[REDACTED] bi-weekly from September 2011 through December 2012. She hand wrote in the client comments section: "Only change during the year is my address and rent increase". (Department Exhibit #19) This Administrative Law Judge finds Respondent's testimony that she notified her caseworker of her receipt of UCB income and increase in rent via telephone messages to be credible in the absence of any testimony or records to the contrary.

This Administrative Law Judge concludes that the department has not shown, by clear and convincing evidence that Respondent committed an Intentional Program Violation of the FAP program. The department apparently did not budget the Worker's Compensation income which Respondent clearly stated on her original application that she was receiving weekly (Department Exhibit # 11). The department caseworker ([REDACTED] [REDACTED] who worked on the case was not available to testify from personal knowledge as to whether or not claimant contacted her via telephone to notify the department that she was receiving Unemployment Compensation Benefits from December 2011 forward. The original Food Assistance Program Budgets are not a part of the record. There is insufficient evidence in the record to show how claimant's income and expenses were calculated. Therefore, this Administrative Law Judge cannot determine what income or expenses were originally budgeted to result in an alleged \$ [REDACTED] overissuance from February 1, 2012 through November 30, 2012. The documents contained in the record do not establish an Intentional Program Violation. Consequently, the department's request for FAP program disqualification and restitution must be denied.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established by clear and convincing evidence that Respondent committed an Intentional Program Violation by failing to report UCB income while receiving benefits for the period of time from February 1, 2012 through November 30, 2012. The evidence contained in the record does not establish that Respondent received an overissuance of Food Assistance Program benefits because there are no original FAP benefits available on the record to show accurate calculation of FAP benefits.

Accordingly, the department's decision is **REVERSED**. Respondents shall not be personally disqualified from participation in the FAP program for one year. The department is not entitled to recoup the overissuance of benefits Respondent ineligibly received under these circumstances.

It is SO ORDERED.

/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 14, 2013

Date Mailed: May 15, 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.

LYL/las

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