

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

IN THE MATTER OF:

[REDACTED]

Registration No: 20139548
Issue No: 4052
Case No: [REDACTED]
Hearing Date: May 16, 2013
Monroe County DHS

Administrative Law Judge: Suzanne D. Sonneborn

HEARING DECISION

This matter is before the undersigned Administrative Law Judge in accordance with 7 CFR 273.16, MCL 400.9, MCL 400.37, and Mich Admin Code, R 400.3130, on the Department of Human Services' (the Department's) request for hearing. After due notice, a hearing was held on May 16, 2013, at which Respondent failed to appear. The hearing was held in Respondent's absence in accordance with Department of Human Services Bridges Administrative Manual (BAM) 720, pp 9-10. The Department was represented by [REDACTED], a regulation agent with the department's Office of Inspector General (OIG).

ISSUE

Whether Respondent committed an intentional program violation (IPV) involving the State Disability Assistance (SDA) program and whether Respondent received an over-issuance of SDA benefits that the Department is entitled to recoup?

FINDINGS OF FACT

Based on the clear and convincing evidence pertaining to the whole record, the Administrative Law Judge finds as material fact:

1. The Department's OIG filed a request for hearing to establish an over issuance of SDA benefits received as a result of a determination that Respondent committed an IPV.
2. Respondent was a recipient of SDA benefits at all times relevant to this hearing.
3. On June 18, 2007, Respondent signed an assistance application (DHS-1171). In signing the application, Respondent certified with her signature, under penalty of perjury, that the application had been

examined by or read to her and, to the best of her knowledge, the facts were true and complete. Respondent further certified with her signature that she received and reviewed a copy of the Acknowledgements. Respondent further certified with her signature that she understood she could be prosecuted for perjury and for fraud and/or be required to repay the amount wrongfully received if she intentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause her to receive assistance she should not have received. (Department Exhibit 1, pp. 6-13)

4. Respondent's eligibility for SDA benefits was based on, among other things, her participation in [REDACTED].
5. On August 4, 2008, the department obtained verification that Respondent discontinued her participation in [REDACTED] in February 2008. (Department Exhibit 2, pp. 14-16)
6. As a result of Respondent's discontinuation of her participation in [REDACTED] [REDACTED] in February 2008, she received an over issuance of SDA benefits in the amount of \$1,320.00 for the period March 1, 2008 through July 31, 2008. (Department Exhibit 3, pp. 17-18)

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program was established by 2004 PA 344 and is a financial assistance program for individuals who are not eligible for the Family Independence Program (FIP) and are either disabled or the caretaker of a disabled person. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180.

In the present matter, the Department requested a hearing to establish an over issuance of SDA benefits, claiming that the over issuance was the result of an IPV committed by Respondent.

Generally, a client is responsible for reporting any change in circumstances that may affect eligibility or benefit level within ten days of the change. BAM 105, p 7. When a client or group receives more benefits than they are entitled to receive, the Department must attempt to recoup the over issuance. BAM 700, p 1. A suspected IPV is defined as an over issuance where:

- 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. [BAM 720, p 1.]

An IPV is suspected by the Department when a client intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing a reduction of, program eligibility or benefits. BAM 720, p 1. In bringing an IPV action, the agency carries the burden of establishing the violation with clear and convincing evidence. BAM 720, p 1.

An overissuance period begins the first month the benefit issuance exceeds the amount allowed by Department policy or six years before the date the overissuance was referred to an agency recoupment specialist, whichever is later. This period ends on the month before the benefit is corrected. BAM 720, p 6. The amount of overissuance is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p 6.

Suspected IPV matters are investigated by the OIG. This office: refers suspected IPV cases that meet criteria for prosecution to the appropriate prosecuting attorney; refers suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearings System (MAHS); and returns non-IPV cases back to the Department's recoupment specialist. BAM 720, p 9.

The OIG will request an IPV hearing when:

- Benefit overissuances are not forwarded to the prosecuting attorney's office;
- Prosecution of the matter is declined by the prosecuting attorney's office for a reason other than lack of evidence, and
- The total OI amount for the FAP is \$1000 or more, or
- The total OI amount is less than \$1000, and
 - The group has a previous IPV, 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. BAM 720, p 10.

The OIG represents the Department during the hearing process in IPV matters. BAM 720, p 9. When a client is determined to have committed an IPV, the following standard periods of disqualification from the program are applied (unless a court orders a different length of time): one year for the first IPV; two years for the second IPV; and lifetime for the third IPV. BAM 720, p 13. Further, IPV's involving the FAP result in a ten-year disqualification for concurrent receipt of benefits (i.e., receipt of benefits in more than one State at the same time). BAM 720, p 13.

A disqualified client remains a member of an active benefit group, as long as he or she continues to live with the other group members – those members may continue to receive benefits. BAM 720, p 12.

In this case, at the May 16, 2013 disqualification hearing, the OIG provided credible, sufficient, and undisputed testimony and other evidence establishing that, on June 18, 2007, Respondent signed an assistance application (DHS-1171). In signing the application, Respondent certified with her signature, under penalty of perjury, that the application had been examined by or read to her and, to the best of her knowledge, the facts were true and complete. Respondent further certified with her signature that she received and reviewed a copy of the Acknowledgements. Respondent further certified with her signature that she understood she could be prosecuted for perjury and for fraud and/or be required to repay the amount wrongfully received if she intentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause her to receive assistance she should not have received.

The OIG further established that Respondent's eligibility for SDA benefits was based on, among other things, her participation in ██████████ Services. The OIG further established that Respondent discontinued her participation in ██████████ ██████████ in February 2008. The OIG further established that, as a result of Respondent's discontinuation of her participation in ██████████ in February 2008, she received an over issuance of SDA benefits in the amount of \$1,320.00 for the period March 1, 2008 through July 31, 2008.

However, while the OIG established that Respondent completed an assistance application on June 18, 2007 wherein she acknowledged with her signature her receipt and review of "the Acknowledgements," the OIG failed to produce a copy of these Acknowledgements in order to demonstrate precisely what information was acknowledged by Respondent, or otherwise establish that Respondent was clearly and correctly instructed regarding her obligation to report when her participation with ██████████ ended. Nor has the OIG produced any evidence that Respondent intentionally failed to report when her participation with the ██████████ ended.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine.

Dep't of Community Health, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Consequently, based on the testimony and evidence presented by the OIG, this Administrative Law Judge finds that while Respondent did indeed fail to timely and properly report accurate information regarding her SDA benefit eligibility, the OIG has not established, under the clear and convincing standard, that Respondent was aware of her reporting obligation in this regard or that Respondent's failure to timely and properly report accurate information was *intentional* and, therefore, it cannot be said that Respondent committed an IPV in this matter. This Administrative Law Judge further finds, however, that Respondent received an over issuance of SDA benefits in the amount of \$1,320.00 for the period March 1, 2008 through July 31, 2008.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that, notwithstanding Respondent's failure to timely and properly report accurate information regarding her SDA benefit eligibility, Respondent did not commit an intentional program violation with respect to the SDA program. This Administrative Law Judge further decides that Respondent received an over issuance of SDA benefits in the amount of \$1,320.00 for the period March 1, 2008 through July 31, 2008.

It is therefore **ORDERED** that the department's determination of an intentional program violation with respect to the SDA program is **REVERSED**. It is further **ORDERED** that the department's recoupment of overissued SDA benefits is **UPHELD** in the amount of \$1,320.00.

/s/ _____
Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 17, 2013

Date Mailed: May 20, 2013

20139548/SDS

NOTICE: Either party may appeal this decision and order to the circuit court for the county in which the party resides within 30 days of receipt of this decision and order.

SDS/aca

cc:

