

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201333610
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: June 26, 2013
County: Genesee 06

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and in accordance with 7 CFR 273.16 and Mich Admin Code, Rule 400.3130 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on June 26, 2013, from Lansing, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

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 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

- | | |
|--|---|
| <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)? |

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 3/11/13 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 9/2009, through 5/2010.
4. Respondent was was not aware of the responsibility to refrain from FAP trafficking pursuant to the most recent application for assistance signed on 3/2/2009. Respondent further acknowledged that she understood that she could be prosecuted for fraud for failing to comply with the rights and responsibilities of the FAP program.
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 intermittent days between 9/2009 and 5/2010. Specifically, these days are identified on Department Exhibit 1.5 which shows a total issuance that Respondent ineligibly received of \$ [REDACTED] See Exhibit 1.5.
7. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. Respondent was entitled to \$ [REDACTED] in FIP FAP SDA CDC MA during this intermittently days identified in Department Exhibit 1.5. .
9. Respondent did did not receive an OI in the amount of \$ [REDACTED] 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. Personal subject matter jurisdiction is proper for the reasons stated on the record.

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 (2013) 720.

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 \$ [REDACTED] or more, or
- the total overissuance amount is less than \$ [REDACTED] 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 (2009) 710. 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.

In this case, authorization for this store for which Respondent cashed FAP benefits was revoked pursuant to a plea bargain filed by the store in the United States District of the Eastern District of Michigan, Southern Division per criminal number 12-cr-20258 on 4/24/12. See Department Exhibits 33-44.

Evidence that Respondent had prior knowledge of the duty to not engage in trafficking is unnecessary to establish IPV for trafficking; an IPV is automatically suspected for a Respondent who is alleged to have trafficked FAP benefits. 7 CFR 273.16; BAM 720.

Clear and convincing evidence in this case shows that Respondent cashed large amounts at the Mandingo African Market on the intermittent dates identified in Department Exhibit 1.5 totaling \$ [REDACTED]. The plea bargain by the Market indicated that the Market commonly issued \$ [REDACTED] on the dollar in its FAP trafficking scheme. FAP trafficking committed by the Respondent under the parameters of an IPV is shown with clear and convincing evidence.

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] from the following program(s) FIP FAP SDA CDC MA.
- The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] 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.

/s/
Janice G. Spodarek
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 7/8/13

Date Mailed: 7/9/13

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.

JGS/tb

cc:

