

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: [REDACTED]
Issue No.: 6052
Case No.: [REDACTED]
Hearing Date: June 25, 2013
County: Wayne

ADMINISTRATIVE LAW JUDGE: [REDACTED]

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 25, 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 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

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP) | <input type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input checked="" type="checkbox"/> Child Development and Care (CDC)? |

[REDACTED]

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 March 28, 2013, 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 26, 2005, through August 2, 2008.
4. The Respondent acknowledged the requirements of receiving public assistance on the application for assistance signed by Respondent on July 12, 2006.
5. Respondent was was not aware of the responsibility to utilize her Child Development and Care (CDC) benefits for a need allowable by Department policy.
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period they are considering the fraud period is June 26, 2005, through August 2, 2008.
8. During the alleged fraud period, Respondent was issued [REDACTED] in FIP FAP SDA CDC MA benefits from the State of Michigan.
9. The Department has has not established that Respondent committed an IPV.
10. 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.

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.

[REDACTED]

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 (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.

The Department refers recipients of Family Independence Program (FIP) benefits to the Work First program as a condition of receiving those benefits. Benefit recipients that failed to comply with the requirements of the Work First program without good cause may be disqualified from the program and having their benefits closed.

The Family Independence Program (FIP) is a temporary assistance program with a goal of assisting its clients in becoming self-sufficient. To facilitate this goal, the Department will provide assistance with child care where a lack of child care is a barrier to participation.

Participation in the Child Development and Care (CDC) requires that recipients have a verified need allowable by policy to remain eligible to receive benefits.

Each need reason must be verified and exists only when each parent/substitute parent is unavailable to provide the care because of:

- Family preservation.
- High school completion.
- An approved activity.
- Employment. Department of Human Services Bridges Eligibility Manual (BEM) 703.

In this case, the Department's representative testified that the Respondent's need for Child Development and Care (CDC) benefits was to participate in the Michigan Works program, and that she continued to receive CDC benefits while she was not participating in Michigan Works. The Department alleges that the Respondent intentionally failed to report her lack of participation in the Michigan Works program for the purposes of receiving Child Development and Care (CDC) benefits that she was not entitled to. This Administrative Law Judge rejects this argument and finds that the Department has failed to establish an Intentional Program Violation (IPV) of the Child Development and Care (CDC) for the following reasons.

The Department has the burden of establishing by clear and convincing evidence that the Claimant committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

The Department failed to present evidence that the Claimant's participation in the Michigan Works program was voluntary, and it appears that her participation was a requirement of receiving Family Independence Program (FIP) benefits. Regardless of the reason for her participation in Michigan Works, the Department is required to monitor Michigan Works participation and was aware, or should have been aware of the periods when the Respondent was not participating.

Although the Respondent's lack of participation in Michigan Works may have made her ineligible for the Child Development and Care (CDC) program, this Administrative Law Judge finds that the Department failed to present sufficient evidence that the circumstances of this ineligibility was due to an intentional act by the Respondent for the purposes of receiving benefits that she was not entitled to.

Department of Human Services Bridges Eligibility Manual (BEM) 233A indicates that the Department will excuse a failure to participate in Michigan Works where there are barriers to program compliance that are beyond the participant's control. The Claimant has a duty to provide verification of their barriers to compliance with Michigan Works.

In this case, the Department presumes that a lack of evidence supporting good cause for the Respondent's failure to comply with Michigan Works indicates an intent to collect Child Development and Care (CDC) benefits that she was not entitled to. The evidence does not support a finding that the Claimant's absence from Michigan Works could have been excused. Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the Department has failed to establish the Respondent's intent to receive CDC benefits she was not entitled to.

Furthermore, BEM 703 allows for multiple needs to receive Child Development and Care (CDC) benefits. This Administrative Law Judge finds that the Department has failed to establish that the Respondent's only verified need for Child Development and Care (CDC) benefits was participation in Michigan Works. The Respondent may have had barriers to her participation in Michigan Works that created a valid need for Child Development and Care (CDC) benefits during these periods when she was not participating in Michigan Works.

In conclusion, this Administrative Law Judge finds that the Department has failed to meet its burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV) of the Child Development and Care (CDC) program.

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 the Department has failed to establish an Intentional Program Violation (IPV) of the Child Development and Care (CDC) program.

The Department is ORDERED to delete the OI and cease any recoupment action.

/s/ _____
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 07/09/2013

Date Mailed: 07/10/2013

[REDACTED]

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.

[REDACTED]

cc:

[REDACTED]