

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201357331
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: October 16, 2013
County: Saginaw

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

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 hearing was held on October 16, 2013. Respondent did not appear. The record did not contain returned mail. In accordance with Bridges Administration Manual (BAM) 720 the hearing proceeded without Respondent. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received a [REDACTED] over-issuance of Medical Assistance (MA) benefits and a [REDACTED] over-issuance of Family Independence Program (FIP) benefits from March 1, 2012, to April 30, 2012, which 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) On August 1, 2011, Respondent submitted an application for assistance. (Pages 14-33) The first page of the application indicates that Respondent was seeking Food Assistance Program (FAP) and Medical Assistance (MA) benefits.
- (2) On April 10, 2012, a Fraud Investigation Request was submitted on Respondent. The request stated that Respondent's daughter, [REDACTED], had been living with her grandmother in Minnesota since January 21, 2012.

- (3) On July 15, 2013, the Office of Inspector General submitted this request for a hearing.

CONCLUSIONS OF LAW

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 1997 AACRS R 400.3101-3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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.

In this case, the Department has requested a disqualification hearing to establish an over-issuance of benefits as a result of an Intentional Program Violation (IPV) and the Department has asked that Respondent be disqualified from receiving Family Independence Program (FIP) benefits. Department policies provide the following guidance and are available on the internet through the Department's website.

BAM 720 INTENTIONAL PROGRAM VIOLATIONS DEPARTMENT POLICY

All Programs

Recoupment policies and procedures vary by program and over-issuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

BAM 700 explains OI discovery, OI types and standards of promptness. BAM 705 explains agency error and BAM 715 explains client error.

DEFINITIONS

All Programs

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 or CDC provider has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

IPV

FIP, SDA and FAP

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

MA and CDC Only

IPV exists when the client/AR or CDC provider:

- Is found guilty by a court, **or**;
- Signs a DHS-4350 **and** the prosecutor or the office of inspector general (OIG), authorizes recoupment in lieu of prosecution, **or**;
- Is found responsible for the IPV by an Administrative Law Judge conducting an IPV or debt establishment hearing.

OIG RESPONSIBILITIES

All Programs

Suspected IPV cases are investigated by OIG. Within 18 months, OIG will:

- Refer suspected IPV cases that meet criteria for prosecution to the Prosecuting Attorney.
- Refer suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearing System (MAHS).
- Return non-IPV cases to the RS.

IPV Hearings

FIP, SDA, CDC, MA and FAP

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings 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.

Exception: For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable.

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 [REDACTED] or more, **or**;
 - The total OI amount is less than [REDACTED], **and**;
 - The group has a previous IPV, **or**;
 - The alleged IPV involves FAP trafficking, **or**;
 - The alleged fraud involves concurrent receipt of assistance (see BEM 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.

BAM 710 RECOUPMENT OF MA OVERISSUANCES

DEPARTMENTAL POLICY

MA Only

Initiate recoupment of an over-issuance (OI) due to **client error or intentional program violation** (IPV), **not** when due to **agency error** (see BAM 700 for definitions). Proceed as follows:

- Determine the OI period and amount.
- Determine the OI Type (client error or suspected IPV).
- Initiate recoupment of an OI due to client error.

If IPV is suspected, refer the case to the Office of Inspector General (OIG), if appropriate, by completing a DHS-834, Fraud Investigation Request.

Note: OIs due to IPV are recouped by OIG working directly with the local office fiscal unit.

PROCEDURES

Document your decisions and actions on the application form. Your manager must review the case record.

MA Payment Information

Complete and mail or fax the DCH-203 (MSA-203), Medical Expenditures Request, to obtain a list of MA payments in the OI period.

For changes unreported by ongoing recipients, the OI period begins the first day of the month **after** the month in which the standard reporting period **plus** the negative action period would have ended.

Overissuance Determination

When you receive the amount of MA payments, determine the OI amount. For an OI due to unreported income or a change affecting need allowances:

- If there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) **or** the amount of MA payments, whichever is less.
- If there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts **or** the amount of MA payments, whichever is less.

For an OI due to **any other** reason, the OI amount is the amount of MA payments.

OIG Referral

The **minimum** OI amount for OIG referral is **\$500 unless** the local prosecutor sets a lower amount. OIG through regular channels informs affected local offices of lower amounts.

You may refer an IPV that is **under** the set minimum **if** the group's actions are repetitious or flagrant. The local office director or designee must approve the referral.

The assistance application (Pages 14-33) in this record raises several questions about the responsibility for any over-issuance in this case. The first page of the application indicates that Respondent requested Medical Assistance (MA) and Food Assistance Program (FAP) benefits but not Family Independence Program (FIP) benefits. Respondent is identified as the grandmother of [REDACTED], not the mother. [REDACTED] is marked as attending school but no school name is provided. Information on [REDACTED]

parents only includes: father's full name, [REDACTED]; father's date of birth; mother's first name, [REDACTED]. There is a single entry on the notes pages (Page 33) "2mo."

Food Assistance Program (FAP) benefit issuance evidence (Page 39) shows Respondent received Food Assistance Program (FAP) for a group of 2 from August 1 to 31, 2011 and FAP was closed beginning September 1, 2011. The certification date for all FAP status' is November 15, 2011.

Family Independence Program (FIP) and Medical Assistance (MA) Other Healthy Kids benefit issuance evidence is on Page 37. It shows FIP benefits were issued beginning August 16, 2011 for a group of 1 and OHK benefits were issued beginning August 1, 2011.

Page 34-36 of the record is a Customer Service Tracking print and a PARIS Program Inquiry. [REDACTED] a cw from MN reported: [REDACTED] moved to Minnesota to live with her grandmother in January; [REDACTED] had been active for assistance in MN since 1/21/2012; requesting [REDACTED] be removed from FIP and OHK in Michigan.

In the Office of Inspector General Investigation Report (DHS-4652) RA Tetloff reports that Respondent telephoned to report she would not attend the June 13, 2013 interview because she (Respondent) resides in Minnesota.

An IPV requires that the Department establish by 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, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

There is no evidence in this record at all which shows Respondent requested Family Independence Program (FIP) benefits. There is no evidence in this record at all which shows that the Department requested verification of [REDACTED] student status as required by Department policy to issue FIP benefits.

There is evidence in this record which shows that Respondent is [REDACTED] grandmother, not [REDACTED] mother. However, the Department has based its requested action on the premise that Respondent is [REDACTED] mother and that [REDACTED] went to Minnesota to live with her grandmother? The result of the evidence in this record falls woefully short of proof these over-issuances are the result of intentional actions by Respondent.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department has failed to establish by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) which resulted in any over-issuance.

It is ORDERED that the actions of the Department of Human Services, in this matter, are **REVERSED**.

/s/

Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 11/04/2013

Date Mailed: 11/05/2013

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.

GFH/sw

cc:

