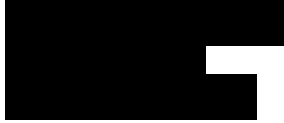


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 201319818
Issue No.: 1052; 3055
Case No.:
Hearing Date: June 12, 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 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on June 12, 2013, from Lansing, Michigan. The Department was represented by 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 400.3178(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of

- | | |
|--|---|
| <input checked="" 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 checked="" 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 clear and convincing evidence, competent, material and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on 12/26/12 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. The Department alleges overissuances in the FIP program from 4/1/11 through 8/31/11 in the amount of \$ [REDACTED] for the FAP 4/1/11 through 8/1/11 in the amount of \$ [REDACTED]
4. Respondent was was not aware of the responsibility to report any permanent changes in address/residency.
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 4/1/11 through 8/31/11.
7. During the alleged fraud time period, Respondent used her FAP benefits out of the State of Michigan from 2/8/11 to 3/14/11, returning to Michigan, and subsequently from 4/10/11 thru 8/19/11 in Ohio. Respondent also used FAP benefits outside of Ohio and Michigan from 2/8/11 thru 3/14/11.
8. On 11/21/12 the OIG documented a phone conversation with Respondent which took place on 11/13/12. Respondent stated that she never moved to Ohio and only went down to Ohio for 4 months to give [REDACTED] to a [REDACTED] she put up for [REDACTED]. The alleged fraud period is for FAP 4 months; for FIP 5 months.
9. Respondent did did not receive an OI in the amount of \$ [REDACTED] (the Department had deleted some amounts as having been lawfully received) under the FIP FAP SDA CDC MA program.
10. The Department has has not established that Respondent committed an IPV.
11. 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.

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 OI. BAM 700.

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 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 \$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,
 - 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. BAM 720.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to MA. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 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.

Under BAM Item 220 which is the residence policy and procedure for the Department, policy indicates that a person is a resident if that individual is not receiving assistance from another state, is living in Michigan except for temporary absence, and intends to remain in the state permanently or indefinitely. BAM Item 220, page 1.

BAM Item 212 indicates a temporarily absence does not include situations where a person is temporarily absence.

As noted in the Findings of Facts, Respondent represented to the Department that she was in the State of Ohio for 4 months as she was temporarily in Ohio to give [REDACTED] to a [REDACTED] for which she was given up for [REDACTED]. Respondent's FAP benefits, according the Department, were not continuously cashed in one location but in Ohio, Utah, Kansas, Louisiana, Texas, Arkansas and Wyoming. The problem with the Department's case under the clear and convincing standard is that the Department did not establish that Respondent was permanently outside the State of Michigan. The time for which Respondent cashed benefits outside of Michigan and Ohio consisted of less than a week using the DHS's procedure of giving the Respondent 30 days for temporary absence. Additionally, the nature of the arraignment herein was credible in that Respondent testified that she went down to Ohio to give [REDACTED] for the [REDACTED] to give up for [REDACTED]. This ALJ finds that this situation to be a very sensitive one, and any

ambiguities ruled in favor of Respondent. This ALJ does not find the evidence herein to rise to fraud under a clear and convincing standard.

Nor does the undersigned ALJ find that the facts in this case to rise to an overissuance for the FIP and FAP programs under a preponderance of evidence. Respondent was eligible for these benefits. There are no facts which would indicate that Respondent did not have an intent to return as four months to give [REDACTED] to a [REDACTED] for which she gave up for [REDACTED] can be rationally construed by a reasonable person as a temporary absence. In fact, the evidence shows that Respondent did indeed return to Michigan on 8/20/11 and continuously cashed benefits in the State of Michigan from that date forward. The Department proposed actions are reversed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above clear and convincing evidence, Findings of Facts, 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 delete the OI and cease any recoupment action.

/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

201319818/JGS

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:

