

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

**IN THE MATTER OF:**



Reg. No.: 201332755  
Issue No.: 3055  
Case No.:   
Hearing Date: May 14, 2013  
County: Montcalm

**ADMINISTRATIVE LAW JUDGE:** Janice G. Spodarak

**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 May 14, 2013, from Lansing, Michigan. The Department was represented by , Regulation Agent, of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent and James Bowers, Witness.

**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)           | <input checked="" type="checkbox"/> State Emergency Services (SER) |
- 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)?        |
| <input checked="" type="checkbox"/> State Emergency Services (SER) |   |

**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 3/7/13 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV for the FAP and SER programs.
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 7/1/08 through 10/31/11. The Department also requested an IPV for SER alleging an overissuance for a recipient period of 7/7/10 through 4/22/11.
4. The Department  has  has not established that Respondent committed an IPV.
5. This was Respondent's  first  second  third IPV.
6. The Department alleges the Respondent failed to inform the Department of self-employment income from a business. Respondent presented credible evidence that she in fact has repeatedly submitted income tax returns to the Department each year which indicate her [REDACTED] and her [REDACTED]. The Department credible presented evidence that the Department failed to properly process this verification with regards to Respondent's eligibility which would be consistent with the facts herein. Claimant contends that the income tax returns show \$ [REDACTED]
7. No one who had personal knowledge of this case was present at the administrative hearing. The individuals who would have process Respondent's eligibility cases for the alleged overissuance year(s), was not present at the administrative hearing for testimony and/or cross examination.
8. 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 of the FAP and SER Programs.
9. The Department has not established an overissuance by preponderance of evidence based on the facts.

### **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.

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by 1999 AC, Rule 400.7001 through Rule 400.7049. Department policies are found in the State Emergency Relief Manual (ERM).

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 \$ [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,
  - 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.

In this case, the Department requests an IPV for both the FAP and SER programs. The Department was unclear as to the authority for SER IPV. The Department failed to present State laws, rules or policy regarding an IPV for the SER program.

In this case, the Department alleges that Respondent failed to disclose income from [REDACTED]. Respondent credibly testified that she had no income after deducting expenses. The Department testified that Respondent failed to disclose; Respondent credibly testified that she has delivered [REDACTED] since 2008 properly showing all business income and expenses with a \$ [REDACTED]. As noted in the Findings of Facts, no one who had personal knowledge of this case from the local office was present at the administrative hearing for testimony and/or cross examination.

The undersigned ALJ has weighed all the evidence and authority presented by the Department in this case, and finds that the Department has not presented clear and convincing evidence of a FAP or SER IPV. The undersigned ALJ also does not find that the evidence presented in this case is sufficient to find an overissuance for the FAP and/or SER programs by the preponderance of the evidence standard. Thus, the undersigned ALJ reverses the Department's proposed/alleged action to have Respondent's case classified as an IPV. There is no IPV for either the FAP or SER program.

The Department is not barred from proposing an overissuance of benefits in the future should it choose to, and if it obtains necessary budgets and documentation to support its claim. However, the Department will be inputted with the knowledge and/or information regarding Respondent's tax returns which have been delivered previously to the Department.

### **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 of FAP and SER programs.

2. The Department may choose to bring an overissuance action in the future. If it does so, this ALJ rules that it must be based on Department error. This ALJ further rules that the Department would be required to reprocess this case in conjunction with the previously verified income tax return Respondent delivered to the Department.

It is so ORDERED.



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

Date Signed: 6/17/13

Date Mailed: 6/17/13

**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:

