

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


IN THE MATTER OF:



Reg. No.: 201334167
Issue No.: 2000; 3055
Case No.: 111125821
Hearing Date: May 29, 2013
County: Muskegon

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 May 29, 2013, from Lansing, Michigan. The Department was represented by , Regulation Agent 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 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"/> 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)? |

4. Did the Department correctly submit evidence of an alleged MA IPV?

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 3/15/13 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. The Department's OIG indicates that the time period they are considering the fraud period for concurrent benefits, receipt of MA, receipt of FAP, from 7/5/11 through 12/31/11.
4. The Department failed to present clear and convincing evidence of an alleged IPV, and failed to present evidence by a preponderance of an overissuance.

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 \$ [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.

As noted above, Federal regulations, Federal law, and State policy requires clear and convincing evidence of an IPV. If an IPV is not found, the burden of proof changes to a preponderance of evidence to find an overissuance. An overissuance may be Respondent error or Department error.

In this case, the Department alleges on its hearing summary that there were concurrent benefits received, an MA overissuance, and FAP benefits received ineligible and cashed out of state. However, at the administrative hearing, the OIG stipulated that there was no MA overissuance, and no concurrent receipt of benefits. The information contained in the file regarding the FAP benefits is patently ambiguous due to the inconsistency in the total programs and in the total overissuance amounts.

The undersigned Administrative Law Judge (ALJ) has reviewed the entire file and finds that there is not clear and convincing evidence of an IPV. Nor is there evidence by a preponderance of evidence of overissuances due to the patent ambiguity of the facts of the programs herein.

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. The Department failed to present clear and convincing evidence of an IPV of the FAP and MA programs. The Department also failed to present clear and convincing evidence of the receipt of concurrent benefits. The Department also failed to present clear and convincing evidence of Respondent having committed an IPV.

2. The Department also failed to present evidence by preponderance of evidence of an overissuance due to the patent ambiguity of the facts of all the programs and the overissuance amounts.
3. The Department's hearing request cannot go forward.

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

Date Signed: 6/10/13

Date Mailed: 6/11/13

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:

