

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

IN THE MATTER OF:



Reg. No.: 2013-6254
Issue No.: 3052, 4060
Case No.:
Hearing Date: February 27, 2013
County: Wayne County (17)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 February 27, 2013, from Detroit, Michigan. The Department was represented by Derrick Gentry, 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 400.3187(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 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)? |

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 October 22, 2012 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 relevant periods at issue.
4. The Department's OIG also sought recoupment of an Overissuance of CDC benefits. The hearing file contained the hearing packet and repay agreement which were returned as undeliverable. BAM 725 provides: Pursue a debt collection hearing only when the repay agreement has not been returned as undeliverable. BAM 725 pp 14, (8-1-2012). Therefore the Department's OIG is not entitled to pursue debt collection and recoupment of the CDC benefits and its case must be dismissed.
5. Respondent was was not aware of the responsibility to report changes in circumstances, including address changes, to the Department.
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 for FAP benefits is April 1, 2006 through June 30, 2009.
8. During the alleged fraud period, Respondent was issued \$1 [REDACTED] in FIP FAP SDA CDC MA benefits from the State of Michigan.
9. The OIG alleges that Respondent was entitled to \$0 in FIP FAP SDA CDC MA during this time period.
10. Respondent did did not receive an OI in the amount of \$1 [REDACTED]3 under the FIP FAP SDA CDC MA program.
11. The Department has has not established that Respondent committed an IPV.
12. This was Respondent's first second third alleged IPV.

13. 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 Department of Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services, Program Administrative Manuals (PAM), Program Eligibility Manual (PEM), and Reference Schedules Manual (RFS).

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 Mich Admin Code, R 400.3001 through R 400.3015.

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. [BEM 720 (August 1, 2012), p 10.]

Subsequent to the scheduling of the current hearing and the hearing date, the Notice of Hearing and accompanying documents (which established due notice) were mailed to Respondent via first class mail at the last known address and were returned by the United States Postal Service as undeliverable. Department policy dictates that when correspondence sent to Respondent concerning an intentional program violation (IPV) is returned as undeliverable, the hearing cannot proceed with respect to any program other than Food Assistance Program (FAP). BAM 720, p 10. Thus, the hearing proceeded with respect to the alleged FAP IPV.

Intentional Program Violation

Suspected IPV means an overissuance (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. [BAM 720, p 1 (emphasis in original).]

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). 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.

In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department that she was no longer employed by various employers and that the Department determined that the employers did not exist in part because the employers did not respond to subpoenas issued requesting employment information. The Department presented evidence as regards Quinns that the Claimant was not working at that restaurant when she filed an application in April 2006. Item 23pp 166. The Claimant also represented she worked for a Subway for a period but the Department could not verify its existence several years later by a site visit. The Claimant indicated that she worked for BB's Diner and check stubs were in the file indicating that she was employed there since 6/1/07 with two valid check stubs for August 2008. pp.155. The OIG attempted to verify employment with LA coney Island, but the LA coney Island was closed at the time verification was sought. The Claimant indicated in her application that she was paid cash working 15, to 20 hours per week. The Department failed to prove the Claimant was not working and the records indicated that a verification of employment was received from the Claimant in May 2007 for the period 3/8/07. pp. 47. A subsequent application filed on 4/17/08 indicated that the Claimant was not employed at the time. Pp 70. The Work Number information submitted did not establish that the Claimant was not working as not all employers report wages or report to the work number. Overall the the Department OIG did not establish its fraud case or that the Claimant was not working. Nor was it clear what periods were included in the overissuance for the FAP benefits especially when pay stubs were present. Additionally the work first information was not clear as the Claimant was assigned to attend work first but nothing further was ever reported in the view case notes as to whether her case wa closed or whether she was working.

Because the evidence presented did not establish by clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining FAP eligibility, the Department has not established that Respondent committed an IPV of her FAP benefits.

Disqualification

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving 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, p 12.

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 (October 1, 2009), p 2. 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, p 13.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV. Therefore, Respondent is not subject to a disqualification under the FAP program.

Recoupment of Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (December 1, 2011), p 1. The amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p 6; BAM 715 (December 1, 2011), pp 1, 5; BAM 705 (December 1, 2011), p 5.

At the hearing, the Department provided a FAP issuance summary and added the benefits together. The Department did not back out any periods on the summary, even though pay stubs existed for one employer with a federal id number which were valid stubs nor did the Department consider the period when Claimant had verified employment in May 2007. Because the Department could not verify information, it cannot per se prove entitlement to an overissuance. The Department did not remove any periods where the Claimant demonstrated employment and the Department did not establish that she was not employed.

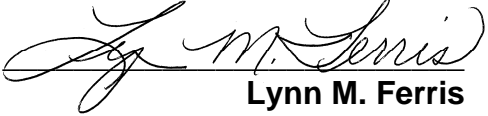
DECISION AND ORDER

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:

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.


Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 12, 2013

Date Mailed: April 15, 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.

LMF/tm

cc: [REDACTED]
D. Gentry, Regulation Agent
IPV
[REDACTED]
L. Ferris