

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

IN THE MATTER OF:



Reg. No.: 2013-989
Issue No.: 3052
Case No.:
Hearing Date: November 28, 2012
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

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 November 28, 2012, from Detroit, Michigan, before Administrative Law Judge Michael Bennane. The Department was represented by , Agent, Office of the Inspector General (OIG).

On March 18, 2013, the case was reassigned to Administrative Law Judge Jan Leventer to prepare a decision and order.

Participants on behalf of Respondent included: Respondent and her husband, Michael Berro.

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

- Family Independence Program (FIP) Food Assistance Program (FAP)
 State Disability Assistance (SDA) 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 29, 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 period of January, 2009, through August, 2009.
4. Respondent was was not aware of the responsibility to report complete and truthful information about her income and assets.
5. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period they are considering the OI period is January-August, 2009.
7. During the alleged OI period, Respondent was issued \$5,838 in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. Respondent was entitled to \$0.00 in FIP FAP SDA CDC MA during this time period.
9. Respondent did did not receive an OI in the amount of \$5,838 under the FIP FAP SDA CDC MA program.
10. The Department has has not established that Respondent committed an IPV.
11. This was Respondent's first second third IPV.
12. 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 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.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance (OI). Department of Human Services Bridges Administrative Manual (BAM) 700 (2013).

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. Department of Human Services Bridges Administrative Manual (BAM) 720 (2013).

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, or
- 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. *Id.*

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. Department of Human Services Bridges Administrative Manual (BAM) 710 (2009). 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.

Additionally, in order to establish IPV, the Department must prove all three elements of the IPV act. The first element is that there must be an intentional failure to disclose information for the purpose of obtaining unlawful benefits. BAM 720. The first part of this element is to determine whether information was not disclosed to the Department. If all of the information requested was in fact disclosed, then there is no failure to disclose and the first element cannot be proved.

In this case the Department alleges that Respondent failed to disclose four pieces of information: ownership of a Nissan, a checking account, self-employment and undisclosed income at Select Auto Collision Inc., and, self-employment and undisclosed income at Michigan Wide Construction Inc. Dept. Exh. 1, Hearing Summary. As the alleged IPV begins January 1, 2009, the Department must establish that the initial failure to disclose occurred before January 1, 2009.

Looking first at Respondent's August 27, 2008 application, this application states there are no bank accounts, a 1998 Dodge station wagon, no self-employment or income from [REDACTED], no self-employment at [REDACTED], and income of \$ [REDACTED] per month at [REDACTED]. Clmt. Exh. A, pp. 9-11.

Looking first at the bank accounts, at the hearing the Department submitted [REDACTED] records showing that Respondent's husband, [REDACTED] ro, opened a checking account on May 19, 2003. Dept. Exh. 1, pp. 52-53. The records further show that the July 27, 2009 balance was \$694.17 and the September 28, 2009 balance two months later was \$880.73. *Id.* While there is no information as to the balance on August 27, 2008, the day Respondent applied for benefits, the July 2008-July 2009 average balance is \$1,169. *Id.*, p. 52.

It is found and determined that Respondent had a [REDACTED] checking account when she applied for benefits on August 27, 2008, and failed to disclose it to the Department. While the account is in the name of her husband, he is an adult group member and he also signed the August 27, 2008 application along with the Respondent. These facts demonstrate that Respondent failed to make a disclosure of assets to the Department. It must now be examined whether the required intent is present. Clmt. Exh. A, p. 15.

The question of intent must be examined according to BAM 720, and the question to be answered is whether Respondent knew that she had a responsibility to report assets to the Department. Respondent signed the August 27, 2008 application under an Affidavit statement which states that her signature means that all of the information in the application is true and complete. *Id.* The Respondent's signature is her method of stating that she knows her responsibility and she accepts it. Thus, the question of Respondent's intent can be answered positively, that she did know she had a duty to be truthful and complete. Also, on January 23, 2009, Respondent signed a Semi-Annual Contact Report, indicating she was aware of her reporting responsibility and that she was not hiding information for the purpose of obtaining Department benefits. It is found and determined that the Respondent had the intent to conceal information from the Department.

The last part of this first IPV element is whether Respondent failed to act because she intended to obtain Department benefits to which she was not entitled. BAM 720. This is the Department's assertion, and the inference is found to be logical and reasonable in this case. Not only did the Respondent have a 2003 checking account with several hundred dollars balance, she later signed a Semi-Annual Contact Report and again made no disclosure of the checking account. Dept. Exh. 1, pp. 50-51.

Based on the evidence analyzed above and all of the evidence in this case considered in its entirety, it is found and determined that the Department has proved by clear and convincing evidence that Respondent committed an IPV in this case. It is now necessary to determine whether the Department clearly and correctly instructed Respondent as to her duty to disclose assets to the Department.

This second IPV element consists of establishing the fact that the Department clearly and correctly instructed Respondent regarding her reporting responsibilities. BAM 720. Respondent's signature on the August 27, 2008 application and the January 23, 2009 Semi-Annual Contact Report show that Respondent was clearly and correctly instructed. The application is signed underneath an Affidavit statement indicating that by signing the application the customer is certifying that all statements are true and complete. Similarly, on the Semi-Annual Contact Report, the Respondent signed the form underneath a penalty section explaining that hiding or failing to disclose information was against the rules of the Department. These documents establish that the Department did in fact clearly and correctly instruct Respondent about her disclosure responsibilities. It is found and determined that the Department has proved that it clearly and correctly instructed Respondent about her reporting responsibilities. Dept. Exh. 1, p. 51; Clmt. Exh. A, p. 15.

It is now necessary to determine whether there is any physical or mental impairment of Respondent that would prevent her from fulfilling her responsibility. This is the third requirement of IPV. In this case the Department submitted in evidence three applications and a Semi-Annual Contact report, all signed by the Respondent. There is no apparent impairment of record with regard to Respondent's ability to prepare an application and provide information. Accordingly, it is found and determined that the Department has established by clear and convincing evidence that there is no physical or mental impairment that would prevent Respondent from fulfilling her reporting responsibilities.

In conclusion, it is found and determined that the Department has established by clear and convincing evidence that an IPV occurred in this case. The Department is entitled to an order that IPV has occurred. The Department's request for a finding of IPV is granted.

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 \$5,838 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to initiate recoupment procedures for the amount of \$5,838 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from

- FIP FAP SDA CDC for a period of
 12 months. 24 months. lifetime.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 25, 2013

Date Mailed: March 26, 2013

2013-989/JL

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.

JL/tm

cc:

