

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

IN THE MATTER OF:

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Reg. No.: 201412489
Issue No.: 3005
Case No.: ██████████
Hearing Date: March 19, 2014
County: Muskegon (61-00)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on March 19, 2014 from Detroit, 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
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (MA)
benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 Family Independence Program (FIP)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? 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, 2014, 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 issued by the Department.
4. The Department's OIG indicates that the time period it is considering the fraud period is September, 2007, through September, 2008.
5. During the fraud period, Respondent was issued ██████ in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period.
6. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$1,996.
7. This was Respondent's first second third alleged IPV.
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.

CONCLUSIONS OF LAW

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

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. BAM 700, p. 1.

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.

BAM 700 (2013), p. 6; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

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); see also 7 CFR 273(e)(6). 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.

The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:
- (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).

(6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance 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.

BAM 720 (2013), p. 12.

A court or hearing decision that finds a client committed 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. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (2013), 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. 16.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the respondent intentionally made a false or misleading statement, or intentionally withheld information with the intention to commit an IPV, with regard to the FAP program. Thus, the Department must not only prove that the respondent committed an act, but that there was intent to commit the act.

In this case, the Department has established that respondent was aware of the responsibility to report all changes to the Department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. However, the undersigned is not convinced that the Department has met its burden of proof in providing clear and convincing evidence that the respondent intended to defraud the Department with regard to their FAP eligibility.

First of all, the undersigned notes that this case is extremely old; the OI in question was discovered on October 21, 2008; it was not referred to the OIG for investigation until October 18, 2012.

Per policy in place at the time, a recoupment specialist has 60 days to make a determination as to whether an OI exists, and an additional 90 days to make a referral for a suspected IPV to the OIG. This case languished with the recoupment specialist for *four years*. Based on this policy, the undersigned is tempted to dismiss this case outright on the basis that the Department has failed to follow policy with regards to the referral of a suspected IPV. The undersigned has reviewed case law on the matter, and believes that such a dismissal would be supported by that case law. The undersigned also believes that such a dismissal would be appropriate given the length of time the evidence has languished, and the practical impossibilities of expecting a respondent to recall facts that are more than 7 years old by the time of the hearing.

Furthermore, respondent would be hard pressed to even make attempts at discovery in Department records, as the change over to the Bridges system in 2009 effectively removed most pre-Bridges records from the Department systems.

However, the undersigned will not dismiss the case on the basis of the timeliness of the hearing request, given that the case can be resolved on other, more factual and less technical grounds.

The burden of proof that the Department must meet in order to prove Intentional Program Violation is very high. It is not enough to prove that the respondent was aware of the requirements to report at some point, nor is it enough to prove that the respondent did not report in a timely manner. The Department must prove in a clear and convincing manner, that, not only did the respondent withhold critical information, but that the respondent withheld this information with the intent to commit an IPV.

In other words, the Department must prove that the respondent did not simply forget to meet their obligations to report, but rather, actively sought to defraud the Department.

The Department has not proven that in the current case. Respondent applied for, and received, FAP benefits on January 18, 2007. On that application, and in a subsequent application filed in December, 2007, claimant specifically reported that she was not applying for benefits on behalf of the particular group member whose income was at issue.

This did not stop the Department from issuing respondent FAP benefits for this group member, despite the specific requests from the respondent to not receive those benefits. Policy at the time did require this secondary person to be a member of the FAP group; however, there is no evidence that the Department told respondent that this person was being added to the group.

The Department has failed to provide evidence that respondent was told that she was receiving FAP benefits for the additional, unrequested group member, and the undersigned therefore cannot hold that respondent was aware of the discrepancy.

The Department is alleging IPV based on the fact that respondent failed to report a change in income for a group member respondent specifically told the Department that she did not want FAP benefits for.

There is no requirement in policy to report income changes for a person who is not part of the benefit group, and the Department has failed to provide evidence that respondent was aware that the Department had included the person in question in respondent's benefit group.

As such, the undersigned holds, that, given that respondent did not request FAP benefits for the person in question, and there is no evidence respondent was notified that she would receive extra benefits for the person in question, the respondent was not at fault for failing to notify the Department of the income changes to the person in question, even though policy specifically required this person to be part of the FAP group.

As respondent was not at fault for the situation, it falls under agency error, and the undersigned declines to find IPV.

Therefore, as the Department has failed to provide clear and convincing evidence that claimant intentionally withheld information in order to secure additional FAP benefits, the undersigned holds that claimant did not commit an IPV.

As the undersigned holds that the error in the current case is agency error, recoupment may only proceed under the agency error guidelines.

The Administrative Law Judge, after reviewing the supplied issuance budgets, is not convinced that the respondent received ██████ in FAP benefits they were not eligible for. The overissuance budgets provided assume that the respondent committed an IPV and intentionally did not report income; as such, the budgets do not allow respondent a 20% earned income deduction.

As the undersigned holds that the error in this case is agency error, and that respondent did report her income, respondent is entitled to all deductions that would normally be given in an FAP, including all deductions for reported income. Therefore, before recoupment can be authorized, the agency must first establish the correct overissuance

amount. Until the correct overissuance amount is supplied by the Department and proven through substantial evidence, the undersigned will not allow recoupment in the matter at hand.

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, if any, concludes that:

1. Respondent did did not commit an IPV by clear and convincing evidence.
2. Any error in the current case is the result of Agency Error.
3. The Department has failed to establish that respondent received an overissuance 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.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 15, 2014

Date Mailed: April 15, 2014

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.

RJC/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]