

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

IN THE MATTER OF:

██████████
██████████
████████████████████

Reg. No.: 2014-32855
Issue No(s): 4005
Case No.: ██████████
Hearing Date: May 29, 2014
County: Muskegon (00)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 May 29, 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 March 28, 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. Respondent was was not aware of the responsibility to report changes in group members.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is August 1, 2008 to December 31, 2008 (fraud period).
7. During the fraud period, Respondent was issued \$1,335 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$1,335.
9. This was Respondent's first second third alleged IPV.
10. 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 State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor,
- prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$1000 or more, or
 - the total OI amount is less than \$1000, **and**
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720 (May 2014), pp. 12-13.

Intentional Program Violation

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 reporting responsibilities.

BAM 700 (May 2014), p. 7; 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.

SDA is a cash program for individuals who are not eligible for FIP and are disabled or the caretaker of a disabled person. BEM 214 (August 2008), p. 1; See also BEM 261 (August 2008), p. 1. A caretaker of a disabled person may receive SDA provided that the assistance of the caretaker is medically necessary for at least 90 days and the caretaker and the disabled person live together. BEM 261, p. 3.

In the present case, the Department alleges that Respondent was the caretaker of his mother; however, upon her passing, he was no longer eligible for such benefits. As such, the Department alleges that Respondent committed an IPV of his SDA benefits because he failed to report that his mother had passed away in a timely manner to the Department, which caused an overissuance of SDA benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (August 2008), p. 7. Changes must be reported within 10 days: after the client is aware of them, or the start date of employment. BAM 105, p. 7. Other reporting requirements include, but are not limited to, changes in persons in the home. BAM 105, p. 7.

Changes in need occur when there are changes in: eligible group size; living arrangement; and grantee status. BEM 515 (August 2008), p. 2.

For changes reported timely (within 10 days), reflect the change the first month that begins at least 10 days after the change is reported if administratively possible. BEM 515, p. 2. Depending on the timing of the reported change and timely notice requirements, some benefits will be adjusted in the first month after the change is reported; others in the second month after the change is reported. BEM 515, pp. 3-4.

Reflect changes reported late as follows:

- For member additions resulting in a grant increase, reflect the change in the month after the month the change is reported.
- For changes other than member additions resulting in a grant increase, reflect the change no later than the first month that begins at least 10 days after the change is reported.
- For changes resulting in a grant decrease, determine when the change would have been effective had the client reported timely and you had acted timely. Reflect the change in the appropriate month. Initiate recoupment as appropriate.

BEM 515, p. 3.

The Department's OIG indicates that the time period it is considering the fraud period is August 1, 2008 to December 31, 2008. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report persons in the home and that he intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of his SDA program benefits or eligibility.

First, the Department presented Respondent's application dated April 16, 2008, to show that the Respondent was aware of his responsibility to report changes. See Exhibit 1, pp. 10-25.

Second, the Department presented evidence that Respondent's mother passed away on June 20, 2008. See Exhibit 1, p. 30.

Third, the Department presented a documentation record dated December 1, 2008, which indicated that Respondent reported his mother passed away on June 20, 2008. See Exhibit 1, p. 31.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of SDA benefits. There was no evidence to show that Respondent, during the alleged fraud period, represented that he intentionally withheld information. The Department presented a documentation record dated December 1, 2008, which indicated that Respondent reported his mother passed away on June 20, 2008. See Exhibit 1, p. 31. It is persuasive evidence that Respondent did not report the change (mother's passing) within 10 days he was aware of it. See BAM 105, p. 7. Nevertheless, this evidence actually shows that the Respondent reported his mother's passing to the Department. This shows that Respondent is not intentionally withholding or misrepresenting the change report information. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of his SDA program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of SDA benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

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. BAM 720, p. 16. Refusal to repay will not cause denial of current or future MA if the client is

otherwise eligible. BAM 710 (July 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 FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning SDA benefits. Therefore, Respondent is not subject to a disqualification under the SDA program. BAM 720, p. 16.

Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report his mother's passing. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (May 2014), p. 1.

A client error is present in this situation because Respondent failed to notify the Department of his mother's passing timely. Based on this information, it is persuasive evidence that an OI is present due to client error.

In regards to policy, Respondent did not report his mother passing within 10 days after he was aware of it. BAM 105, p. 7. Before his mother's passing, Respondent received SDA benefits because he was a caretaker of his mother. See BEM 214, p. 1 and BEM 261, p. 3. However, the evidence presented that due to his mother's passing, he was no longer eligible for SDA benefits. As such, an OI is present in this case because Respondent failed to report that his mother had passed away in a timely manner to the Department, which caused an overissuance of SDA benefits.

Applying the overissuance period standards and in consideration of the Respondent's mother passing on June 20, 2008, the Department determined that the OI period began on August 1, 2008. See Exhibit 1, pp. 2 and 30. It is found that the Department applied the appropriate OI begin date. See BAM 715, pp. 4-5.

Additionally, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715, p. 6.

In establishing the OI amount, the Department presented a benefit summary inquiry showing that Respondent was issued SDA benefits by the State of Michigan from August 2008 to December 2008, which totaled \$1,335. See Exhibit 1, pp. 26 - 29. Thus, the Department is entitled to recoup \$1,335 of SDA benefits it issued to Respondent from August 1, 2008 to December 31, 2008.

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. The Department has established by clear and convincing evidence that Respondent did did not commit an intentional program violation (IPV).
2. Respondent did did not receive an OI of program benefits in the amount of \$1,335 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$1,335 in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 3, 2014

Date Mailed: June 3, 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.

EJF/cl

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