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

IN THE MATTER OF:



Reg. No.:14-015964Issue Nos.:2005, 3005Case No.:Image: March 16, 2015Hearing Date:March 16, 2015County:Oakland (04-North Saginaw)

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

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 16, 2015, from Detroit, Michigan. The Department was represented by

Participants on behalf of Respondent included:

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

- 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?

 Did the Department establish, by clear and convincing evidence, that Respondent
- 2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
- Should Respondent be disqualified from receiving benefits for
 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 November 20, 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 \square FIP \boxtimes FAP \square SDA \square CDC \boxtimes MA benefits issued by the Department.
- 4. Respondent 🖾 was 🗌 was not aware of the responsibility to notify the Department of changes that might affect her benefits.
- 5. Respondent \Box had \boxtimes did not have an 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 March 1, 2014, through September 30, 2014 (fraud period).
- 7. During the fraud period, Respondent was issued \$2,684.68 in ☐ FIP ⊠ FAP ☐ SDA ☐ CDC ⊠ MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 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 \$2,684.68.
- 9. This was Respondent's \boxtimes first \square second \square third alleged IPV.
- 10. A notice of hearing was mailed to Respondent at the last known address and \Box was \boxtimes 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 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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k.

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 (July, 2013), p. 4.

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 (July, 2013), p. 5; BAM 720, p. 12.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 5.

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.

In this case, the Respondent began using her FAP and MA benefits exclusively in the State of Florida from March 1, 2014, onward.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 13. 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. 1.

In this case, although the Respondent began using her benefits exclusively outside the State of Michigan, there was no intervening documentation of Respondent providing false information to the Department subsequent to her application.

<u>Overissuance</u>

1. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 9.

In this case, the Department provided documentation of Respondent receiving benefits that she was not entitled to and that the Department must attempt to recoup.

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 is has not established by clear and convincing evidence that Respondent committed an IPV.
- 2. Respondent \boxtimes did \square did not receive an OI of program benefits in the amount of \$2,684.68 from the following program(s) \square FIP \boxtimes FAP \square SDA \square CDC \boxtimes MA.

The Department is ORDERED to

- delete the OI and cease any recoupment action.
- initiate recoupment procedures for the amount of \$2,684.68 in accordance with Department policy.
- reduce the OI to \$ for the period accordance with Department policy.
- , and initiate recoupment procedures in

Mićhael J. Bennane Administrative Law Judge for Nick Lyon, Interim Director Department of Human Services

Date Signed: 3/24/2015

Date Mailed: 3/24/2015

MJB / pf

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

CC:	