

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

IN THE MATTER OF:

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

Reg. No.: 2013 15683
Issue No.: 3052
Case No.: ██████████
Hearing Date: April 24, 2013
County: Wayne County DHS(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 April 24, 2013, from Detroit, Michigan. The Department was represented by ██████████, Lead Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: ██████████, the Respondent.

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)(AMP) | |

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 December 6, 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 May 2009, through January 31, 2011.
4. Respondent was was not aware of the responsibility to report his income.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. The Claimant applied for FAP on November 5, 2010.
6. The Claimant's application indicated that he received \$400 per week in self-employment income and \$700 from his business monthly. Exhibit 1 pp22-23
7. The Claimant provided the Department with copies of his bank account check stubs demonstrating earnings and S corporation return on November 19, 2010 as part of his verification of income. Exhibit 1 pp. 31-49.
8. The Claimant provided all the information that the Department requested to verify his employment and self-employment income.
9. The Department did not establish the Claimant's income from his business properly and incorrectly assumed that gross receipts of the business shown on the S Corp tax return are the Claimant's income,
10. The Department's OIG indicates that the time period they are considering the fraud period is the period from May 2009 through January 31, 2011.
11. During the alleged fraud period, Respondent was issued \$14,120 in FIP FAP SDA CDC MA benefits from the State of Michigan.

12. The Department alleges that Respondent was entitled to \$0 in FIP FAP SDA CDC AMP during this time period.
13. Respondent did did not receive an OI in the amount of \$14,120 under the FIP FAP SDA CDC MA program.
14. The Department has has not established that Respondent committed an IPV.
15. This was Respondent's first second third alleged IPV.
16. On December 6, 2012 the Department requested a hearing to establish FAP IPV and FAP overissuance.
17. 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 OI. BAM 700.

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. BAM 720.

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.

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. BAM 720.

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. 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 this case the evidence demonstrated that at no time did the Respondent fail to give requested information or give incorrect, inaccurate or incomplete information when requested by the Department. The Claimant provided his company S corp return, the check stubs indicating receipt of \$400 per week in wages and the Business Checking account.

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. The Department did not provide any evidence of fraud by the Claimant and

therefore its request for a finding of an Intentional Program Violation and one year disqualification is denied and Dismissed.

The Department established that from the period August 2007 through June 2008 Respondent was working and earning income but it did not adequately explain how it determined the income and did not consider a very important fact which was the Claimant not only reported income of \$700 from his company monthly but also advised the Department that he received \$400 per week in gross wages as self-employment income. It did not appear that the Department considered both income sources when it reviewed this case. Essentially the Claimant advised the Department in his application that his monthly income was \$2,300 per month. (\$700 and \$400 X 4 weeks). The Department, rather than considering this information instead concluded that the Claimant's income was \$5,000 per month and apparently determined it could ignore the information contained in the application. A review of the S corp tax return submitted with the application also indicated income of \$15,600 and ordinary business income of \$7,863 when added together total \$23,463. The Claimant's income reported on the application was \$27,600, slightly higher than the return figure but not \$60,000. Apparently the Department thought it could exclude all business expenses because it determined that the Claimant commingled expenses in his business account based on BEM 400. BEM 400 only applies to assets which must be considered when determining eligibility and whether the asset limit for a particular program is exceeded, thus disqualifying a request for benefits. A review of the provision relied on by the Department does not support such a conclusion. The Department could not apply BEM 400 to exclude the Claimant's business checking account as an asset as the policy in effect at the time of the overissuance did not include or apply to the FAP program. BEM 400, pp 15, (1-1-2010). Nor could the Department use this provision to exclude all business expenses and deem the gross earnings shown on the S corporation returns or the \$5,000 reported on the application as actual income and not consider the legitimate business expenses shown in the return. The Claimant also credibly testified that the food items that were shown for withdrawals from his business account were legitimate business expenses and that the payment of his tuition was taken as a loan from the corporation. Lastly, the FAP program had no asset limit disqualification or exclusion applied to it at the time of the alleged overissuance.

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 failed to establish an overissuance in part because of its assumption that the Claimant's income was \$5,000 per month. As previously indicated there is no basis for determining that the Claimant's income was \$60,000 per year. The Department provided no FAP budgets to demonstrate that based on the correct earned

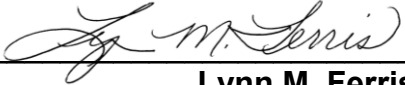
income what the correct FAP benefit amount, if any would be, a fact necessary to establish an overissuance. Based upon the evidence presented the Department did not provide any evidence that supported its contention that the Respondent based upon income reported was not entitled to FAP benefits in any amount. Under these circumstances and based upon the testimony of the parties and the documentary evidence, it is determined that the Department did not meet its burden of proof. Therefore, the Department is not entitled to recoup \$14,120 in FAP benefits it issued to Respondent from May 2009 through January 31, 2011.

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 and its request for a finding of IPV and a one year disqualification is DENIED AND DISMISSED WITH PREJUDICE.
2. Respondent did did not receive an OI of program benefits in the amount of \$14,200 from the following program(s) FIP FAP SDA CDC MA/AMP.

The Department is ORDERED to delete the OI in the amount of \$14,200 and cease any recoupment action and its request for hearing seeking a debt collection is DISMISSED WITH PREJUDICE.


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

Date Signed: May 31, 2013

Date Mailed: May 31, 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/cl

cc: 