

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

IN THE MATTER OF:



Reg. No.: 20137329
Issue No.: 1052; 3052
Case No.: [REDACTED]
Hearing Date: April 10, 2013
County: Wayne (41)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 10, 2013, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

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 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of

- | | |
|---|---|
| <input checked="" 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

- | | |
|---|---|
| <input checked="" 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)? |

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 1, 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 relevant periods at issue.
4. Respondent was was not aware of the responsibility to report changes in income, employment, and group size to the Department.
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 they are considering the fraud period for FIP is January 1, 2003 through February 28, 2003 and June 1, 2003 through June 30, 2004 (the "FIP fraud period").
7. The Department's OIG indicates that the time period they are considering the fraud period for FAP is February 1, 2003 through February 28, 2003; June 1, 2003 through May 31, 2004; and May 1, 2005 through October 31, 2005 (the "FAP fraud period").
8. During the alleged fraud period, Respondent was issued \$7334 in FIP FAP SDA CDC MA benefits from the State of Michigan, and the OIG alleges that Respondent was entitled to \$63 in such benefits during this time period.
9. During the alleged fraud period, Respondent was issued \$6106 in FIP FAP SDA CDC MA benefits from the State of Michigan, and the OIG alleges that Respondent was entitled to \$320 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$7271.
11. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$5786.
12. This was Respondent's first second third alleged FIP IPV.
13. This was Respondent's first second third alleged FAP IPV.

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

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 Mich Admin Code, R 400.3001 through R 400.3015.

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

- FAP trafficking OIs 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 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, or
 - the alleged fraud is committed by a state/government employee. [BEM 720 (February 1, 2013), p 10.]

Intentional Program Violation

Suspected IPV means an overissuance (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 720, p 1 (emphasis in original).]

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). 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 Department alleges that Respondent committed an IPV of the FIP and FAP programs because (i) she failed to report that her husband lived with her during the alleged fraud period and did not report his earned and unearned income during the alleged fraud period and (ii) she did not report her own earned income and her unearned income from Unemployment Compensation Benefits (UCB).

A client's FIP group must include the parents of the child who live together. PEM 210 (January 2004), p 2. Spouses who live together must be in the same FAP group. PEM 212 (January 2004), pp 1-2. In support of its allegation that Respondent failed to report her marriage and that her husband lived in her household, the Department presented a marriage license showing that Respondent and ██████████ were married on ██████████, and both reported their address at the ██████████ address that Respondent reported to the Department as her address of record during the alleged fraud period. The Department also presented a printout from the Secretary of State (SOS) showing that from January 25, 2006 to May 1, 2006, ██████████ continued to report the ██████████ address as his address. Furthermore, in the four applications Respondent filed with the Department between November 8, 2002, and May 20, 2005, Respondent identified herself as having never been married and did not include her husband as a member of her household. She also identified the father of two of her children as ██████████" ██████████ first name. One of the children has the same first and last name as Respondent's husband.

The foregoing evidence was sufficient to establish by a clear and convincing standard that, during the alleged FIP and FAP fraud periods, Respondent intentionally withheld information concerning the fact that she was married to ██████████, who was the father of children in her FIP group, and that ██████████ lived in the home with her and the children. Respondent also failed to report ██████████ income to the Department. The evidence presented established that Respondent withheld this information for the purpose of maintaining or increasing her FIP and FAP benefits. Thus, the Department

established that Respondent committed a FAP IPV and a FIP IPV based on her failure to disclose this information.

Disqualification

A court or hearing decision that finds a client committed an 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. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (October 1, 2009), 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 13.

Because the Department satisfied its burden of establishing that Respondent committed a first IPV of FIP benefits, Respondent is subject to a one year FIP disqualification. While the Department also established that Respondent committed an IPV of the FAP program, it did not present any evidence to establish that Respondent had a prior FAP IPV, as alleged. Thus, Respondent is subject to a one year disqualification of FAP benefits, the penalty for a first IPV.

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 (February 1, 2013), 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 (February 1, 2013), pp 1, 5; BAM 705 (February 1, 2013), p 5.

At the hearing, the Department alleged that Respondent was overissued \$5786 in FAP benefits and \$7271 in FIP benefits during the alleged fraud periods for each program. In support of its OI case, the Department presented FAP OI and FIP OI budgets for each of the months during the alleged fraud period for each program which showed the calculation of the overissuance. The Department testified that the only changes made to the budgets in calculating Respondent's eligibility and benefit amounts were the addition of the previously unbudgeted income the household received, an increase in the group size to include [REDACTED], and an increase in the maximum benefits the group was eligible to receive based on the increased group size. The budgets included [REDACTED]'s earned and unearned income and Respondent's earned income from [REDACTED] and [REDACTED] and unearned income from unemployment compensation benefits (UCB) that had not been previously budgeted.

FAP Recoupment

A review of the FAP OI budgets for each of the months of the alleged fraud period show that the Department properly calculated the OI amount for February

1, 2003 through February 28, 2003 and June 1, 2003 through May 31, 2004. However, a review of the FAP OI budgets for the months between May 1, 2005, through October 31, 2005, show that the Department used a group size of 4 to calculate the OI amount. The Department testified that during this period Respondent had reported a group size of 4. Therefore, in calculating the OI amount, the Department should have increased the group size to 5 to include Respondent's husband in the FAP group. Therefore, the Department failed to properly calculate the FAP OI amount for May 1, 2005 through October 31, 2005. Removing the \$1308 alleged OI during this period from the amount sought to be recouped results in a remaining FAP OI amount of \$4478.

FIP Recoupment

A review of the FIP OI budgets for each of the months of the alleged FIP fraud period (January 2003 through February 2003; June 2003 through June 2004) shows that the Department properly calculated the FIP OI amount.

Thus, the Department is entitled to recoup a total of \$11,749 from Respondent consisting of \$7271 in overissued FIP benefits and \$4478 in overissued FAP benefits.

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 concerning her FIP and FAP benefits.
2. Respondent did did not receive an OI of program benefits in the amount of \$11,749 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- delete the OI and cease any recoupment action.
- initiate recoupment procedures for the amount of \$ _____ in accordance with Department policy.
- reduce the OI to \$11,749, and initiate recoupment procedures for this amount in accordance with Department policy.

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It is FURTHER ORDERED that Respondent be disqualified from FIP for a period of 12 months and from FAP for a period of 12 months.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 5/3/2013

Date Mailed: 5/3/2013

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.

ACE/hw

cc:

