

**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.: 2013 60160
Reg. No.: 2013 60158
Issue No.: 3052
Case No.: ██████████
Hearing Date: October 10, 2013
County: Wayne County DHS (57)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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

Respondent(s) 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 July 30, 2013, to establish an OI of benefits received by Respondent(s) [REDACTED], her husband, as a result of Respondent having allegedly committed an IPV. The Department sought identical requests for Intentional Program Violations against the Claimant applicant [REDACTED] and her spouse, [REDACTED]. This Decision will address both individuals as the proofs submitted by the Department were identical for both cases. The Department conceded that it could only recoup once for any alleged overissuance.
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 Carmen Rodriguez was was not aware of the responsibility to report employment to the Department. It was not established that her husband [REDACTED] was aware of responsibility to report employment to the Department.
5. Respondent [REDACTED] had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement, but it is noted that the application in this case is in Spanish.
6. The Department's OIG indicates that the time period it is considering the fraud period is December 1, 2006 to December 31 2006 ([REDACTED]) \$114 overissuance. July 1, 2007 to September 30, 2007 ([REDACTED]) (fraud period) \$925 overissuance.
7. During the fraud period, Respondent was issued \$1039 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 \$1039.
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 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.

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 (1/1/13), p. 10.

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 (1/1/13), 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.

In this case, the Claimant [REDACTED] made an application for Food Assistance. The application was in the Spanish language dated June 12, 2007. The Claimant reported that her husband was working on the application. The Department sought to establish that either the Claimant Respondent [REDACTED] the Applicant, or her Spouse, [REDACTED], had committed an IPV. To that end the Department filed two separate cases in this matter. The Department's proofs did not establish as regards Claimant/Respondent [REDACTED] (2013-60158) that he had any knowledge of whether his sons were working or that he was advised by the Department, on the application or otherwise, that he had a responsibility to report employment for any other group member. His employment was reported. Therefore, the Department's allegations that [REDACTED] committed an IPV or otherwise was involved in fraudulent activity to obtain more food assistance than he was otherwise entitled is not supported by the evidence and the record presented.

The Claimant's son, [REDACTED] was not listed as employed at the time of the application and [REDACTED] signed the application. The Verification of Employment notes that [REDACTED]'s employment was expected to end as of June 15, 2007, thus the information reported on the application was correct. As regards [REDACTED] the Department seeks a finding of an intentional program violation and an over issuance from December 1, 2006 through December 31, 2006, dates prior to the application in question (June 12, 2007). Based upon the employment verification obtained by the Department it does appear that the Claimant's son [REDACTED] worked for the one month which the Department now seeks to claim caused an intentional program violation to occur. Based upon the evidence presented there is no fraud established for this one month. Additionally, the Department presented no information with respect to the time to establish that [REDACTED] was a FAP group member at the time (December 1, 2006 through December 31, 2006). However the employment verification

does show his address to be the same as the Claimant's. Therefore, it is concluded that he resided at the address and due to his age, was a mandatory group member, ([REDACTED]). Based on the evidence presented by the Department, the Department has clearly not established that an intentional program violation occurred during this time period and has not establish that the Claimant did any action which was an intentional act on Claimant's part to fraudulently obtain food assistance. The Department has not sought additional recoupment with regard to [REDACTED] s wages beyond the one month period.

As regards [REDACTED], one of the persons listed in the household, on the June 12, 2007 application, the Claimant indicated that he was not working as of June 19, 2007. [REDACTED] birth date is listed as [REDACTED] making him [REDACTED] years of age at the time of the application, and thus he was an adult and not a mandatory group member. BEM 212. He did not sign the application.

The Department sought verification of employment for [REDACTED] in September 2007. The Verification noted that this adult was employed during the period December 2006 through September 23, 2007. The period the Department claims the Claimant failed to report [REDACTED] s employment was July 1, 2007 through September 30, 2007. The verification of employment with regard to [REDACTED] does not provide any address associated with this individual with regard to his employment during that period. At the time of the application, it is noted that [REDACTED] did not sign the application and a note indicated by the caseworker noted that he had an H case. Further complicating the proofs in this matter was that the entire application in this case is in Spanish and thus the details and content of the application could not be read by either the undersigned or the Department Regulation Agent representative. Further, although the Claimant may have listed [REDACTED] as a household member there was no evidence or proof that the applicant [REDACTED] acknowledged that all persons listed on page 2 of the application cook and prepared food together.

The Department prepared FAP over issuance budgets with regard to the Claimant's failure to report [REDACTED] income. These budgets allegedly included as of July 2007 a group of five members. Exhibit 1 page 31. Prior to that date a budget prepared in December 2006 noted a group size of 4. No explanation with regard to how the group size was determined and why the group size was 4 for the prior time period and 5 subsequently was offered at the hearing. Based upon the evidence provided, it cannot be determined whether or not [REDACTED] was a group member during the period of the over issuance alleged in this case for him from July 1, 2007 through September 30, 2007 in the amount of \$925. Based on the evidence presented and the testimony of the Department, it is determined that the Department has not met its burden of proof to establish an intentional program violation or any evidence of intent to defraud the Department so as to obtain more food assistance benefits than the Claimant was otherwise to entitled to receive.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 13.

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 (1/1/13), 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 not establish that an intentional program violation has occurred and therefore is not entitled to any disqualification. Which it has sought to have imposed.

Overissuance

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.

In this case, the Department presented evidence that during the various time periods in question in this case her son, [REDACTED] was employed during the period December 1 through December 31, 2006. The Department alleges that the Claimant failed to report income from her son in the amount of \$114. Exhibit 1 pp. 29 – 30 and as regards the verification of employment has established that Claimant's son [REDACTED], whose address was listed on the verification as the household's address and who also was under the age of 20, was a mandatory group member and therefore, the Department has established an over issuance for the one month it has sought recoupment of over issued benefits. Based upon the budget presented, it is determined that the Department is entitled to seek a finding of over issuance of \$114 in FAP benefits with regard to this time period as a result of failure to report employment income. However, the \$114 amount sought by the Department does not meet the threshold limit for the time period in question and therefore no overissuance can be pursued by the Department as the threshold limit of \$125 has not been met.

PAM 715, the policy in effect at the time of the alleged overissuance provides with regard to Overissuance Threshold

- No client overissuance will be established if the OI amount is less than \$125, unless:
 - The client group is active for the OI program, **or**

- The OI is a result of a QC audit finding. PAM 715, PP 5 (10/1/06)

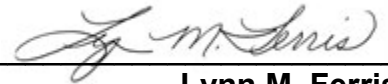
As regards the remainder of the over issuances claimed by the Department with regard to [REDACTED] the Department has failed to establish that the Claimant was a FAP group member at the time the alleged over issuance is claimed; namely, July 1, 2007 through September 30, 2007, and therefore is not entitled to seek an over issuance from the Claimant's FAP benefits during that time.

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. Respondent did did not receive an OI of program benefits in the amount of \$114 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to delete the OI and cease any recoupment action.



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

Date Signed: October 29, 2013

Date Mailed: October 29, 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: [REDACTED]
[REDACTED]
[REDACTED]