

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

IN THE MATTER OF:



Reg. No.: 2013-51690
Issue Nos.: 1052, 3052
Case No.: [REDACTED]
Hearing Date: October 3, 2013
County: Presque Isle

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 3, 2013 from Detroit, Michigan. The Department was represented by [REDACTED].

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

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 June 12, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by failing to report that the father of her minor children lived with her and that he had earned income.
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 all household 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 April 1, 2012, to March 31, 2013.
7. During the alleged fraud period, Respondent was issued \$3,224 in FIP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$80 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP benefits in the amount of \$3,144.
9. During the alleged fraud period, Respondent was issued \$3,303 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1,261 in such benefits during this time period.
10. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2,042.
11. This was Respondent's first second third alleged FIP IPV.
12. This was Respondent's first second third alleged FAP IPV.
13. 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

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 (February 2013), 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 (July 2013), 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 Department alleges that Respondent committed an IPV concerning her FIP and FAP benefits because she failed to report that the father of her minor children lived in the household with her and the children and the father had income that was not reported to the Department and considered in assessing her FIP and FAP eligibility and benefit amount. A minor child and the child's legal parents who live together are mandatory FIP and FAP group members and the earned income of all mandatory group members is considered in determining FIP and FAP eligibility. BEM 210 (October 2011 and January 2013), p. 4; BEM 212 (April 2012 and November 2012), p. 1; BEM 505 (October 2010), p. 1.

At the hearing, the Department presented (i) a redetermination signed by Respondent August 3, 2012, which listed Respondent and her three minor children as the household members and identified an [REDACTED] address; (ii) a document signed by Respondent in January 2012 for the Office of Child Support identifying the children's father; (iii) a statement from the father's employer that the father resided in housing it provided him between March 18, 2012, and March 5, 2013, at the same address identified by Respondent as her address; (iv) a Verification of Employment by the father's employer identifying earned income by the father between March 12, 2012, and February 28, 2013; (v) FAP OI budgets for the period between June 2012 and February 2013; and (vi) FIP OI budget for the period between June 2012 and January 2013.

The evidence presented was sufficient to establish that the father was living with Respondent between June 2012 and February 2013, and that he had earned income that was not reported during this period. Respondent's completion of the August 3, 2012, redetermination which failed to list the father as a household member and disclose his income was sufficient to establish that Respondent intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. However, as discussed below, the Department's OI budgets fail to establish that Respondent was overissued either FAP or FIP benefits as a result of Respondent's failure to report the father's income. Because overissuance of benefits is a condition of establishing an IPV, the Department has failed to present clear and convincing evidence to support its FIP IPV or FAP IPV cases against Respondent.

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 (May 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.

Because the Department has failed to establish a FAP IPV or a FIP IPV, Respondent is not subject to a disqualification under either program.

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

In this case, the Department alleged that Respondent received \$2,042 in FAP benefits between June 2012 and February 2013 that she was not eligible to receive and \$3,144 in FIP benefits between June 2012 and January 2013 that she was not eligible to receive. The Department presented FAP OI budgets and FIP OI budgets to support their calculation.

FAP OI Budgets

At the hearing, the Department testified that the only change made to the FAP OI budgets was the inclusion of the unreported income. A review of the evidence

after the hearing shows that Respondent's original FAP benefits were based on a household size of two. Although the August 3, 2012, redetermination showed four household members (Respondent and her three minor children), the EDG Search/Summary showed that there were only two eligible FAP members in Respondent's FAP group (two of Respondent's children), and the monthly FAP benefit Respondent received during the period at issue was the maximum available to a FAP group size of two with no income. See RFT 260 (October 2011 and December 2012), p. 1.

The FAP OI budgets presented by the Department did not increase the FAP group size from two to three to include the father. Because there was no evidence presented to establish that the father was a disqualified member of the group and, in fact, the evidence presented by the Department showed that he was an approved FAP member, when the Department prepared the FAP OI budget to include the father's income, it should also have increased the group size from two to three to reflect the inclusion of the father in the household. Because a FAP group with three members would be eligible for greater FAP benefits than a FAP group with two members, the FAP OI budgets do not accurately reflect the benefits Respondent's FAP group would be eligible to receive if the father was included in the group. Thus, the budgets are inadequate to establish that an OI of FAP benefits occurred. As such, the Department has failed to establish that it is entitled to an OI of any FAP benefits issued to Respondent during the period at issue.

FIP OI Budgets

With respect to the FIP benefits, the Department alleged that, after the father's income was taken into consideration, Respondent had excess income and was not eligible for any FIP benefits other than a \$10 monthly allotment, presumably for extended FIP (EFIP) benefits. See BEM 519 (October 2012 and January 2013), p. 1 (providing for \$10 monthly benefits to families for up to six month when loss of FIP eligibility relates to income from employment of a FIP program group member).

A review of the FIP OI budgets shows some errors and/or discrepancies which render the Department's calculation of the FIP OI amount uncertain. First, the Department failed to increase the FIP group size, and applicable maximum FIP payment standard amount, to take into consideration the addition of the father in the FIP group. Secondly, although the monthly unreported earned income in the FAP budgets for June 2012 to January 2013 is listed as \$884, the unreported earned income in the FIP budgets for the same months is listed as \$2,211, and the Department did not explain this discrepancy. While the FIP OI budgets establish income ineligibility based on earned income of \$2,211, Respondent *would* be FIP income-eligible if \$884 was the earned income amount, particularly once the FIP payment standard was increased to take into consideration the increased FIP group size. Because the budgets are inadequate to establish that an OI of FIP benefits occurred and the amount of any OI, the Department has

failed to establish that it is entitled to an OI of any FIP benefits issued to Respondent during the period at issue.

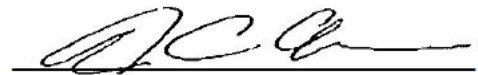
Because the Department has failed to establish an OI of FAP benefits of \$2,042 or an OI of FIP benefits of \$3,144, the Department is **not** entitled to recover any of the \$5,186 in benefits it alleges were overissued to Respondent.

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 FAP IPV or an FIP IPV by clear and convincing evidence.
2. Respondent did did **not** receive an OI of program benefits in the amount of \$5,186 from the following program(s) FIP FAP SDA CDC MA.

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



Alice C. Elkin

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

Date Signed: October 9, 2013

Date Mailed: October 10, 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/pf

cc:

