

**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.: 2013-48907
Issue No.: 1052; 3055
Case No.: ██████████
Hearing Date: October 30, 2013
County: Saginaw (00)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 30, 2013, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent and Enrique Martinez.

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 May 30, 2013, 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 issued by the Department.
4. Respondent was was not aware of the responsibility to report income and persons in the home.
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 for FIP to be December 1, 2010 to May 31, 2011, and FAP to be November 1, 2010 to March 31, 2012.
7. During the alleged fraud period, Respondent was issued \$8,331 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1,668 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 \$6,663.
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 (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 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 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. 12.

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. 7; 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 of her FAP/FIP benefits because she failed to report earned incomes and persons in the home to the Department, which caused an overissuance of FAP/FIP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (January 2010), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 7.

Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are **not** limited to, changes in persons in the home and address and shelter cost changes that result from the move. BAM 105, p. 7.

Additionally, for FAP cases, children include natural, step and adopted children. BEM 212 (September 2010), p. 1. Parents and their children under 22 years of age who live

together must be in the same group regardless of whether the child has his/her own spouse or child who lives with the group. BEM 212, p. 1.

Additionally, for FIP cases, when cash assistance is requested for a dependent child, or a dependent child is a mandatory FIP EDG member, all of the following individuals who live together are in the FIP EDG, regardless of program request status: dependent child and child's legal parent(s). BEM 210 (January 2010), p. 3.

The Department's OIG indicates that the time period it is considering the fraud period for FIP to be December 1, 2010 to May 31, 2011, and FAP to be November 1, 2010 to March 31, 2012.

At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report the earned income and persons in the home and that she intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP/FIP program benefits or eligibility. Specifically, the Department testified that the Respondent failed to report a person in the home (father of their child) and that the additional person had earned income in which Respondent failed to report. Additionally, the Department testified that Respondent failed to report her own earned income as well.

First, the Department presented Respondent's application dated August 23, 2010, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1. A review of the application indicated that the Respondent reported the father of their child as a household member and his employment income only. See Exhibit 1. The Department testified that the FAP application was denied due to the income of the father.

Second, the Department presented Respondent's subsequent application dated November 9, 2010. See Exhibit 1. A review of this application indicated that Respondent listed a different address as compared to the application dated August 23, 2010. See Exhibit 1. A review of the application made it difficult to determine if the address change is in regards to mailing or residential. See Exhibit 1. The application included additional notes by either the Respondent or DHS caseworker that stated Respondent moves from house to house. See Exhibit 1. Respondent also did not list the father of her child as a household member. See Exhibit 1. No employment income was listed either. See Exhibit 1.

Third, the Department presented Work First case notes, which indicated that the Respondent worked two jobs. See Exhibit 1. The Department also testified that the case notes did not indicate Respondent's employment in which it alleges she failed to report.

Fourth, the Department presented Respondent's Redetermination dated August 31, 2011. See Exhibit 1. A review of the Redetermination indicated that Respondent listed

the father of her child as a household member and that they were all living together as of February 2011. See Exhibit 1. The Respondent also listed that both herself and the father of her child were employed. See Exhibit 1. Under the special comments section, it appears the DHS worker notated that the Respondent started working on February 20, 2011. See Exhibit 1. Finally, the Redetermination indicated a change of address in which all three household members now resided in the address Respondent first listed in the application dated August 23, 2010. See Exhibit 1.

Fifth, the Department presented Respondent's employment records, which indicated that she was employed from February 2011 to March 2012. See Exhibit 1. The Department also presented the father of her child's employment records, which indicated that he was employed from May 2007, ongoing. See Exhibit 1.

At the hearing, Respondent first testified that the case notes were incorrect because she never worked at the two jobs indicated in the notes or attended the school listed. See Exhibit 1.

Second, Respondent provided testimony in regards to the application dated August 23, 2010. Respondent testified that at the time of the application all three group members (father, child, and Respondent) lived together. Then, Respondent testified that she moved out with her daughter to a new address, which was listed in the application dated November 9, 2010. Respondent testified that only she and her daughter lived together as of the application dated November 9, 2010. Respondent testified that she lived at her aunt's house and a friend's house.

Additionally, Respondent testified that she obtained a new job and moved back into the home with the father in mid-February 2011. The group size would have now been three again. Respondent testified that she spoke to her DHS caseworker and provided Respondent's and the father's check stubs to the Department in March 2011, which would have been before the August 2011 notification. Respondent testified that she also completed a prior Redetermination in March and/or April 2011, which reported all of the changes in question. This Redetermination would have occurred prior to the August 2011 Redetermination. It should be noted that the Respondent's alleged Redetermination was not provided at the hearing.

Third, Respondent testified that her employment time period was February 2011 to April 2012 and the father's employment was from May 2007 to October 2013.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP and FIP benefits. The evidence was not persuasive to show that Respondent intentionally withheld or misrepresented the income information and persons in the home for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP/FIP program benefits or eligibility.

The Department failed to present credible testimony or evidence that all three household members were living together as of the application dated November 9, 2010. On the other hand, Respondent credibly testified that only she and her daughter lived together at the time of November 2010 application.

Additionally, Respondent failed to provide evidence that a Redetermination was submitted in March and/or April 2011, which would have notified the Department of the changes timely. However, the Department presented credible evidence that Respondent first reported the changes in the Redetermination dated August 31, 2011. See Exhibit 1. This evidence is persuasive that the Respondent did not report the changes that occurred in February 2011 until August 2011. But, this evidence does not show that the Respondent intentionally withheld or misrepresented the information. Even though Respondent did not report the changes timely, she eventually notified the Department of the reported changes. Based on this information, Respondent did not intentionally withhold or misrepresent the income information/persons in the home as she eventually reported this information in August 2011.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the information/persons in the home for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP/FIP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP/FIP benefits.

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. 15.

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. 16. 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. 16.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP and FIP benefits. Therefore, Respondent is not subject to a disqualification under the FAP and FIP program.

Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report income and persons in the home. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (July 2013), p. 1.

A client error is present in this situation because Respondent reported changes more than five months after they occurred. See Exhibit 1. As stated previously, Respondent reported that all three household members were living together as of February 2011. Moreover, the Respondent also listed that both she and the father of her child were employed. See Exhibit 1. Respondent did not report these changes until five months after they moved in together. Based on this information, it is persuasive evidence that an OI is present due to client error. The evidence shows that the Respondent failed to report the changes timely to the Department, which caused an overissuance of FAP/FIP benefits.

In regards to policy, Respondent did not report the earned income changes within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7. Also, Respondent did not report the changes in persons in the home and address and shelter cost changes that result from the move in persons in the home within 10 days after the client is aware of them. BAM 105, p. 7. Both FIP and FAP programs required that all three household members were in the same group as of February 2011. See BEM 212, p. 1 and BEM 210, p. 3. Thus, an OI was present for FAP and FIP benefits.

Regarding client error overissuances, the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months before the date the OI was referred to the RS, whichever is later. BAM 715, p. 4. To determine the first month of the OI period (for OIs 11/97 or later) the department allows time for: the client reporting period; the full standard of promptness (SOP) for change processing; and the full negative action suspense period. BAM 715, p. 4. Based on the above policy, the Department would apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 715, p. 5.

The Department determined that the FIP OI period begin date is December 1, 2010, and the FAP OI period begin date is November 1, 2010. It is found that the Department applied the inappropriate OI begin dates for both programs. In consideration that the reported changes began in February 2011, it is found that the appropriate OI begin date is February 1, 2011.

Additionally, 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 group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

For FAP and FIP cases, if improper reporting or budgeting of income caused the OI, the Department uses actual income for the OI month for that income source. BAM 715, p. 7. The Department converts all income to a monthly amount. BAM 715, p. 7. An

exception for FAP only states that the Department does not convert the averaged monthly income reported on a wage match. BAM 715, p. 7. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 715, p. 7.

Also for FAP cases, if the FAP budgetable income included FIP/SDA benefits, use the grant amount actually received in the OI month. BAM 715, p. 8. The Department uses the FIP benefit amount when FIP closed due to a penalty for non-cooperation in an employment related activity. BAM 715, p. 8. Also, for client error OIs due, at least in part, to failure to report earnings, the Department does not allow the 20% earned income deduction on the unreported earnings. BAM 715, p. 8.

In regards to Respondent's FIP benefits, the Department presented OI budgets for February 2011 to May 2011. See Exhibit 1. The Department also presented OI budgets for FAP benefits for the time period of February 2011 to March 2012. See Exhibit 1. The monthly budgets were provided for the FIP and FAP programs using the employer's submitted documents. See Exhibit 1. A review of the OI budgets found them to be inaccurate because the Department failed to provide pay stubs and/or additional information on how it calculated Respondent's pay periods. The Department appropriately provided the father of her child's pay stubs, however, no such information was provided in regards to the Respondent. The Department did present a weekly hours worked and pay rate for Respondent's employment history. See Exhibit 1. However, when attempting to verify the pay date for the Respondent, different amounts were calculated than what the OI budget indicated.

Based on the foregoing information, the Department presented OI budgets that were not properly calculated. There is clearly an overissuance present, however, the Department will be ordered to recalculate the following overissuances: (i) FIP benefits time period of February 2011 to May 2011 and (ii) FAP benefits time period of February 2011 to March 2012.

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 by clear and convincing evidence.

The Department is ORDERED to

1. recalculate the following overissuances: (i) FIP benefits time period of February 2011 to May 2011 and (ii) FAP benefits time period of February 2011 to March 2012, in accordance with Department policy; and
2. notify the Respondent in writing of the FAP and FIP overissuance amount in accordance with Department policy.



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

Date Signed: November 14, 2013

Date Mailed: November 14, 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.

EJF/cl

cc: [REDACTED]
[REDACTED]