

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

IN THE MATTER OF:

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

Reg. No.: 2013-61519
Issue No(s): 1052; 3052
Case No.: ██████████
Hearing Date: November 4, 2013
County: Wayne (57)

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 November 4, 2013 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

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) and/or Food Assistance Program (FAP) 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 FIP and/or FAP?

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 10, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP and FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report change in household income.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Respondent applied for assistance from the Department in November of 2006.
7. Respondent's daughter began earning income in March of 2007.
8. Respondent removed her daughter from her case in November of 2007.
9. The Department's OIG indicates that the time period it is considering the fraud period is May 1, 2007 through October 31, 2007.
10. The Department substantiated its budgets with respect to FIP, but not with respect to FAP.
11. During the alleged fraud period, Respondent was issued FIP and FAP benefits.
12. A notice of hearing was mailed to Respondent at the last known address and 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, 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, 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, on November 1, 2006, Respondent applied for assistance. Official Notice is taken that with Respondent's signature on the assistance application, Respondent certified review and agreement with the sections in the assistance application Information Booklet, which include the obligation to report changes in one's circumstances. However, the Department must prove not only that Respondent was aware that she was to report her change of circumstances, but she specifically did not report her change of circumstances with the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 Respondent's daughter began receiving income in March of 2007. It is noted that at Respondent's next redetermination in November of 2007, Respondent did not include her daughter as part of her group. It is just as likely as not that Respondent always intended to report her daughter's income, but waited until the next redetermination. I am not convinced by clear and convincing evidence that Respondent did not report the income of her daughter with the purpose of preventing reduction of program benefits.

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, 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, Respondent is not disqualified from receiving FIP or FAP, as the Department has not shown by clear and convincing evidence that Respondent committed an IPV.

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, with regard to FAP, the Department shows budgets that reflect rent or mortgage amounts as \$0.00 for the months during the alleged fraud period of May 1,

2007 through October 31, 2007. The Department states in its remarks, "Customer reports a [sic] obligation of \$625.00 responsible for utilities. Customer states no one else in the home. Shelter verification questionable . No shelter allowed." However, it is likely that the Department based its decision regarding questionable shelter verification on the notes found in the November 2007 reapplication. (See Exhibit 1, p. 34: "Shelter obligation of \$625.00 responsible for utilities. No verification received." The November 2007 application is not applicable to the alleged fraud period. Rather, the November 2006 application is applicable to the alleged fraud period. The notes for the 2006 application do not reflect a lack of verification. (See exhibit 1, p. 26) Therefore, the Department should have included the housing obligation in its budget. Without the housing obligation included in the budget, it cannot be concluded that the Department properly determined that Respondent was issued an OI in FAP.

As to FIP, the employment verification (Exhibit 1, pp. 15-18) is consistent with the Department's FIP budgets for the period from May 1, 2007 through October 31, 2007. The Department has properly established that Respondent received an OI for FIP benefits in the amount of \$2,500.00.

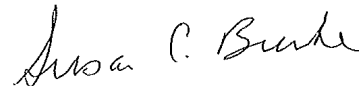
DECISION AND ORDER

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 not commit an IPV by clear and convincing evidence.
2. Respondent did not receive an OI in FAP benefits.
3. Respondent received an OI in FIP benefits in the amount of \$2,500.00.

The Department is ORDERED to

1. Delete the OI and cease any recoupment action with regard to FAP.
2. Initiate recoupment procedures for the amount of \$2,500.00 for the FIP OI, in accordance with Department policy.



Susan C. Burke
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 6, 2013

2013-61519/SCB

Date Mailed: November 6, 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.

SCB/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]