

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013-61522
Issue No.: 1000; 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 proper Notice of Disqualification Hearing with respect to the Family Independence Program (FIP)?
2. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
3. Did Respondent commit an Intentional Program Violation (IPV)?
4. Should Respondent be disqualified from receiving 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 August 8, 2013, to establish an OI of benefits for FIP and FAP 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 FAP benefits issued by the Department.
4. The alleged fraud periods regarding FAP are [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Exhibit 1, p.11)
5. The Department presented one assistance application, dated February 6, 2006. (Exhibit 1, pp. 16-23)
6. The Department presented unsubstantiated budgets.
7. A notice of hearing was mailed to Respondent regarding FIP and FAP at the last known address and was 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).

FAMILY INDEPENDENCE PROGRAM (FIP)

Subsequent to the scheduling of the hearing and prior to the hearing date, the Notice of Disqualification Hearing and accompanying documents that were mailed to Respondent at the last known address, and which constituted due notice, were returned to the Michigan Administrative Hearing System (MAHS) by the United States Postal Service as undeliverable.

Department policy dictates that when correspondence to a Respondent concerning an Intentional Program Violation (IPV) is returned as undeliverable, the hearing cannot proceed except with respect to the Food Assistance Program (FAP). Department of Human Services Bridges Administrative Manual (BAM) 720, p. 12. Because the hearing concerned FIP benefits, the hearing regarding FIP cannot proceed.

Therefore, the request for a disqualification hearing regarding FIP is **DISMISSED**.

FOOD ASSISTANCE PROGRAM (FAP)

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 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. 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, 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.

The Department has not presented clear and convincing evidence that Respondent was clearly and correctly instructed regarding her duty to report income with respect to the alleged fraud period from September 1, 2005 through November 30, 2005. The Department presented for examination an application for assistance (DHS-1171) dated February 9, 2006, which would not be applicable to the 2005 fraud period. (Exhibit 1, pp. 16-23, Item #1) As to the alleged fraud period of May 1, 2006 through June 30, 2006, the Department interviewed Respondent on August 5, 2009, at which interview Respondent stated that she was positive that she reported her income directly to her service worker. (Exhibit 1, p. 12) The Department's service worker was not present at the hearing to dispute Respondent's claim. In addition, the Department presented a Verification of Employment (Exhibit 1, p. 24), which would indicate that the Department was aware, perhaps from Respondent, that Respondent was employed. The Department therefore did not present clear and convincing evidence that Respondent committed an IPV.

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 FAP.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, the Department presented budgets, but did not substantiate how it obtained such figures as housing expense and medical expense that it used for its calculation. For instance, Exhibit 1, p. 31 indicates shelter expense (rent/mortgage) of \$0.00, but no documentation substantiates how the Department arrived at that figure. Without such

substantiation, it cannot be concluded that the Department correctly calculated Respondent's overissuance, if any.

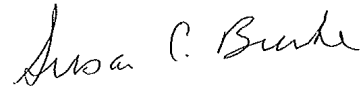
DECISION AND ORDER

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

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

It is FURTHER ORDERED that the Department's hearing request regarding FIP is DISMISSED without prejudice.



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

Date Signed: November 5, 2013

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]