

**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.: 2013-68109
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.

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 September 11, 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.
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 for FAP to be July 1, 2011 to January 31, 2012 and FIP to be July 1, 2011 to July 31, 2011.
7. During the alleged fraud period, Respondent was issued \$2,972 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$136 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 \$2,836.
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 her employment and wages 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 (June 2011), 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.

The Department's OIG indicates that the time period it is considering the fraud period for FAP to be July 1, 2011 to January 31, 2012 and FIP to be July 1, 2011 to July 31, 2011. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report her income 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.

First, the Department presented Respondent's application dated December 28, 2010, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1.

Second, the Department presented Respondent's State Emergency Relief (SER) application dated August 15, 2011. See Exhibit 1. A review of this document indicated that Respondent did not report any employment income. See Exhibit 1.

Third, the Department presented Respondent's application dated October 31, 2011. See Exhibit 1. A review of this document indicated that Respondent did not report any employment income. See Exhibit 1.

Fourth, the Department presented Respondent's SER application dated October 31, 2011. See Exhibit 1. A review of this document indicated that Respondent did not report any employment income. See Exhibit 1.

Fifth, the Department presented Respondent's Verification of Employment dated April 23, 2012. See Exhibit 1. This document showed that Respondent began work in May 2011 and ended employment in January 2012. See Exhibit 1.

At the hearing, Respondent testified that she submitted a previous Verification of Employment and paystubs in early June 2011. Respondent testified that she submitted her Verification of Employment and paystubs to the PATH program because it was required or she would be sanctioned. Then, Respondent testified that she then submitted her Verification of Employment and paystubs to her DHS caseworker in early June 2011. Respondent also testified that she submitted the second Verification of Employment and paystubs that the Department presented at the hearing dated April 23, 2012. It should be noted that the first Verification of Employment that Respondent is alleging was not presented at the hearing.

In regards to the SER application dated August 15, 2011, Respondent testified that she mistakenly did not report any employment income. See Exhibit 1. Respondent testified that her DHS caseworker called her questioning why she marked "no" to employment section, when DHS itself had on record she was working. Respondent testified that she provided paystubs from May 2013 again to her DHS caseworker and reapplied for SER assistance.

However, it was discovered during the hearing that Respondent did not report any employment income on her application dated October 31, 2011, which was during the alleged fraud period. See Exhibit 1. Respondent testified that she did not complete the application due to medical reasons and that her sister completed it.

Respondent also testified that the Verification of Employment dated April 23, 2012, was not completed by her boss at that time. Respondent agreed that she began in May 2011, but that she ended her employment in late February 2012.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP and FIP benefits. The evidence is sufficient to establish that Respondent failed to report her income and that she intentionally withheld or misrepresented her income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP and FIP program benefits or eligibility.

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).

The Department presented evidence to establish Respondent's intent during the alleged IPV usage. The Verification of Employment and attached documents dated April 23, 2012, showed that Respondent worked at the employer from May 2011 to January 2012. See Exhibit 1. These documents confirmed Respondent's unreported income during the alleged fraud period. Ultimately, Respondent did not credibly testify that she submitted the Verifications of Employment and paystubs in June 2011 and August 2011, which would have occurred earlier in the alleged fraud period.

Additionally, Respondent did not credibly testify that she mistakenly did not report any employment income on the SER application dated August 15, 2011. See Exhibit 1. This application occurred during Respondent's alleged fraud period. Respondent did not credibly testify because she had two subsequent applications in which she also did not report any employment income during the alleged fraud period. Both Respondent's applications dated October 31, 2011, indicated she reported no employment income. See Exhibit 1. It is possible that Respondent's sister completed the application, however, again, no income is reported on the applications. Moreover, Respondent's testimony is not persuasive due to the fact that there are three applications during the alleged fraud period that she reported no income. On the other hand, the applications presented by the Department are persuasive evidence to show that Respondent committed an IPV of her FAP/FIP benefits because she failed to report her employment and wages to the Department, which caused an overissuance of FAP/FIP benefits.

In summary, there was clear and convincing evidence that Respondent was aware of the responsibility to report her earned income and that she intentionally withheld or misrepresented her income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP/FIP program benefits or eligibility.

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 satisfied its burden of showing that Respondent committed an IPV concerning FAP/FIP benefits. Therefore, Respondent is disqualified from FAP and FIP benefits for 12 months. BAM 720, p. 16

Overissuance

As previously stated, the Department has established that Respondent committed an IPV of FAP and FIP benefits.

Under Department policy, the OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months (6 years) before the date the OI was referred to the RS, whichever is later. BAM 720, p. 7. To determine the first month of the OI period 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 720, p. 7. 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 720, p. 7.

Applying the above standard and in consideration of Respondent's starting to receive the unreported income in May 2011, the Department determined that the OI period began on July 1, 2011 for both FAP and FIP benefits. See Exhibit 1. It is found that the Department applied the appropriate OI begin date.

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 720, p. 9. The Department converts all income to a monthly amount. BAM 720, p. 9. An

exception for FAP only states that the Department does not convert the averaged monthly income reported on a wage match. BAM 720, p. 10. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 720, p. 10.

Also for FAP cases, if the FAP budgetable income included FIP/SDA benefits, use the grant amount actually received in the OI month. BAM 720, p. 10. The Department uses the FIP benefit amount when FIP closed due to a penalty for non-cooperation in an employment-related activity. BAM 720, p. 10. 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 720, p. 10.

In regards to Respondent's FIP benefits, the Department presented an OI budget for July 2011. Monthly budgets were provided for the FIP program using the employer's submitted documents. See Exhibit 1. A review of the OI budget found it to be fair and correct. The Department established that the overissuance for FIP benefits was \$403. Thus, the Department is entitled to recoup \$403 in FIP benefits.

In regard to Respondent's FAP benefits, the Department presented OI budgets from the period July 2011 to January 2012. See Exhibit 1. Monthly budgets were provided for the FAP programs using the employer's submitted documents. See Exhibit 1. A review of the OI budgets found them to be fair and correct. The Department established that from July 2011 to January 2012 that Respondent was issued \$2,569 in FAP benefits. After budgeting the income, the corrected total amount of FAP benefits issuance was \$136. The overissuance was established to be \$2,433 in FAP benefits. See Exhibit 1. Thus, the Department is entitled to recoup \$2,433 of FAP benefits.

In total, the Department is entitled to recoup \$2,836 in FAP/FIP benefits.

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.
2. Respondent did did not receive an OI of program benefits in the amount of \$2,836 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$2,836 in accordance with Department policy.

- It is FURTHER ORDERED that Respondent be disqualified from
 FIP FAP SDA CDC for a period of
 12 months. 24 months. lifetime.



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]