

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

**IN THE MATTER OF:**

[REDACTED]

Registration No: 201317407  
Issue No: 3055  
Case No: [REDACTED]  
Hearing Date: October 30, 2013  
Ingham County DHS

**ADMINISTRATIVE LAW JUDGE:** Suzanne D. Sonneborn

**HEARING DECISION**

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 hearing was held on October 30, 2013, at which Respondent appeared and provided testimony. Respondent's witnesses included [REDACTED] [REDACTED] and [REDACTED] all of whom provided testimony on Respondent's behalf. The Department was represented by [REDACTED] [REDACTED] a regulation agent with the department's Office of Inspector General (OIG).

**ISSUE**

Whether Respondent committed an intentional program violation (IPV) involving the Food Assistance Program (FAP) and whether Respondent received an over issuance of FAP benefits that the Department is entitled to recoup?

**FINDINGS OF FACT**

Based on the clear and convincing evidence pertaining to the whole record, the Administrative Law Judge finds as material fact:

1. The Department's OIG filed a request for hearing to establish an over issuance of FAP benefits received as a result of a determination that Respondent committed a first IPV in the program. The agency further requested that Respondent be disqualified from receiving further FAP benefits for a period of one year.
2. On [REDACTED] Respondent married [REDACTED] (Department Exhibit 9, p. 61)

3. On November 15, 2007, Respondent completed an assistance application (DHS-1171) and reported therein that her household membership included herself, her husband [REDACTED], and her four children. Respondent further reported that Mr. [REDACTED] was employed full-time with [REDACTED]. In signing the application, Respondent certified with her signature, under penalty of perjury, that all the information she had written on the form or told to a specialist was true. Respondent further certified with her signature that she received and reviewed a copy of the Acknowledgements, which include the obligation to report changes in one's circumstances within ten days. Respondent further certified with her signature that she understood she could be prosecuted for fraud and/or be required to repay the amount wrongfully received if she intentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause her to receive assistance she should not have received. (Department Exhibit 1, pp. 13-20)
4. On October 29, 2010 and November 1, 2011, respectively, Respondent completed two redeterminations (DHS-1010). In each redetermination, Respondent reported that her household membership included herself and her four children. Respondent further reported that her only income consisted of child support payments, \$[REDACTED] of which she received from Mr. [REDACTED]. In signing the redeterminations, Respondent certified with her signature, under penalty of perjury, that the redetermination had been examined by or read to her and, to the best of her knowledge, the facts were true and complete. Respondent further certified with her signature that she received a copy and reviewed the sections of DHS Publication 1010, Important Things About Programs & Services. (Department Exhibit 2, pp. 21-24; Department Exhibit 3, pp. 25-28)
5. On November 16, 2011, Respondent completed an assistance application for State Emergency Relief assistance (DHS-1514) and, in doing so, Respondent reported that her household membership included herself and her four children. In signing the application, Respondent certified with her signature, under penalty of perjury, that the application had been examined by or read to her and, to the best of her knowledge, the facts were true and complete. (Department Exhibit 4, pp. 29-35)
6. Respondent and [REDACTED] filed joint tax returns for 2006, 2007, 2008, 2009, and 2010 and filed separate returns for 2011 and, in all returns, reported their home address at [REDACTED] Michigan.
7. In Facebook postings on December 22, 2010, January 6, 2011, February 11, 2011, April 19, 2011, June 22, 2011, July 8, 2011, July 25, 2011, August 23, 2011, and September 17, 2011, Respondent references her

- husband [REDACTED] as being in her home with her. (Department Exhibit 11, pp. 70-125)
8. On September 27, 2012, Respondent requested that the Department discontinue all assistance, including her FAP benefits, for the reason that Respondent's boyfriend moved into her home and Respondent and her children were being added to his insurance. (Department Exhibit 5, pp. 36-37)
  9. On October 1, 2012, the Department obtained verification from [REDACTED] and [REDACTED] that Respondent's husband, [REDACTED] has been employed with [REDACTED] and [REDACTED] since January 1, 2008. (Department Exhibit 6, pp. 38-49; Department Exhibit 7, pp. 50-59)
  10. On October 3, 2012, the Department obtained verification from [REDACTED] that [REDACTED] address on record with his employer is [REDACTED], Michigan and that his wife, Respondent, is covered by his health insurance with [REDACTED] (Department Exhibit 8, p. 60)
  11. On October 3, 2012 and November 1, 2012, respectively, the Department obtained verification from the Michigan Secretary of State that Respondent and [REDACTED] both reported residency at [REDACTED] Michigan for driver's license identification purposes. (Department Exhibit 13, p. 148; Department Exhibit 14, p. 149; see also Lexis Nexis Report, Department Exhibit 12, pp. 126-147)
  12. As a result of Respondent's refusal or failure to properly and timely report her husband's membership in her FAP household group as well as his employment earnings, she received an over issuance of FAP benefits in the amount of \$19,420.00 for the time period December 1, 2008 through September 30, 2012. (Department Exhibit 10, pp. 62-69)
  13. Respondent was clearly instructed and fully aware, or should have been fully aware, of her responsibility to properly report all changes in circumstances, including her household group composition and household's receipt of earned income, to the Department within ten days of the occurrence, as required by agency policy.
  14. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with her reporting responsibilities.
  15. This was the first determined IPV committed by Respondent.

## 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.

In the present matter, the Department requested a hearing to establish an over issuance of FAP benefits, claiming that the over issuance was the result of an IPV committed by Respondent. Further, the Department asked that Respondent be disqualified from the FAP program for a period of one year.

Generally, a client is responsible for reporting any change in circumstances that may affect eligibility or benefit level, including a change in income amount, within ten days of the change. BAM 105, p 7. With respect to earned income, a client must report any of the following: starting or stopping employment; changing employers; change in rate of pay; and a 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. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMP), alimony, and child support payments.

The OIG will request an IPV hearing when:

- Benefit over issuances are not forwarded to the prosecuting attorney's office;
- Prosecution of the matter is declined by the prosecuting attorney's office for a reason other than lack of evidence, and
- The total OI amount for the FAP 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 or
- The alleged fraud is committed by a state/government employee. BAM 720, p 12.

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.

A 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 (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 CF R 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.

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 (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.

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, at the October 30, 2013 disqualification hearing, the OIG provided credible testimony and other evidence establishing that, on October 29, 2010, November 1, 2011, and November 16, 2011, Respondent completed two redeterminations and an SER application, respectively, – and, in each form, Respondent reported that her household membership included herself and her four children. The OIG further established that Respondent and her husband, [REDACTED], filed joint tax returns for 2006, 2007, 2008, 2009, and 2010 and filed separate returns for 2011 and, in all returns, reported their home address at [REDACTED] Michigan. The OIG further established that, in Facebook postings on December 22, 2010, January 6, 2011, February 11, 2011, April 19, 2011, June 22, 2011, July 8, 2011, July 25, 2011, August 23, 2011, and September 17, 2011, Respondent referenced her husband [REDACTED] as being in her home with her. The OIG further established that [REDACTED] has been employed with [REDACTED] and [REDACTED] since January 1, 2008. The OIG further established that his address on record with his employers is [REDACTED] Michigan and that his wife, Respondent, is covered by his health insurance with [REDACTED]. The OIG further established that Respondent and [REDACTED] both reported to the Secretary of State their address as being at [REDACTED] Michigan for driver's license identification purposes. Finally, the OIG established that Respondent failed to timely and accurately report her husband in her FAP household group as well as his employment earnings, as a result of which she received an over issuance of FAP benefits in the amount of \$19,420.00 for the time period December 1, 2008 through September 30, 2012.

Also at the hearing, Respondent testified that she did not report her husband being in her home because she and her husband were separated in late 2008/early 2009. Respondent further testified that, when they separated, [REDACTED] moved out of the home and stayed with friends or family or in his truck until their reconciliation in early November 2012. In support of Respondent's testimony, Respondent's witness, [REDACTED] testified that she knows Mr. [REDACTED] as not in Respondent's home during the time period in question because he stayed with her some times. Ms. [REDACTED] could not testify as to when or how long Mr. [REDACTED] stayed with her. Respondent's witness [REDACTED] similarly testified that Mr. [REDACTED] also stayed with her occasionally during his separation from Respondent but Ms. [REDACTED] also could provide no specifics as to when or how long Mr. [REDACTED] stayed with her. Respondent's witness, [REDACTED] testified that Mr. [REDACTED] never stayed with her during his separation from Respondent.

Respondent also produced three handwritten, unnotarized statements for admission at the hearing. These statements were purportedly prepared by

██████████ and ██████████ The statement by ██████████ dated October 29, 2013, reads:

I ██████████ can't testify to the fact I lived in my mom's home during her separation from ██████████, my step-dad. ██████████ was absent from the home during the separation from 2008 to 2012.

The statement from ██████████, also dated October 29, 2013, reads:

I ██████████ can and will testify if need be to the fact that ██████████ while separated from his wife did stay at my house with me on and off for several months from 2008 – 2012.

The statement from ██████████ dated October 28, 2013, reads, in relevant part:

I ██████████ state the fact that my wife ██████████ and I were separated and had an on and off relationship. I lived with family and friends and also stayed in my truck during our separation. I moved back into the home in November 2012.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds persuasive the fact that Respondent and her husband continued to report a shared residence not only in tax returns that they filed in 2009, 2010, and 2011, but in their driver's license registration with the Secretary of State, despite their alleged separation during this time period. This Administrative Law Judge likewise finds persuasive the fact that Richard Wolschleger maintained Respondent on his health insurance with his employer throughout their alleged separation. But perhaps most persuasive in this regard is the fact that, between December 2010 and at least September 2011, Respondent posted messages on Facebook referencing her husband ██████████ as being in her home. Of further note is a message Respondent posted on Facebook on March 22, 2011, wherein she acknowledged that she received income but didn't "want to say much here." (Exhibit 11, p. 119)

Certainly, Respondent did not report any income in her November 1, 2011 redetermination.

Against this backdrop, this Administrative Law Judge finds Respondent's hearing testimony that [REDACTED] did not live in Respondent's home during the alleged fraud period to be unconvincing and unreasonable. Significantly, none of Respondent's witnesses could provide any specific dates during which they testified that [REDACTED] stayed with them. Indeed, even [REDACTED] who did not attend the hearing, offered an unnotarized statement that failed to indicate when his alleged separation from Respondent began. Moreover, Respondent's daughter's statement that [REDACTED] was "absent from the home during the separation from 2008 to 2012" directly conflicts with Respondent's own Facebook postings.

This Administrative Law Judge further finds that Respondent was, or should have been, fully aware of her responsibility to timely report her husband's membership in her FAP household group as well as his employment earnings. Moreover, Respondent's signature on her assistance application established that she was, or should have been, fully aware that the intentional withholding or misrepresentation of information potentially affecting her eligibility or benefit level could result in criminal, civil, or administrative action. Finally, there was no evidence presented indicating that Respondent suffered from any physical or mental impairment that limited her ability to understand and fulfill her reporting responsibilities. See BEM 720, p 1.

Based on the credible and undisputed testimony and other evidence presented by the OIG, the Administrative Law Judge finds that the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter, resulting in an over issuance of FAP benefits in the amount of \$ [REDACTED] for the time period December 1, 2008 through September 30, 2012. Further, because the OIG established that this was Respondent's first IPV, the one-year disqualification period is appropriate.

### **DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, and for the reasons stated on the record, this Administrative Law Judge decides that Respondent committed an intentional program violation involving the FAP program and received an over issuance of FAP benefits in the amount of \$ [REDACTED]

It is therefore ORDERED THAT:

- The Department shall initiate recoupment procedures as a result of Respondent's intentional program violation in the amount of \$ [REDACTED] and



- Respondent is personally disqualified from participation in the FAP for a period of one year. The disqualification period will begin IMMEDIATELY as of the date of this order.

/s/ \_\_\_\_\_  
Suzanne

Department

\_\_\_\_\_  
D. Sonneborn  
Administrative Law Judge  
for Maura D. Corrigan, Director  
of Human Services

Date Signed: November 7, 2013

Date Mailed: November 7, 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 she lives.

SDS/hj

cc:

