

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

IN THE MATTER OF:



Reg. No.: 201357572
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: October 24, 2013
County: Oakland (03)

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 24, 2013 from Lansing, Michigan. The Department was represented by [REDACTED] [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent personally appeared and provided testimony.

ISSUES

1. Did Respondent receive an overissuance (OI) of 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 Food Assistance Program (FAP) benefits?

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 15, 2013 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2011 through March 31, 2013.
5. During the alleged fraud period, Respondent was issued [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
6. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED].
7. The Department OIG contends that Respondent is guilty of an IPV because, during the fraud period, she: (1) failed to report her earned income from employment and (2) falsely reported that her daughter was a household group member.
8. This is Respondent's first alleged IPV.

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 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 (7/2013), 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 (7/2013), p. 6; 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 OIG argues that Respondent is guilty of an IPV after she falsely reported that her daughter [REDACTED] was a household group member when her daughter resided in the state of Washington. The Department also contends that Respondent is guilty of an IPV after she failed to timely and properly report to the Department that she started working at [REDACTED]. Respondent advances several arguments in her defense. First, Respondent admits that her daughter, [REDACTED], did not reside with her in Michigan and attended the [REDACTED]. But Respondent contends that the Department mistakenly included Rachel as a household group member and that the Department, in a letter, acknowledged that [REDACTED], who was

█ years of age, was not eligible for FAP benefits. Respondent submits that she identified █ as a household group member because Respondent provides support with gas money and phone bills. According to Respondent, █ is still considered a part of her household and on the application she was simply showing that she continues to support her 2 children. Respondent specifically denied that she actually listed █ as "living with her" at any time. Respondent states that she reported to the Department that she had a temporary position with █ as early as August, 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). 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Both the Department and Respondent entered into evidence several records pertaining to this matter. The Administrative Law Judge reviewed all documents provided by both parties and has given full consideration to the testimony of the parties.

With regard to the IPV question, the record clearly shows that Respondent's daughter was not a member of her household during the fraud period (September 1, 2011 through March 31, 2013). On the Filing Form (DHS-1171) at page 20, Respondent listed █ as a household member. (Department's Exhibit 1, p 9) Respondent also listed █ as a household group member on page D of the Assistance Application (DHS-1171). (Department Exhibit 1, p. 13) In fact, Respondent specifically identified on question number 16 that █ needed food, medical and cash assistance. (Department Exhibit 1, p. 13) The record also contains a July, 2012 redetermination form that listed █ as a household member and asked Respondent to "cross out incorrect information and write the correct information in the space provided." Respondent did not cross out █'s name on this form. The Department has policies that govern a client's responsibilities with regard to proper and accurate reporting to the Department.

Department policy requires that clients must report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105. Clients are required to report changes within 10 (ten) days of receiving the first payment reflecting the change. BAM 105. Clients are also required to report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105. These changes include, but are not limited to, changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or

providers. BAM 105. Clients must also cooperate with the local office in determining initial and ongoing eligibility. BAM 105. This includes completion of necessary forms. BAM 105. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105.

Here, Respondent's explanation that she did not intend to convey that [REDACTED] physically resided with her in the home, but was essentially a member of Respondent's emotional household is disingenuous. Respondent's explanation for listing [REDACTED] as a household member on the filing form and on the assistance application is without merit. In this regard, Respondent's testimony is not credible. She is clearly in violation of BAM 105.

The evidence also shows that Respondent failed to timely and properly report her employment income to the Department. The record shows that Respondent worked at [REDACTED] (TCS) from June 25, 2012 through January 21, 2013. (Department's Exhibit 10, p. 52) However, Respondent's Change Report (DHS-2240) indicates that as of August 1, 2012, she had [REDACTED] income due and that her unemployment benefits had stopped. (Department's Exhibit 2, pp. 26-27).

With regard to Respondent's contention that the Department acknowledged that [REDACTED] was not eligible to receive benefits anyway, this Administrative Law Judge finds that Respondent is incorrect. The record shows that the Department mailed Respondent a Notice of Case Action (DHS-1605) which indicated that Respondent is ineligible for FIP benefits because [REDACTED] is an adult, but this does not apply to FAP.

This Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds that the Department has shown, by clear and convincing evidence, that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of FAP benefits or eligibility. Further, there is no evidence that Respondent had a physical or mental impairment that limited her understanding or ability to fulfill her reporting responsibilities.

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 (7/2013), 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 record shows that because this is Respondent's first FAP IPV, the 12 month (or 1 year) FAP disqualification period shall apply.

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, the material, substantial and competent evidence shows that Respondent received an OI of FAP benefits during the above fraud period.

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 commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of program benefits in the amount of [REDACTED] from the FAP program.

The Department is ORDERED to initiate recoupment procedures for the amount of [REDACTED] in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

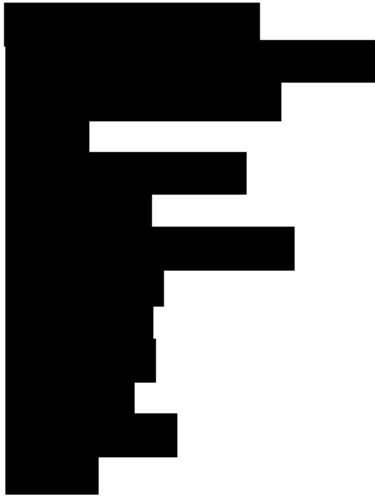
Date Signed: November 4, 2013

Date Mailed: November 5, 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.

CAP/aca

cc:

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