

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

IN THE MATTER OF:

██████████
████████████████████
██

Reg. No.: 2014-3416
Issue No.: 3005
Case No.: ██████████
Hearing Date: December 2, 2013
County: Oakland (63-03)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 December 2, 2013 from Detroit, Michigan. The Department was represented by ██████████
██

Participants on behalf of Respondent included: .

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) 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 October 8, 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 is July 1, 2011, to April 30, 2012.
7. During the alleged fraud period, Respondent was issued \$11,076 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$7,324 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 \$3,752.
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 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 (February 2013), 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 (July 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 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 failed to report his and his wife's self-employment income and their two children's employment income. In support of its case concerning Respondent's failure to disclose his and his wife's self-employment income, the Department testified that it had reviewed Respondent's 2011 personal tax return in which Respondent and his wife reported self-employment income. The Department testified that Respondent had not reported self-employment income to the Department. Respondent should have been aware that self-employment income would affect his FAP eligibility and benefit amount. The absence of any reported self-employment establishes, by clear and convincing evidence, that Respondent intentionally withheld information for the purpose of maintaining or preventing reduction of FAP benefits. Based on this evidence, the Department established, by clear and convincing evidence, that Respondent committed an IPV of his FAP 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 (May 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 established that Respondent committed a FAP IPV. Therefore, Respondent is subject to a one-year disqualification from the FAP program.

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. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 6; BAM 715 (February 2013), pp. 1, 5; BAM 705 (February 2013), p. 5.

The Department alleges that Respondent was overissued \$3,752 in FAP benefits between July 1, 2011, and April 30, 2012. In support of its case, the Department

presented FAP OI budgets for each of the foregoing months showing OIs to Respondent totaling \$3,752. A review of the budgets shows that the Department included Respondent's and his wife's unreported self-employment income for each of the months at issue, averaging the total self-employment each declared in their 2011 Michigan taxes over 12 months and reducing the amount by 25%, the deduction available for allowable expenses of producing self-employment income when the client has not verified actual expenses. See BEM 502 (October 2012), p. 3. The Department properly calculated the unreported self-employment income using this calculation. However, there was no evidence presented that Respondent and his wife had ongoing self-employment income for 2012. Because the 2012 FAP OI budgets continue to include unreported income for Respondent and his wife but there was no evidence presented that they had continuing self-employment income, any OI alleged for the period between January 1, 2012, and April 30, 2012, is not considered in the calculation of the OI the Department is entitled to recoup.

The remaining FAP OI budgets for July 1, 2011, to December 31, 2011, include the income received by Respondent's daughter, a member of the FAP group, as well as Respondent's and his wife's unreported self-employment income. Although the Department alleged at the hearing that the daughter had failed to report her income, in its FAP OI budgets, the Department states that "client did report this income" and applies the 20% deduction for earned income that is generally not available when a client has failed to report income. See BAM 720 (July 2013), p. 10. However, the Department is entitled to pursue an OI based on an incorrect prospective budget if (i) the client withheld information or provided false information, (ii) the Department failed to act on known information in a timely manner, or (iii) the Department made a mathematical error. BEM 505, p. 10. Because the original budgets used to calculate Respondent's FAP benefits did not include the daughter's income, the Department was entitled to include the daughter's income in calculating the OI.

The Department relied on the daughter's gross earned income as reported on the Work Number. The Work Number shows that the daughter received her first paycheck for the employer at issue on July 8, 2011. Under Department policy, the calculation of the first month of the OI requires that the Department apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. BAM 720, p. 7. For establishing an OI, the date the client received a payment is the date a client became aware of the change. BEM 505 (October 2010), p. 11. Taking into consideration the daughter's first paycheck on July 8, 2011, and applying the 10-day reporting period, the 10-day processing period and the 12-day negative action period results in the first OI month being September 2011. Because the FAP OI budgets for July 2011 and August 2011 include the daughter's income, only the FAP OI budgets for September 2011 to December 2011 are reviewed to determine the OI amount.

If improper reporting or budgeting of income cause the OI, the Department must use actual income for the OI month for that income source, converted to a monthly amount (except for FAP cases involving income reported on a wage match). BAM 720, p. 8; BEM 505, pp. 10-11. A review of the FAP OI budgets for September 2011 to December

2011 shows that the Department considered the daughter's actual income converted to an averaged monthly income. Further review of the FAP OI budgets for September 2011 through December 2011 shows that, when Respondent's and his wife's self-employment income and their daughter's employment income are included in the FAP budget, Respondent's group was eligible to receive only \$1,137 in FAP benefits but received \$3,145. Thus, the Department is entitled to recoup the \$2,008 in FAP benefits overissued to Respondent between September 2011 and December 2011.

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 \$2,008 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to reduce the OI to \$2,008 for the period September 1, 2011 to December 31, 2011, and initiate recoupment and/or collection procedures 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.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 11, 2013

Date Mailed: December 11, 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.

ACE/pf

2014-3416/ACE

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]