

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201335795
Issue No.: 1052, 3055
Case No.: [REDACTED]
Hearing Date: August 20, 2013
County: Macomb (12)

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and in accordance with 7 CFR 273.16 and Mich Admin Code, Rule 400.3130 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on August 20, 2013 from Lansing, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: [REDACTED] (Respondent).

ISSUES

1. Did Respondent receive an overissuance (OI) of Family Independence Program (FIP) and Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Family Independence Program (FIP) and 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 March 25, 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 FIP benefits during the period of March 1, 2011 through August 31, 2011. Respondent was a recipient of FAP benefits during the period of August 1, 2011 through August 31, 2011.
4. Respondent was aware of the responsibility to timely report to the Department any changes in household circumstances including changes in income and employment.
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 they are considering the FIP fraud period is March 1, 2011 through August 31, 2011. The Department's OIG indicates that the time period they are considering the FAP fraud period is August 1, 2011 through August 31, 2011.
7. During the alleged FIP fraud period, Respondent was issued \$2,169.00 in FIP benefits from the State of Michigan. During the alleged FAP fraud period, Respondent was issued \$757.00 in FAP benefits from the State of Michigan.
8. Respondent was entitled to \$60.00 in FIP benefits during this time period. Respondent was entitled to \$340.00 in FAP benefits during this time period.
9. Respondent did receive an OI in the amount of \$2,109.00 under the FIP program. Respondent did receive an OI in the amount of \$417.00 under the FAP program. The total OI for both FIP and FAP was **\$2,526.00**.
10. The Department has not established that Respondent committed an IPV.
11. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 1999 AC, Rule 400.3001 through Rule 400.3015.

An Intentional Program Violation (IPV) is a benefit overissuance (OI) resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. See Bridges Program Glossary (BPG) at page 24. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (2013).

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 their reporting responsibilities.

IPV is suspected when there is **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 (2013) 720.

The Department's OIG requests IPV hearings for cases when:

- benefit overissuances are not forwarded to the prosecutor,
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is \$1000 or more, or
- the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, 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.

A disqualified recipient remains a member of an active group as long as he/she lives with them. BAM 720. Other eligible group members may continue to receive benefits. BAM 720.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720. Clients are disqualified for periods of 1 (one) year for the first IPV, 2 (two) years for the second IPV, a lifetime disqualification for the third IPV, and 10 (ten) years for a concurrent receipt of benefits. BAM 720. If the court does not address disqualification in its order, the standard period applies. BAM 720.

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 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.

In the instant matter, the Department contends that Respondent failed to properly notify the Department of an increase in income after her part-time employment changed to full time employment. Respondent signed an Intentional Program Violation Repayment Agreement (DHS-4350) where she acknowledged responsibility to pay the OI amount for both FIP and FAP of \$2,526.00. However, Respondent disagrees that the OI was due to an IPV. Respondent testified that she promptly reported all changes in income to her caseworker.

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. The Department did not include an assistance application as an exhibit in the record. Instead, the Department relied upon a redetermination (DHS-1010) where Respondent indicated that she began working on October 29, 2010 at "██████" and worked 18 hours per week. The record contained a Semi-Annual Contact Report (DHS-1046) dated July 18, 2011, which indicated Respondent worked as a contract employee/breastfeeding peer counselor at ██████ on a part-time basis working 40-50 hours every two weeks. The DHS-1046 indicated that Respondent

properly indicated that the household gross income used in her FAP budget was \$540.00 and had changed by more than \$100.00.¹ The record also contains a Verification of Employment (DHS-38) which indicated that Respondent worked as a counselor, 40 hours per pay period (biweekly) and began working on February 1, 2011. Attached to the DHS-38 was a check/direct deposit register which showed Respondent's hours and earnings from February 1, 2011 through December 31, 2011. The register revealed that Respondent was paid biweekly and that her hours fluctuated. During some of her two-week pay periods, Respondent worked 40 hours and on other occasions, she would work as much as 71 hours.

As indicated above, there must be "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." See BAM 720. While Respondent is responsible for repayment of the \$2,526.00 FIP and FAP OI, there is not clear and convincing evidence in this record that the OI was the result of an IPV. In the present case, this Administrative Law Judge finds that the evidence was not clear and convincing that Respondent acted intentionally or that she misrepresented the changes in her employment or income situation to the Department for the purpose of obtaining or maintaining her FIP and FAP benefits. There is less evidence of the presence of an IPV as there is evidence of a client error. Department policy cited above requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 (ten) days. This Administrative Law Judge has no reason to find that Respondent's testimony that she contacted her caseworker when her hours changed is not credible.

This Administrative Law Judge therefore concludes that the Department has not shown, by clear and convincing evidence, that Respondent committed an intentional violation of the FIP and FAP programs. However, because Respondent signed the repayment agreement, she is responsible to pay the Department for the \$2,526.00 FIP and FAP overissuance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, concludes that:

1. Respondent did not commit an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$2,526.00 from the FIP and FAP programs.

The Department is ORDERED to initiate recoupment procedures for the amount of \$2,526.00 in accordance with Department policy.

¹ Although both the "yes" and "no" boxes were checked, this ALJ finds that Respondent did properly and timely report the change in income on this particular form.

IT IS SO ORDERED.

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

Date Signed: August 26, 2013

Date Mailed: August 28, 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:

