

**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 60072
Reg. No.: 2013 60154
Issue No.: 3052
Case No.: ██████████
Hearing Date: October 10, 2013
County: Wayne (57)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 10, 2013 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

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 July 30, 2013, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The Department's OIG filed a hearing request on July 30, 2013, to establish an OI of benefits received by Respondent(s) [REDACTED], his wife, as a result of Respondent having allegedly committed an IPV. The Department sought identical requests for Intentional Program Violations against Respondents, [REDACTED] [REDACTED]. This Decision will address both individuals as the proofs submitted by the Department were identical for both cases. The Department conceded that it could only recoup once for any alleged overissuance.
3. Respondent, [REDACTED], signed an 1171 application on March 2, 2004 and subsequently added his wife to the application when he married. The Respondent's wife signed the application on March 19, 2004. At the time of the application modification, it was apparent that the Claimant was not working.
4. A verification of employment was provided to the Department on May 2, 2005 with Respondent [REDACTED]'s dates of employment. Respondent began employment July 2004 through March 18, 2005. Exhibit 1, pp. 16, 17.
5. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
6. Respondents were recipients of FIP FAP SDA CDC MA benefits issued by the Department.
7. Respondent [REDACTED] was was not aware of the responsibility to report changes in household income and starting of employment.
8. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
9. The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2004 to February 28, 2005 FAP (fraud period).
10. During the fraud period, Respondent was issued \$1629 in FIP in FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$116 in such benefits during this time period.
11. The Department alleges that Respondent received an OI in FIP FAP (\$1513) benefits in the total amount of \$1513.

12. This was Respondent's first second third alleged IPV for both FIP and FAP benefits.
13. 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 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 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 (1/1/13), 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 (1/1/13), 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, [REDACTED] was the applicant for FAP benefits. The application was dated and signed by [REDACTED] on March 2, 2004. On March 19, 2004 because he married, the Respondent's wife signed the application on March 19, 2004. The Respondent [REDACTED] correctly reported that he was working on the application. The Department sought to establish that the Respondent [REDACTED] the Applicant, and his Spouse, [REDACTED], had committed an IPV. To that end the Department filed two separate cases in this matter. The Department's proofs did not establish that Respondent [REDACTED] (2013-601548) had any knowledge of her specific responsibility to report changes or was given a booklet or otherwise advised by the Department that she had a responsibility to report employment for any other group member. Therefore, the Department's allegations that [REDACTED] committed an IPV or otherwise was involved in fraudulent activity to obtain more food assistance than she was otherwise entitled is not supported by the evidence and the record presented. The facts were that [REDACTED] was not working at the time [REDACTED] signed the application.

In this case, the evidence presented by the Department clearly demonstrated that during the alleged fraud period Respondent [REDACTED] received earned income from employment due to his employment with Community Development Outreach. As evidence of employment, the Department presented a Verification of Employment provided by the Respondent's employer showing Respondent [REDACTED] weekly earnings beginning in September 2004 through February 28, 2005. Exhibit 1, pp. 16,17. At no time during the fraud period did the Respondent, [REDACTED] report receipt of income from employment so that his food assistance could be adjusted and the income included in the FAP benefit calculation. The evidence clearly established that during September 1, 2004 through February 28, 2005 the Respondent, [REDACTED] received more FAP benefits than he was otherwise entitled resulting in an over-issuance of \$1513. Based upon the evidence presented and the budgets that were reviewed to determine the amounts of the over-issued benefits, it is determined that the Department used the correct earned income for employment. Failure to report receipt of income from employment and starting of employment resulting in a change of income over the 6 month period in question clearly established an intentional program violation occurred as a result of the Respondent's conduct. The Respondent clearly received more benefits than he was otherwise entitled to or would have received had he reported the income.

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 (1/1/13), 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 clearly established that an intentional program violation occurred due to Respondent [REDACTED] failure to report receipt of employment over a 6 month period. The Department also established that this was the Respondent's first violation for FAP benefits; therefore, the Department has established its request for disqualification.

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 budgets for FAP benefits were reviewed for the periods in question. The overissuance summary for the months in question was also provided. The review of the budgets indicated that the Department properly calculated the earned income amounts including the correct employment income received bi-weekly, and which were

received during the period. Based on the review of the budgets the Department has established that it was entitled to an over-issuance of \$1513 for FAP benefits. Exhibit 1 pp. 26 – 31. It is noted that the Department amended the requested over-issuance amount at the hearing to account for a typographical error as the amount of the overissuance stated was \$1629 instead of \$1513.

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, if any, concludes that:

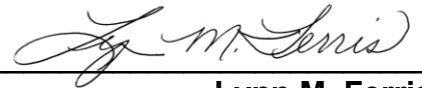
1. Respondent did did not commit an IPV by clear and convincing evidence.
2. Respondent did did not receive an OI of program benefits in the amount of \$1513 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

initiate recoupment procedures for the amount of \$1513 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.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 1, 2013

Date Mailed: November 1, 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.

LMF/cl

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