

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

IN THE MATTER OF:



Reg. No.: 2014-26766
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: April 15, 2014
County: Macomb #36

ADMINISTRATIVE LAW JUDGE: Dale Malewska

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 April 15, 2014 from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Appearing late for hearing – she had no witnesses.

ISSUES

1. Did Respondent receive an over-issuance (OI) of
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medicaid 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 February 13, 2014, to establish an OI and recoupment of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that the 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 aware of the responsibility to not engage in unauthorized transactions.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. She was a competent advocate in her own defense.
6. The Department's OIG indicates that the time period it is considering the fraud period is August 2011 through December 2011.
7. During the fraud period, Respondent was issued \$ [REDACTED] in FIP FAP SDA CDC MA benefits by the State of Michigan.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$ [REDACTED]
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 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 \$ [REDACTED] or more, or
 - the total OI amount is less than \$ [REDACTED], 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 (7-1-2013), p. 12.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The Respondent intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (7-1-2013), p. 7; BAM 720, p. 1.

An IPV also requires that the Department establish by clear and convincing evidence that the Respondent 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; 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 established that the Respondent was aware of her responsibility to timely and accurately report to the Department any and all changes – including *employment, other benefits, and those living in her home*. Department policy requires the beneficiary to report any significant change in circumstance, under pain of perjury, that affects eligibility or benefit amount within 10 (ten) days. See BAM 105

The Respondent's threshold signature on her application for assistance could certify awareness that fraudulent participation in the FAP program might result in criminal or civil or administrative claims. However, in this case production of that record was not strong evidence of an intention to commit fraud in light of the Respondent's credible testimony.

The Respondent honestly reported her job, her income and the disability benefits received by [REDACTED] - as well as listing her [REDACTED] home. Exhibit #1, pages 6 – 24. The Respondent testified that she has been a long time recipient of assistance and knows the rules, stating; [REDACTED].” See Testimony.

She added that her [REDACTED] was “... [REDACTED]” and had bounced from “... [REDACTED].” She does not know his whereabouts – but acknowledged that when he worked at [REDACTED] he lived with his [REDACTED].

She explained that this [REDACTED] used her address as a work contact and that he did so without her knowledge or consent.

She said she was submitting documents to DHS, on an unrelated matter, when she picked up what she thought was “a piece of mail” and accidentally submitted it to DHS reviewers. It was a copy of a [REDACTED] – showing the Respondent's address – there was no testimony from either party if the address appeared on an envelope or simply the [REDACTED].

The Respondent acknowledged that the [REDACTED] would show up on occasion for [REDACTED].

On review, the only evidence brought by the Department to establish an intentional program violation by the Respondent was a lone item – a [REDACTED] address - later indicating approximately [REDACTED].

[Exhibit #1, pp. 28-29]. This was good evidence to arouse the suspicion of an investigator – but standing alone - it was not sufficient evidence to prove a program violation – and it certainly lacked the requisite weight to satisfy the clear and convincing evidentiary standard recited above.

The Respondent's unsworn statement referenced by the Department witness claimed that she *allowed* the use of her address – yet the statement itself only quotes the Respondent referencing "... [REDACTED]" and their [REDACTED]. Her testimony, under oath, that he took the address without her consent or knowledge carried more weight on review.

There was no evidence that the Respondent intentionally failed to report anything or that she gave incomplete or inaccurate information on her DHS 1171 application. Furthermore, she would have no duty to report the absence of an [REDACTED] who did not live in the residence to anyone and the her later discovery of a purloined address¹ is not a significant event affecting her eligibility.

Disqualification

A court or hearing decision that finds a Respondent committed IPV disqualifies that Respondent from receiving program benefits. BAM 720, p. 12. Disqualification must be proven with clear and convincing evidence - a threshold not met today. The evidence actually supported the Respondent's integrity on application [DHS 1171] and bolstered her credible testimony. Accordingly, the ALJ lacks a clear and firm belief that a program violation took place.

Over-issuance

When a Respondent 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, there was insufficient evidence to establish an OI as the Respondent had no duty to report her son's income – because he did not live in her home.

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. The Department has established by clear and convincing evidence that Respondent did not commit an intentional program violation (IPV).

¹Based on this record the "address" could have just as [REDACTED]
[REDACTED] See Exhibit #1 at page 28.

2. Respondent did not receive an OI of program benefits in the amount of \$ [REDACTED] from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to delete the OI and cease any recoupment action.



Dale Malewska
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 4/23/14

Date Mailed: 4/24/14

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.

DM/tb

cc:

[REDACTED]