

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

IN THE MATTER OF:



Reg. No.: 2014-30959
Issue No(s): 3005
Case No.:
Hearing Date: April 29, 2014
County: Ingham

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 29, 2014 from Lansing, Michigan. The Department was represented by , Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: The Respondent 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 January 21, 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 an apparent temporary 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 February 1, 2006 through March 31, 2008.
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 is also suspected for a Respondent 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 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 has not established that the Respondent was aware of her responsibility to timely and accurately report to the Department any and all changes – including her *name*. Department policy requires the beneficiary to report any change in circumstance that affects eligibility or benefit amount within 10 (ten) days. See BAM 105

The Respondent's threshold signature on her application for assistance suggests that she was aware that fraudulent participation in the FAP program could result in criminal or civil or administrative claims to be brought against her. However, the Department failed to present the entire DHS application – omitting the section where the Respondent might identify any permanent or temporary mental disability – perhaps sustained as a result of the [REDACTED].

The evidence brought today also establishes that the Respondent did have a name change – if you examine pages 14 and 24 of the Department's exhibit. The Department's testimony that the name change by [REDACTED] marriage at pages 14 and 26 did not appear - as there was no page 26 in this oddly numbered exhibit. The Respondent admitted [REDACTED] so that would explain the name variation found on page 24 of the Department's exhibit – particularly when compared with the [REDACTED].

The Respondent's testimony was compelling - she sustained an apparent [REDACTED] [REDACTED]. When she was approached by DHS while a fresh victim of spousal abuse she took what she could for her protection and that of her children – time passed and she [REDACTED]. The concept of reporting the resulting name change escaped her. [Note that the worker filling out her application documented that she could not complete the application herself]. See Exhibit #1 at page 19.

In light of the failure of the Department's proofs to establish a subsequent marriage or some discernable paper trail within their exhibit - they have failed to preponderate their burden of proof with clear and convincing evidence.¹ However, it would appear from the

¹ See In Re Martin, 450 Mich 204 at page 227 (1995) "We agree that the clear and convincing evidence standard, the most demanding standard applied in civil cases..."

testimony that both parties agree that an OI of benefits has occurred. The Respondent's testimony that this was not an intentional act of omission was clearly established through her credible testimony.

The ALJ believes that the Respondent may well have had either a temporary physical or temporary mental impairment that limited her ability [on ██████████] to understand her reporting requirements.

Disqualification

A court or hearing decision that finds a Respondent committed IPV disqualifies that Respondent 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.

Respondents 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 Respondent is otherwise eligible. BAM 710 (7-1-2013), p. 2. Respondents 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 does not establish that the Respondent intentionally committed an IPV.

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, the record demonstrates that the Respondent received an OI of FAP in the amount of \$ ██████████

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).
2. Respondent did receive an OI of program benefits in the amount of \$ ██████████ from the following program(s) FIP FAP SDA CDC MA.

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



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

Date Signed: 5/29/14

Date Mailed: 5/29/14

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]