

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

IN THE MATTER OF:



Reg. No.: 20149749
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: February 26, 2014
County: Branch (00)

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 February 26, 2014 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent.

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 the Department establish, by clear and convincing evidence, that Respondent committed 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 November 5, 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 October 1, 2012 to May 31, 2013 (fraud period).
7. During the alleged fraud period, Respondent was issued \$2454 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 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 \$2454.
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 (July 2013), p. 12.

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. 7; 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 argued that Respondent's intent to mislead the Department was established by the Semi-Annual Contact Report she submitted to the Department on November 7, 2012. In the Semi-Annual Contact Report, in response to the question of whether her household's gross earned income changed by more than \$100 from \$2541 (the amount used by the Department to calculate Respondent's FAP budget), Respondent indicated "no." However, the employment records the Department retrieved from Respondent's husband's employer showed that Respondent's husband's gross monthly income from July 2012 through November 2012, when Respondent submitted her Semi-Annual Contact Report, exceeded \$2641. Therefore, Respondent's response in the Semi-Annual Contact Report was not accurate.

Respondent testified at the hearing to explain her actions. Respondent's testimony established that English was not her first language and that she had had a friend assist her in completing the Semi-Annual Contact Report. It was clear from Respondent's testimony that she did not understand how she had erroneously completed the Semi-Annual Contact Report.

Respondent's testimony was sufficient to establish that she did not intentionally misrepresent or withhold information for the purpose of maintaining FAP benefits or eligibility. As such, the Department has failed to establish that Respondent committed an IPV of her 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 (July 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 failed to satisfy its burden of showing that Respondent committed a FAP IPV. Therefore, Respondent is **not** subject to a 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 the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (July 2013), pp. 1, 6; BAM 705 (July 2013), p. 6.

In this case, the Department contended that Respondent had been overissued FAP benefits totaling \$2454 for October 2012 through December 2012 and February 2013 through May 2013. Under Department policy, the calculation of the first month of the OI period requires that the Department apply the 10-day client reporting period, the full 10-day processing period, and the full 12-day negative action suspense period. BAM 720, p. 7; BAM 220 (November 2012), pp. 6, 9. The Department established that Respondent was a simplified reporting FAP client with a group size of six. As a simplified reporting client with a group size of 6, Respondent was required to report within 10 days of a month when her household's gross income for the preceding month exceeded the applicable simplified reporting income limit, which for Respondent was \$3356 beginning October 1, 2012. RFT (October 2012), p. 1; BAM 200 (December 2011), p. 1. The employment records from Respondent's husband's employer establish that Respondent's household's income exceeded the simplified reporting limit in August 2012. As such, Respondent was required to report the change by September 10, 2012, and the OI period, taking into consideration the processing period and the negative action suspense period, began November 2012.

The Department acknowledged that Respondent was not overissued FAP benefits for January 2013 and presented FAP OI budgets for November 2012, December 2012 and January 2013 through May 2013. A review of the FAP OI budgets for each of these months shows that, when Respondent's husband's gross monthly employment income is considered in the calculation of Respondent's FAP eligibility, her FAP group was not net income eligible for any FAP benefits. BEM 550 (February 2012), p. 1; RFT 250 (October 2012), p. 1. Therefore, Respondent was not eligible for any of the FAP benefits issued to her in November 2012, December 2012, and February 2013 through May 2013. The benefits inquiry summary presented by the Department shows that the Department issued \$2040 in FAP benefits to Respondent during those months. Thus, the Department is eligible to recoup or collect from Respondent overissued FAP benefits totaling \$2040 for benefits issued between November 1, 2012 and May 31, 2013.

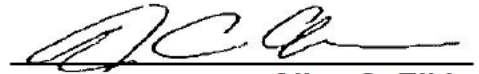
DECISION AND ORDER

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. The Department has **has not** established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent **did** did not receive an OI of program benefits in the amount of \$2040 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to reduce the OI to \$2040 for the period October 1, 2012 to May 31, 2013, and initiate recoupment/collection procedures in accordance with Department policy.



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

Date Signed: March 17, 2014

Date Mailed: March 17, 2014

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.

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