

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

IN THE MATTER OF:



Reg. No.: 2013-67006
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: April 15, 2014
County: Jackson

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: The Respondent had no witnesses.

ISSUES

1. Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) 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 Food Assistance Program (FAP)?

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 September 5, 2013, 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. He acknowledged that obligation in his testimony.
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 February 1, 2011 through December 31, 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. The alleged OI for FAP was \$ [REDACTED]
10. The alleged OI for Medicaid was \$ [REDACTED]
11. This was Respondent's first alleged IPV.
12. 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 Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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. 6; 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 Respondent acknowledged that he was aware of his responsibility to timely and accurately report to the Department any and all changes – including *employment and other benefits*. 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. They provided documentation that the Respondent so acknowledged that duty. Exhibit #1, page 20, See BAM 105

The Department argument against Respondent for failure to report employment and other benefits is as follows:

- The Respondent applied for assistance per DHS 1171 on [REDACTED].
- He [REDACTED] Income job title as “[REDACTED]” [Exhibit #1, page 15]
- On [REDACTED]
- There was an increase in the number of hours worked. *But see*, Exhibit #1, pp. 15 and 24.
- These changes were not reported to DHS within 10 days.
- Thus, the Respondent was over issued FAP and Medicaid benefits for the period of February 1, 2011 through December 31, 2011.

The Department’s theory of the case failed on two levels; first, there was a lack of clear and convincing evidence² to establish that a violation of policy actually took place. Their own documentary evidence said otherwise; second, in order to meet its burden of proof under that standard of review the Department is required to meet an “...exacting measurement.” There were simply too many errors in the record for the Department to prevail.

The Respondent testified that he did report income and pay, but that he never considered the change in status to [REDACTED] as a significant event. “I was still part-time and never in a million years would have thought I was [defrauding the system]”

On review, there appears to be little evidence to support the Department’s position by way of documentation. The Respondent’s old classification and his new classification

¹Note: actually “[REDACTED]” Exhibit #1, page 26.

²See In Re Martin, 450 Mich 204 at page 277 (1995)(“We agree that the clear and convincing evidence standard, [is] the most demanding standard in civil cases...”

still reported [REDACTED]. He still earned a minimum wage – in fact the Department’s evidence over-stated his hourly wage by a dollar - which for some reason included “tips.”³ The college offered a health plan to its permanent employees, but the plan was not available to the Respondent; there was no 401K plan for the Respondent and the Department provided no examples of the Respondent’s *work study* pay stubs. Although they provided many of the [REDACTED] as evidence - absent the work study equivalents any attempt to conduct a before and after review was impossible. See Exhibit #1, at pages 15, 24, 25 and 28 – 49.

Furthermore, since the Department reported the wrong hourly wage throughout its exhibit any derivative analysis thereof on OI/UI budget projection was erroneous.

I thought the Respondent’s testimony was credible. All the reporting triggers detailed in the DHS 1171 [at page 13] are stated in the negative. The Respondent’s movement to permanent [part time] was a *positive* thing – but in reality - it was insignificant.

It was not a significant event - the total hours were the same; [REDACTED], the wage was “minimum” - [REDACTED]? The [REDACTED] might have been a new classification for purposes of [REDACTED] – but this was the same job to the Respondent. His actions in no way demonstrated any intention deceive or to mislead the Department

Based on this record - with these facts - self-reporting under DHS 1171 would have been a meaningless exercise.

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 evidence⁴ - a threshold not met today. The Department’s Exhibit more closely supported the Respondent’s testimony.

In this case, the record demonstrates that Respondent is not guilty of an IPV.

Over-issuance

In this case, the evidence neither established a failure to report nor the corresponding FAP-Medicaid OI.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP and Medicaid benefits. Therefore, Respondent is not subject to a disqualification under the FAP or Medicaid program.

³Not captured for the OI/UI budget analysis.

⁴Subject to the more exacting measurement of persuasion – clear and convincing proof. McCormick, Evidence (4th ed) §340, page 575

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 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: 6/5/14

Date Mailed: 6/13/14

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/tub

cc:

[REDACTED]