

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201425632
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: April 2, 2014
County: Oakland (02)

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 April 2, 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 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 February 12, 2014, 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 FAP benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report income and changes in income and group size.
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, 2011 to November 30, 2011 (fraud period).
7. During the fraud period, Respondent was issued \$1134 in FAP 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 FAP OI in the amount of \$1134.
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 (June 2013), p. 12; BAM 720 (May 2014), pp. 12-13.

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 720, p. 1; BAM 700 (July 2013 and May 2014), p. 7.

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 alleges that Respondent committed a FAP IPV because she intentionally misrepresented her and her husband's employment income resulting in an overissuance of FAP benefits for October 2011 and November 2011. In support of its case, the Department presented (i) an August 11, 2011 application in which Respondent reported that she was no longer employed as of August 1, 2011 and her husband worked at [REDACTED] 40 hours weekly at \$13 hourly; (ii) an October 11, 2011 change report in which Respondent reported starting employment and receiving \$390 biweekly; (iii) a New Hire Client Notice Respondent submitted to the Department on October 17, 2011 in which she reported new employment at [REDACTED] as of September 6, 2011 and pay of \$9.10 hourly for 28 hours weekly; (iv) a New Hire Client Notice Respondent's husband submitted on October 17, 2011 in which he reported employment at [REDACTED] as of July 18, 2011 and pay of \$13 hourly for 40 hours weekly; (v) a Healthy Kids application Respondent submitted on November 23, 2011 in which Respondent reported that she received \$836 in monthly earned income and her husband received \$1040 in monthly earned income; (vi) a printout from the Work Number, a Department-accessible database containing client employment information voluntarily reported by employers, showing that Respondent reengaged in employment with [REDACTED] with her first paycheck on September 15, 2011 and received biweekly pay of \$514.15 on October 13, 2011; \$468.65 on October 27, 2011; \$546.00 on November 10, 2011 and \$418.60 on November 23, 2011; (vii) a consolidated inquiry showing that Respondent's husband received \$11,835.93 from [REDACTED] in the fourth quarter of 2011; (viii) earning statements from Respondent's husband's employer with a date-stamp of November 7, 2011 showing that the husband received \$1040 in gross pay on October 28, 2011, and \$2596.58 in gross pay on October 14, 2011; (ix) a benefit summary inquiry showing that Respondent received \$511 in FAP benefits in October 2011 and in November 2011, with \$56 recouped each month; and (x) FAP overissuance budgets showing the calculation of FAP benefits Respondent was eligible to receive based on the actual income received by the household in October 2011 and November 2011.

The evidence presented shows that Respondent accurately reported her husband's hourly pay and weekly hours in the August 11, 2011 application and the New Hire Client Notice submitted to the Department on October 17, 2011. Respondent also reported her start of employment and accurately reported her hourly pay and weekly hours in the New Hire Client Notice submitted to the Department on October 17, 2011. From the FAP budgets presented, it appears that the Department had not been budgeting any of

Respondent's husband's income, which Respondent reported in the August 11, 2011 application, in calculating the household's FAP budget. While Respondent's husband received a merit bonus totaling \$1553 in the October 14, 2011 paycheck, the Department failed to present any evidence to show that Respondent intentionally withheld information concerning this additional pay from the Department. In fact, it appears that Respondent's husband's earnings statements for October 14, 2011 and October 28, 2011 were submitted to the Department on November 7, 2011, shortly after the household received the payment.

The file indicates that Respondent was a simplified reporter. A simplified reporting household has until the 10th day of the following month to timely report income changes. BAM 720, p. 7. In the absence of any evidence that Respondent was aware that the household would receive merit pay prior to the October 14, 2011 payday, the Department has failed to establish by clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining or preventing reduction of FAP benefits. Thus, the Department has failed to establish that Respondent committed an IPV concerning her FAP case.

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. 16. 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 establish by clear and convincing evidence that Respondent committed a FAP IPV. Accordingly, Respondent is **not** subject to 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 and May 2014), pp. 1, 6; BAM 705 (July 2013 and May 2014), p. 6.

For failure to report income over the simplified reporting income limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. BAM 200 (December 2013), pp. 5-6. During the fraud period, the applicable simplified reporting income limit for a group size of four was \$2422. RFT 250 (October 1, 2011).

In this case, the Department alleges that Respondent was overissued FAP benefits in October 2011 and November 2011. The evidence presented shows that Respondent's earned income, plus her husband's earned income based on the reported \$13 hourly pay for 40 hours weekly, in September 2011 would result in monthly gross income in excess of the simplified reporting income. Because Respondent would be required to report this income in October 2011 and it would affect November 2011 benefits, the first overissuance month is November 2011.


A review of the FAP OI budget for November 2011 shows that Respondent's income plus her husband's income, prospected based on his fourth quarter earnings, would make the household ineligible for FAP benefits that month based on excess gross income. See RFT 250, p. 1. Because the group received \$511 in FAP benefits, and an additional \$56 of FAP benefits subject to a recoupment, in November 2011, the Department was entitled to recoup or collect from Respondent \$567 in overissued FAP benefits for November 2011. See BAM 720, p. 9.

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 not** established by clear and convincing evidence that Respondent committed an intentional program violation (IPV).
2. Respondent **did** receive an OI of FAP program benefits in the amount of \$567.

The Department is ORDERED reduce the OI to \$567 for the period October 2011 to November 2011, and initiate recoupment or collection procedures in accordance with Department policy.


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

Date Signed: April 23, 2014

Date Mailed: April 23, 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.

2014-25632/ACE

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cc:

[REDACTED]