

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

IN THE MATTER OF:



Reg. No.: 201425730
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: April 2, 2014
County: Allegan (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 April 2, 2014 from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG), and [REDACTED] Family Independence Manager.

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 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 May 1, 2011 to November 30, 2011 (fraud period).
7. During the fraud period, Respondent was issued \$3478 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 \$3478.
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 failed to report that her husband lived in her household and, consequently, the calculation of her FAP benefit eligibility and amount did not consider his earned income. Spouses who are legally married and live together must be in the same FAP group. BEM 212 (September 2010 and October 2011), p. 1. With limited exceptions, the income of all group members is considered in calculating FAP eligibility and benefit amounts. BEM 550 (September 2010 and February 2012), pp. 2-3.

In support of its case, the Department relied on (i) the May 11, 2011 application and September 15, 2011 semi-annual contact report in which Respondent did not report that her husband was in her home; (ii) the benefit summary inquiry showing that Respondent was issued FAP benefits between May 2011 and October 2011 based on a group size of three (Respondent and her two children); and (iii) Respondent's caseworker's manager's testimony that that in a May 10, 2012 telephone conference Respondent informed her that she had broken up with her husband in November 2011 and that from May 2011 through October 2011, he lived with her and the children.

The Department's position that Respondent's husband lived in the household with her during the fraud period was dependent entirely on the case manager's testimony. Respondent appeared at the hearing and denied informing the manager that her husband lived in the home. She admitted that she informed the manager that her husband would often come to her home because their small children were in the home and on rare occasions slept in the home but contended that he lived and ate at his parent's home. It is noted that the case manager's telephone conference with Respondent does not appear in the case comment history listed in the Department's system which contains a log of the Department's contacts with Respondent. Further, a review of the case comments shows that Respondent and her husband often separated and reunited.

Based on the evidence presented, the Department has failed to establish, by clear and convincing evidence, that Respondent intentionally withheld information concerning her husband living in her home for the purpose of maintaining or preventing reduction of FAP benefits. Thus, the Department has not established 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.


The Department alleges that Respondent was overissued FAP benefits between May 2011 and October 2011 because her husband's employment income was not considered in the calculation of her FAP eligibility and benefit amount. The Department's overissuance case is dependent on the finding that Respondent lived with her husband and, consequently, his income should have been included in calculation of her FAP eligibility and benefit amount. BEM 212, p. 1; BEM 550, pp. 2-3. As discussed above, the evidence fails to establish that Respondent and her husband lived together between May 2011 and October 2011. Therefore, his income would not be included in the calculation of Respondent's FAP eligibility, and the Department is not eligible to recoup or collect any FAP benefits issued to Respondent between May 2011 and October 2011.

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 not** receive an OI of FAP program benefits between May 1, 2011 and November 30, 2011.

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


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.

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