

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

IN THE MATTER OF:

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Reg. No.: 2014-28416
Reg. No.: 2014-28418
Issue No(s): 3005
Case No.: ██████████
Hearing Date: May 28, 2014
County: Wayne (55)

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 May 28, 2014 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: ██████████.

ISSUES

1. Did Respondents receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondents, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondents be disqualified from receiving Food Assistance Program (FAP) benefits?

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 20, 2014, to establish an OI of benefits received by Respondents as a result of Respondents having allegedly committed an IPV.
2. The OIG has requested that Respondents be disqualified from receiving program benefits.
3. Respondent [REDACTED] (Respondent Husband) was a recipient of FAP benefits issued by the Department. [REDACTED] (Respondent Wife) was also a group member.
4. Respondents have no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time period it is considering the fraud period is November 1, 2008 through September 30, 2010 (fraud period).
6. During the fraud period, Respondent Husband was issued \$5,494.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondents were entitled to \$0.00 in such benefits during this time period.
7. The Department alleges that Respondents received an OI in FAP benefits in the total amount of \$5,494.00.
8. This was Respondents' first alleged IPV.
9. A notice of hearing was mailed to Respondents 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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to

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MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; 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 (August 2008), p. 10.

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 (October 2008), p. 6; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

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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.

As a preliminary matter, the OIG brought a separate case against Respondent Husband and Respondent Wife. The facts and circumstances are identical and therefore only one decision will be issued.

In this case, the Department alleges that Respondents committed an IPV of FAP benefits because Respondent Wife's income was not timely reported. The Department testified that Respondent Husband's failure to timely report his wife's earned income caused an OI of FAP benefits in the amount of \$5,494.00 from November 1, 2008 through September 30, 2010.

Respondent Husband completed a Redetermination on February 5, 2010 in which he listed \$674.00 in Social Security benefits as the only income in the household. The Department obtained Respondent Wife's employment records which showed her earned income from June 11, 2009 through September 16, 2010. While this evidence may be sufficient to establish that an OI occurred, to establish an IPV, the Department must present clear and convincing evidence that Respondents intentionally withheld or misrepresented information for the purpose of maintaining or increasing benefits.

Respondent Wife testified that she had no knowledge that she was a group member as it related to her husband's receipt of FAP benefits. The Department acknowledged that Respondent Wife did not complete the Redetermination and as such it did not have any evidence that Respondent Wife committed an IPV.

The only evidence the Department provided in support that Respondent Husband committed an IPV was the February 5, 2010 Redetermination. Respondent Husband testified that at the time he completed the Redetermination, he was only seeking benefits for himself and as a result, only reported his income. Respondent Husband indicated that he did not intentionally attempt to mislead the Department. There was no evidence presented that Respondent knew that his wife was a mandatory group member thereby requiring him to disclose her employment information. Respondent's mistaken belief that he only needed to report his income is not sufficient to establish that he intentionally withheld or misrepresented information for the purpose of maintaining or increasing benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 1. A disqualified recipient remains a member

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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 (August 2008), 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. 13.

In this case, the Department has not satisfied its burden of showing that either Respondent Husband or Respondent Wife committed an IPV concerning FAP benefits. Accordingly, Respondents are not subject to a disqualification under 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. In this case, Respondent Husband acknowledged that he did not report his wife's wages during the time period he was receiving FAP benefits. The Department is seeking an OI in the amount of \$5,494.00. However, the Benefits Summary Inquiry provided by the Department showed that between November 2008 and September 2010, there was \$5,494.00 issued in FAP benefits. In support of an OI, the Department presented the following:

1. Respondent Wife's Employee Wage History which showed her earnings for each quarter beginning with the fourth quarter of 2008 and ending with the first quarter of 2011.
2. Respondent Wife's actual earned income as reported by her employer from June 11, 2009 through October 14, 2010; and
3. Budgets for November 2008, January 2009, March 2009, and January 2010.

In November 2008, the beginning of the fraud period, income for a group size of two could not exceed \$2,334.00. RFT 260 (October 2008), p. 21. In September 2010, the end of the fraud period, income for a group size of two could not exceed \$2,430.00. RFT 260 (October 2009), p. 22. The Quarterly Wage Report revealed the following:

1. During the fourth quarter of 2008 Respondent Wife earned \$12,876.28, which averages to \$4,292.00 per month.
2. During the first quarter of 2009, Respondent Wife earned \$11,713.80, which averages to \$3,904.04
3. During the second quarter of 2009, Respondent Wife earned \$12,212.07, which averages to \$4070.69.

Further, the earned income reported by Respondent Wife's employer revealed that from June 11, 2009 through September 16, 2010, she earned between \$2,912.84 and

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\$4,573.96 each month. When Respondent Husband's Social Security Income is added to Respondent Wife's earned income, it is clear that the group was not eligible for benefits from November 1, 2008 through September 30, 2010. The Benefit Summary Inquiry provided by the Department showed that between November 2008 and September 2010, the group received \$5,494.00. Because the group received more benefits than they were entitled to, the Department is entitled to recoup the FAP benefits issued from September 1, 2008 through November 30, 2010 in the requested amount of \$5,494.00.

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 failed to establish by clear and convincing evidence that Respondent committed an IPV from November 1, 2008 through September 30, 2010.
2. The Department has further established that Respondent received an OI of program benefits in the amount of \$5,494.00 from the FAP program for the period of November 1, 2008 through September 30, 2010.

The Department is ORDERED to initiate recoupment procedures for the amount of \$5,494.00 in accordance with Department policy.



JACQUELYN A. MCCLINTON
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 18, 2014

Date Mailed: June 18, 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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CC: [REDACTED]
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