

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2014-30110
Issue No(s): 3005; 6005; 6006
Case No.: ██████████
Hearing Date: June 11, 2014
County: Wayne (57)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 June 11, 2014 from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

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 benefits for
 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 March 7, 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 FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report changes in income and CDC need.
5. Respondent had did not have an 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 for FAP is October 1, 2007 to June 30, 2008, and January 1, 2009 to September 30, 2009 (FAP fraud period).
7. The Department's OIG indicates that the time period it is considering the fraud period for CDC is October 14, 2007 to July 5, 2008, and January 4, 2009 to September 26, 2009.
8. During the fraud period, Respondent was issued \$25,290 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$13,855 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$11,435.
10. This was Respondent's first second third alleged IPV.
11. 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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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 (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 700 (May 2014), 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 alleges that Respondent committed an IPV of her FAP/CDC benefits because she failed to report her employment and wages to the Department, which caused an overissuance of FAP/CDC benefits. Each benefit program will be addressed separately below:

FAP IPV

First, the Department's OIG indicates that the time period it is considering the fraud period is October 1, 2007 to June 30, 2008, and January 1, 2009 to September 30, 2009. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report her income and that she intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Program Administrative Manual (PAM) 105 (April 2007), p. 7 and see also BAM 105 (January 2009), p. 7. Changes must be reported within 10 days: after the client is aware of them, or the start date of employment. PAM 105, p. 7. BAM 105 does state changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

PAM 105, p. 7 and BAM 105, p. 7.

First, the Department presented Respondent's income received via quarterly statements. See Exhibit 1, pp. 11-12.

Second, the Department presented Respondent's application dated July 31, 2007, to show she acknowledged her responsibility to report changes as required. See Exhibit 1, pp. 13-20.

Third, the Department presented Respondent's application dated July 8, 2008. See Exhibit 1, pp. 21-36. In this case, Respondent reported her income from the first employer. See Exhibit 1, p. 30. Respondent reported her start date of August 21, 2007 and her type of work is nursing assistant. See Exhibit 1, p. 30. Moreover, Respondent indicated that she is paid every two weeks; works 72-80 hours per pay period; and her rate of pay is \$9.40. See Exhibit 1, p. 30. Finally, Respondent requested child care expenses with her need reason being work. See Exhibit 1, p. 32. It should be noted that the Department also presented her semi-annual dated January 28, 2008, which reported the same employer above. See Exhibit 1, pp. 53-54.

Fourth, the Department presented Respondent's application dated March 24, 2009. See Exhibit 1, p. 37-53. In this application, Respondent indicated employment at second employer and the start date was December 22, 2008. See Exhibit 1, p. 46. In this case, Respondent reported her type of work as home health aide and she is paid every two weeks; works 16 hours a week; and her rate of pay is \$9.50. See Exhibit 1, p. 46. It should be noted that the employer's name was indicated in the case notes section of the application (different employer than one listed in application dated July 8, 2008). See Exhibit 1, p. 52.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. There was no evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld information.

The Department presented Respondent's applications/semi-annuals dated January 28, 2008 and July 8, 2008, in which she reported her first employer. See Exhibit 1, pp. 21-36 and 53-54. The evidence presented that her employment start date was August 21,

2007 and she did not first report such income until January 28, 2008 (mid-certification). See Exhibit 1, pp. 30 and 53-54. It should be noted that the quarterly reports show Respondent's income began in third quarter of 2007 (July through September). See Exhibit 1, p. 12. Moreover, Respondent reported the second employer in the application dated March 24, 2009. See Exhibit 1, p. 46.

It is understandable that these documents show that Respondent did not timely report her income and it is persuasive evidence that she did not report the income within 10 days. PAM 105 and BAM 105, p. 7. Nevertheless, this evidence actually shows that the Respondent reported her employment information to the Department. This shows that Respondent is not intentionally withholding or misrepresenting the income information.

Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

CDC IPV

As stated above, the evidence presented that Respondent is not subject to FAP IPV because she did not intentionally withhold or misrepresent the income information. As such, Respondent also is not subject to a CDC IPV based on no intentional violation of a CDC program rule and as shown in the above FAP IPV analysis. See BEM 708 (April 2014), p. 1.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16.

In regards to FAP benefits, 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 regards to CDC benefits, rule violations shall be considered intentional and result in a disqualification if established by: a court; an administrative law judge (ALJ); or the client or adult group member's signed repay agreement or disqualification form. BEM 708, p. 1.

When it is determined that a client or adult group member intentionally violated a program rule, a referral should be submitted to the Office of Inspector General (OIG). BEM 708, p. 1. If the OIG investigation determines an intentional program violation was committed, a disqualification referral and the Investigation Closure Packet will be sent to CDC policy for review. BEM 708, p. 1. CDC Policy will impose the appropriate disqualification. BEM 708, p. 1. Disqualification periods will be six months for the first occurrence; twelve months for the second occurrence; and lifetime for the third occurrence. BEM 708, p. 1.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP/CDC benefits. Therefore, Respondent is not subject to a disqualification under the FAP/CDC program. BAM 720, p. 16 and BEM 708, pp. 1-3.

FAP Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report income. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (May 2014), p. 1.

A client error is present in this situation because Respondent failed to notify the Department of her earned income timely. Based on this information, it is persuasive evidence that an OI is present due to client error. See PAM 105 and BAM 105, p. 7.

Applying the overissuance period standards, the Department properly determined that the OI periods began on October 1, 2007 and January 1, 2009. See Exhibit 1, pp. 3, 12, 30, and 46 and see BAM 715, pp. 4-5.

Additionally, 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 group or provider actually received minus the amount the group was eligible to receive. BAM 715, p. 6.

In this case, the Department presented OI budgets for October 2007 to June 2008 and January 2009 to September 2009. See Exhibit 1, pp. 75-104. The budgets included some of Respondent's income from the Wage History. See Exhibit 1, pp. 11-12. However, a review of the FAP budgets found them to be inaccurate. Several of the budgets included calculations of the earned income, which could not be verified. For example, the March 2008 budget indicated a total earned income amount of \$894. See Exhibit 1, pp. 83-84. This calculation was based on payments received in December 2007. First, it is unclear why the budget from March 2008 is using income from

December 2007. See Exhibit 1, p. 84. Second, a review of the Wage History did not show such earnings for March 2008. See Exhibit 1, p. 12. In fact, the Wage Match showed total earnings of \$1,465.23 for first quarter 2008. See Exhibit 1, p. 12. When this amount is divided by three (to establish an average amount for each quarter), the result is \$488. See Exhibit 1, p. 12. Thus, it appears that the Department over budgeted. If not, the Department failed to present the paystubs it based the \$894.29 calculation on.

A second example includes the FAP budget from January 2009. See Exhibit 1, pp. 91-92. Again, the January 2009 budget includes income received from May 2008 to July 2008, which is not in the same time period. See Exhibit 1, p. 92. Moreover, the Department failed to present evidence of how it obtained the payment amount nor did the Wage Match actually include calculations for the first quarter of 2009. See Exhibit 1, p. 11.

Based on the foregoing information, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to present evidence on how it calculated the OI amount. There is evidence to show an OI is present, however, the Department also needs to establish how it calculated the OI amount. Because the Department failed to present evidence on how it calculated the FAP OI amount, the Department did not satisfy its burden of showing that it acted in accordance with Department policy.

CDC Overissuance

The Department of Human Services (DHS) may provide payment for child care services for qualifying families when the parent(s)/substitute parent(s) is unavailable to provide the child care because of employment, education and/or because of a health/social condition for which treatment is being received and care is provided by an eligible provider. Program Eligibility Manual (PEM) 703 (October 2007), p. 1 and BEM 703 (January 2009), p. 1.

For CDC eligibility to exist for a given child, each parent/substitute parent (P/SP) must demonstrate a valid need reason. PEM 703, p. 2 and BEM 703, p. 2. There are four CDC need reasons. PEM 703, p. 3 and BEM 703, p. 3. Each need reason must be verified and exists only when each parent/substitute parent is unavailable to provide the care because of: (1) family preservation; (2) high school completion; (3) an approved activity; or (4) employment. PEM 703, p. 3 and BEM 703, p. 3.

Other reporting requirements include, but are not limited to, changes in day care needs or providers. PAM 105, pp. 7-8 and BAM 105, pp. 7-8.

In this case, the Department can also pursue a CDC OI amount based on client error. See BAM 715, p. 1. As shown above, there is an OI present as well for CDC benefits because Respondent failed to notify the Department of her earned income timely. Thus, Respondent incorrectly billed for her CDC benefits for the OI periods.

The child care need calculation is based on a “best estimate” of the Parent/Substitute Parent’s work or approved activity schedule. PEM 710 (July 2007), p. 1 and BEM 710 (January 2009), p. 1. The CDC pay periods are two weeks long. PEM 710, p. 1 and BEM 710, p. 1. The Department determines valid need hours for each Parent/Substitute Parent (P/SP). PEM 710, p. 1 and BEM 710, p. 1. The Department adds a five hour per week travel time allotment to the weekly work or approved activity hours of the P/SP. PEM 710, p. 1 and BEM 710, p. 1. The Department multiplies the result by two to convert to biweekly valid need hours. PEM 710, p. 1 and BEM 710, p. 1

Authorized hours serve as a payment cap. PEM 710, p. 1 and BEM 710, p. 1. Providers are responsible for billing for the actual hours of care (plus allowable illness/holiday hours) for each child. PEM 710, p. 1 and BEM 710, p. 1. The automated payment system limits payments to the lesser of the authorized hours or the hours billed by the provider. PEM 710, p. 1 and BEM 710, p. 1.

In this case, the Department presented OI budgets for October 14, 2007 to July 5, 2008, and January 4, 2009 to September 26, 2009. See Exhibit 1, pp. 69-74. Benefit summary inquiries and summaries for the CDC benefits were also presented. See Exhibit 1, pp. 55-57 and 63-65. The need calculations were based on some of Respondent’s income from the Wage History. See Exhibit 1, pp. 11-12. However, a review of the CDC budgets found them to be inaccurate. Several of the budgets included calculations of the earned income, which could not be verified. Moreover, there were biweekly periods in which the Department improperly calculated the actual CDC hours allowed. See Exhibit 1, pp. 69-74.

Based on the above information, the Department also did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to present evidence on how it calculated the CDC OI amount. There is evidence to show an OI is present; however, the Department also needs to establish how it calculated the OI amount. Because the Department failed to present evidence on how it calculated the CDC OI amount, the Department did not satisfy its burden of showing that it acted in accordance with Department policy.

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 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 \$11,435 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

delete the OI and cease any recoupment action.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 23, 2014

Date Mailed: June 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.

EJF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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