

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

IN THE MATTER OF:



Reg. No.: 14-001711
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: JUNE 26, 2014
County: Monroe

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 June 26, 2014 from Detroit, Michigan. The Department was represented by [REDACTED], 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 Food Assistance Program (FAP) 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 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 April 29, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was advised of the responsibility to report income.
5. Based on the SOLQ report presented showing Respondent's federal benefits and indicating that she had a payee; Respondent may have mental impairments 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 August 1, 2010 to January 31, 2011 (fraud period).
7. During the fraud period, Respondent was issued \$1200 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$96 in such benefits during this time period.
8. The Department alleges that Respondent received a FAP OI in the amount of \$1104.
9. This was Respondent's first alleged IPV.
10. 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 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 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 concerning her FAP benefits because she intentionally failed to report her federal Retirement, Survivors and Disability Insurance (RSDI) and Supplemental Security Insurance (SSI) income and as a result was overissued FAP benefits from August 1, 2010 to January 31, 2011.

In support of its argument that Respondent had unearned Social Security income, the Department presented a Single Online Query (SOLQ) report for Respondent; the SOLQ is the Department's data exchange with the Social Security Administration (SSA). Respondent's SOLQ report shows that she was entitled to RSDI income as of August 1, 2010, which is her "monthly benefit credited date." However, she would not receive the August 2010 payment until September 2010. See <http://www.ssa.gov/dataexchange/documents/SOLQ-SOLQI%20record.pdf>. Under BAM 105 (January 2010), p. 7, Respondent was required to report changes in income within 10 days of receiving the first payment reflecting the change. Because Respondent had not necessarily received payment of her RSDI income at the time she completed the redetermination, the failure to include this income in the redetermination does not establish by clear and convincing evidence that she intentionally withheld or misrepresented information for the purpose of maintaining or preventing reduction of FAP program benefits or eligibility.

Furthermore, Department policy clearly demands that to establish a FAP IPV, the Department is required to establish that there was an overissuance of benefits of at least \$1000. BAM 720, pp. 12-13. Although the \$1000 threshold does not apply if the group has a previous IPV, the alleged IPV involves FAP trafficking, the alleged fraud involves concurrent receipt of assistance, or the alleged fraud is committed by a state/government employee, there was no evidence presented in this case that any of the exceptions to the \$1000 threshold apply.

In this case, the Department alleges that Respondent received a FAP overissuance totaling \$1104. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (May 2014), p. 6; BAM 705 (May 2014), p. 6. In support of its case that there was a FAP OI in excess of \$1000, the Department presented a FAP OI budget showing the amount of FAP benefits the Department alleges Respondent would have been eligible to receive if the RSDI and SSI income she received had been included in the calculation of her FAP benefits for August 1, 2010 to January 2011.

Based on the 10-day reporting period, the 10-day processing period and the 12-day negative action period and in consideration of Respondent's first RSDI payment in September 2010, the OI period would begin in November 2010. BAM 105, p. 7; BAM 720, p. 7. Therefore, the August 2010, September 2010, and October 2010 budgets erroneously include RSDI income in the calculation of the FAP OI and cannot be used to establish a FAP OI. Removal of the alleged OI during those months reduces the OI amount to less than the \$1000 IPV threshold.

Finally, although the Department alleges that Respondent received monthly SSI income totaling \$306, the SOLQ does not support the Department's position. Rather, the SOLQ shows that Respondent received a lump sum payment of \$2142 in December 2010, which appears to be for \$306 in monthly benefits that accrued between May 1, 2010 and December 20, 2010, when the payment was issued. Current SSA-issued SSI payments are counted as unearned income for FAP purposes. BEM 503 (January 2011), p. 23. Retroactive SSI benefits paid as a one-time payment, however, are considered assets unless the payment includes a portion intended as current benefits, which is then considered income. BEM 503, p. 24. Because the Department failed to establish that the \$306 was ongoing monthly SSI payments, the Department did not act in accordance with policy when it considered it unearned monthly income for each month between August 1, 2010 and January 31, 2011.

Under the evidence presented, the Department has failed to establish an OI amount in excess of \$1000. Accordingly, the Department cannot establish a FAP IPV. Because there is no FAP IPV, Respondent is not subject to a disqualification from future receipt of FAP benefits. BAM 720, p. 16.

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 IPV.
2. Respondent did not receive an overissuance of FAP program benefits.

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


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

Date Signed: July 14, 2014

Date Mailed: July 15, 2014

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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.

ACE/tlf

cc:

