

**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.: 14-002584
Issue No.: 1005; 3005
Case No.: ██████████
Hearing Date: July 9, 2014
County: CALHOUN (DISTRICT 21)

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 July 9, 2014, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

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

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 May 13, 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 earned income and group composition.
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 FAP/FIP fraud period is February 1, 2013 to June 30, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$1,999 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$1,999.
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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family

Independence Agency) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

☒ 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 of her FAP/FIP benefits because she failed to report an additional group member (Respondent's spouse) and his earned income to the Department, which caused an overissuance of FAP/FIP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (November 2012), p. 7. 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.

BAM 105, p. 7.

Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 7. These include, but are not limited to, changes in persons in the home. BAM 105, p. 7.

The Department's OIG indicates that the time period it is considering the fraud period is February 1, 2013 to June 30, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report her spouse's addition to the group size and his income and that she intentionally withheld or

misrepresented the information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP/FIP program benefits or eligibility.

First, the Department presented Respondent's application dated November 27, 2012, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1, pp. 10-28. Respondent reported a group size of three (Respondent plus two children) and only included the spouse under the absent parent information. See Exhibit 1, p. 17. Also, in the additional information section, Respondent indicated that she is separated and her spouse is no longer allowed by law in the home. See Exhibit 1, p. 26.

Second, the Department presented a Front-End Eligibility (FEE) Investigation report dated May 23, 2013, which found Respondent's spouse in the home since before December 2012 with income as well. See Exhibit 1, p. 29. The report indicated that Respondent stated her spouse left the home in November 2012 and came back just before Christmas 2012. See Exhibit 1, p. 29. Moreover, the report stated Respondent alleged that she made attempts to contact her DHS caseworker/supervisor and left voicemails stating the spouse is back in the home. See Exhibit 1, p. 29. Finally, the report indicated that Respondent's new caseworker did not receive any such calls. See Exhibit 1, p. 29.

Third, the Department presented an employment verification from the spouse's employer. See Exhibit 1, pp. 30-42. The Verification of Employment and additional documents indicated that Respondent began employment on September 18, 2007, ongoing. See Exhibit 1, pp. 30-42. Moreover, the spouse's employer verification included his pay stubs which indicated married under the taxable marital status and reported the same address as the Respondent. See Exhibit 1, pp. 31-42. It should be noted that the Department also included Respondent's employment verification, but her wages were timely reported. See Exhibit 1, pp. 43-44.

At the hearing, Respondent testified that she did not intentionally withhold the spouse's return to the household or his income information. Instead, Respondent testified that a domestic situation occurred in the household and the spouse left the home from late November 2012 to late December 2012. As such, Respondent testified that she applied for FAP/FIP assistance due to the spouse leaving the home (group size of three at time of application).

Additionally, Respondent testified that the spouse did return to the home until late December 2012; however, indicated he was in the home less than fifty percent of the time from December 2012 to January 2013. Nevertheless, Respondent acknowledged that her spouse was in the household from February 2013 to June 2013 and that the group size was four during this time period. Moreover, Respondent did not dispute that the spouse was employed during this time period, but could not confirm his employment income.

Finally, Respondent testified that she attempted to contact her old/new caseworker regarding her spouse's return to the household a day or two after his return (late December 2012). Respondent testified that she attempted multiple times to contact the Department and left messages, but never received any response from the Department.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. The FEE Investigation report did reveal that the Respondent acknowledged her spouse moved back into the home before December 2012. See Exhibit 1, p. 29. However, the investigative report also revealed that Respondent made attempts to contact the Department several times and left voicemails notifying it that the spouse is back in the home. See Exhibit 1, p. 29. Moreover, Respondent credibly testified that she attempted to notify the Department that her spouse returned to the household; however, the Department never contacted her back. Based on this information, Respondent did not intentionally withhold or misrepresent the income information/persons in the home as the evidence indicated Respondent attempted to report it to the Department.

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/FIP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP/FIP benefits.

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.

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 has failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP/FIP benefits. Therefore, Respondent is not subject to a disqualification under the FAP/FIP program. BAM 720, p. 16.

FAP Overissuance

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

An agency error is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) staff or department processes. BAM 705 (July 2014), p. 1. Some examples include available information was not used or was used incorrectly or action by local or central office staff was delayed, etc...BAM 705, p. 1.

The evidence presented that Respondent attempted to contact the Department that her spouse returned to the home; however, the Department failed to act on the reported change. See Exhibit 1, p. 29. Moreover, Respondent credibly testified that she attempted to contact the Department of the reported change, however, without any success. Nevertheless, even though Respondent did not receive any contact back, the Department can seek recoupment of the OI when there is an agency error. Based on the above information, there is an OI present due to agency error. See BAM 705, p. 1.

It should be noted that Respondent testified that her spouse would only contribute for the house payments and/or bills. However, Respondent testified that he would not contribute to food expenses and/or other necessities.

Nonetheless, for FAP benefits, spouses who are legally married and live together must be in the same group. BEM 212 (November 2012), p. 1. Also, parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1. Based on the above information, the evidence presented that the spouse was a mandatory group member. See BEM 212, p. 1. Respondent acknowledged that the spouse was in the household during the OI period and that the group size was four. Moreover, the evidence presented that the spouse was the parent of Respondent's two children. See Exhibit 1, p. 17. Therefore, it is established the household size was four and that the spouse's income was budgetable. See BEM 212, p. 1 and BEM 501 (July 2012), p. 5.

Applying the overissuance period standard, it is determined that the OI period began on February 1, 2013. See Exhibit 1, pp. 3 and 30-42 and see BAM 705, p. 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 705, p. 6.

In this case, the Department presented OI budgets for February 2013 to June 2013. See Exhibit 1, pp. 45-56. The budgets included Respondent's proper group size of four

(Respondent, spouse, and two children) plus his income that was not previously budgeted. See Exhibit 1, pp. 45-56. A review of the OI budgets for February 2013 to June 2013 found them to be fair and correct. See BAM 705, pp. 7-8. It should be noted that upon budgeting the spouse's income, Respondent was ineligible for FAP benefits due to excess/gross income. See Exhibit 1, pp. 45-56; see BEM 550 (February 2012), p. 1; see 556 (October 2011), pp. 1-6; and see RFT 250 (October 2012), p. 1.

Based on the above information, the Department established that from February 2013 to June 2013, Respondent was issued \$985 in FAP benefits. After budgeting the Respondent's income, the corrected total amount of FAP benefits issuance was \$0. The overissuance was established to be \$985 in FAP benefits. See Exhibit 1, pp. 45-56. Thus, the Department is entitled to recoup \$985 of FAP benefits.

FIP Overissuance

In regards to the FIP OI amount, the Department presented evidence that the spouse was not eligible for benefits because he was not participating with the Work First program. See Exhibit 1, p. 59. The evidence indicated that Respondent's spouse was an excluded adult. See Exhibit 1, p. 59. However, the Department acknowledged during the hearing that Respondent was not eligible for FIP benefits due to the income exceeding the FIP payment standards.

The FIP income limit for a group size of 3 is \$492 and a group size of four is \$597. RFT 210 (January 2009), p. 1. The certified group must be in financial need to receive benefits. BEM 515 (November 2012), p. 1. Need is determined to exist when budgetable income is less than the payment standard established by the department. BEM 515, p. 1 and see also BEM 518 (November 2012), pp. 1-5. Program, living arrangement, grantee status and certified group size are variables that affect the payment standard. BEM 515, p. 1.

The FIP eligibility determination group (EDG) includes all household members whose information is needed to determine FIP eligibility. BEM 210 (January 2013), p. 3. When cash assistance is requested for a dependent child, or a dependent child is a mandatory FIP EDG member, all of the following individuals who live together are in the FIP EDG: dependent child; the child's legal parent(s); and child's legal siblings who meet the definition of a dependent child (siblings have at least one legal parent in common). BEM 210, p. 4.

Based on this information, the evidence presented that Respondent's spouse was a mandatory group member and his income should have been budgeted to determine FIP eligibility. See BEM 210, pp. 3-4; BEM 515, pp. 1-4; and BEM 518, pp. 1-5.

Applying the overissuance period standards, it is determined that the OI period began on February 1, 2013. See Exhibit 1, pp. 3 and 30-42 and see BAM 705, p. 5.

It should be noted that the evidence presented the spouse was a mandatory group member during the OI period and did not participate in the FIP program. See BEM 233A (January 2013), p. 1 and BEM 230A (January 2013), pp. 1-22. Thus, a FIP overissuance was present due to non-participation. Nevertheless, the Department presented the FIP benefit summary inquires for February 2013 to June 2013, showing Respondent was issued \$1,014 for this time period. See Exhibit 1, pp. 57-58. The evidence presented that because the spouse was a mandatory FIP group member and his income exceeded the payment standards for a group size of three or four, Respondent was not eligible for FIP benefits. See RFT 210, p. 1; BEM 210, pp. 3-4; BEM 515, pp. 1-4; and BEM 518, pp. 1-5. Thus, the Department is entitled to recoup \$1,014 in FIP benefits. See BAM 705, pp. 1-8. The total OI amount for both programs is \$1,999 (\$985 for the FAP program plus \$1,014 for the FIP program).


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 \$1,999 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$1,999 in accordance with Department policy.


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

Date Signed: **7/15/2014**

Date Mailed: **7/15/2014**

EJF/cl

