

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-002769
Issue No.: 3005;5006
Case No.: [REDACTED]
Hearing Date: July 10, 2014
County: BRANCH

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 three way telephone hearing was held on July 10, 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) and State Emergency Relief (SER) 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 Food Assistance Program (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 May 22, 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 and SER benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in circumstances, such as changes in income.
5. Respondent 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 January 1, 2013, to June 30, 2013 (fraud period).
7. The Department's OIG indicates that the time period it is considering the fraud period for SER is December 1, 2012 to January 31, 2013 (fraud period).
8. During the fraud period, the Department alleges that Respondent was issued \$3029 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$176 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$3033.
10. During the fraud period, the Department alleges that Respondent was issued \$209.82 in SER benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
11. The Department alleges that Respondent received an OI in SER benefits in the amount of \$209.82.
12. This was Respondent's second alleged IPV for the FAP.
13. 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 State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001 through R 400.7049.

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 benefits because she failed to report her husband's employment and earned income to the Department. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment and earning income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (November 2012), p.7.

The Department contended that Respondent's failure to report caused an OI in FAP benefits in the amount of \$3033 from January 1, 2013 to June 30, 2013. The Department provided copies of Respondent's husband's payroll, as well as the work number to show that Respondent's husband gained employment on October 16, 2012 and that he earned his first paycheck on November 9, 2012. The evidence presented shows that Respondent's husband continued to be employed and earning income throughout the fraud period. (Exhibit 1, pp.63-68).

In support of its contention that Respondent committed an IPV, the Department presented an assistance application that Respondent submitted to the Department on September 5, 2012, prior to the fraud period and prior to the start of her husband's employment. (Exhibit 1, pp.12-35). While this may be sufficient to establish that Respondent was advised of his responsibility to report changes in circumstances, it does not establish, by clear and convincing evidence, that Respondent intentionally withheld information concerning her income or employment for the purpose of maintaining her Michigan FAP eligibility.

The Department also presented evidence that on December 18, 2012, Respondent submitted an SER assistance application on which she reported that her husband was receiving unearned income from unemployment compensation benefits (UCB) but not

that he had become employed and was receiving earned income from employment, since November 9, 2012. (Exhibit 1, pp.43-62). The assistance application form clearly instructs Respondent to list all earned and unearned income from group members, as well as the penalties for failing to do so.

Because Respondent did not identify her husband's employment that began on October 16, 2012 or the income that he was earning starting November 9, 2012, when she completed the December 18, 2012, SER assistance application, the Department's evidence establishes, by clear and convincing evidence, that Respondent intentionally withheld information for the purpose of establishing, increasing, maintaining or preventing reduction of FAP benefits.

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. 13. 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 satisfied its burden of showing that Respondent committed an IPV by failing to report her husband's employment and earned income. Because the Department presented sufficient evidence that this was Respondent's second IPV, she is subject to a two-year disqualification under the FAP program. (Exhibit 1, p.11).

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 (May 2014), p. 6; BAM 705 (May 2014), p. 6. For FAP cases, the amount of FAP benefits received in the calculation is the gross amount issued for the benefit month, before any administrative recoupment deductions. BAM 720, p.9.

At the hearing, the Department established that the State of Michigan issued \$3209 in FAP benefits to Respondent from January 1, 2013, to June 30, 2013, prior to any recoupment amount. The Department alleged that Respondent was eligible for \$176 in FAP benefits during this period.

In support of its OI case for the period between January 1, 2013 and June 30, 2013, the Department presented Respondent's husband's payroll as well as the work number to show that Respondent's husband gained employment on October 16, 2012, that he earned his first paycheck on November 9, 2012 and that he continued to be employed and earning income through June 30, 2013. (Exhibit 1, pp. 65-67).

The Department also presented FAP Budgets for each month at issue showing how the OI was calculated. (Exhibit 1, pp. 75-116). A review of the FAP Budgets for each month shows that when Respondent's husband's unreported earned income is included in the calculation of the group's FAP benefits, Respondent was eligible to receive only \$176 during the fraud period. Thus, the Department is entitled to recoup or collect from Respondent \$3003, the difference between the \$3209 in FAP benefits actually issued to her and the \$176 in FAP benefits she was eligible to receive between January 1, 2013 and June 30, 2013.

The Department also sought to recoup an OI in benefits for the SER program. The Department contented that Respondent received an OI in SER benefits because she provided fraudulent information on her December 18, 2012 SER application by failing to disclose her husband's earned income, thereby making her ineligible for the \$209.82 in SER benefits issued to her. (Exhibit 1, p.118). The Department asserted that Respondent was ineligible for SER, not on the basis that the unreported income was in excess of the income limits allowed for receipt of SER benefits, but rather, because she failed to disclose the earned income, she was ineligible for the entire amount issued.

The Department is to refer an SER OI to the recoupment specialist only when an IPV is suspected, and a FIP, SDA, or FAP OI also exists for the same period. The Department is to follow the procedures in the SER manual (ERM) for recoupment of SER. BAM 720, p.4. The policy and procedure governing the calculation, establishment and recoupment of an OI for the SER program is found in ERM 401, Payment. BAM 700, p.13.

According to ERM 401, when an overissuance is found, it is the responsibility of the specialist to determine the amount and contact the provider to obtain a refund. ERM 401 (October 2013), p.4. Thus, the Department has not established that Respondent received an OI of SER benefits and as such, is not entitled to recoupment of the \$209.82 in SER benefits issued to her.

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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$3003 from the FAP program.

The Department is ORDERED to initiate recoupment and/or collection procedures for the amount of \$3003 from the FAP in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the FAP program for a period of 24 months.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **7/21/2014**

Date Mailed: **7/23/2014**

ZB / tlf

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

