

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

IN THE MATTER OF:



Reg. No.: 2014 31163
Issue No(s): 3005, 6005
Case No.: [REDACTED]
Hearing Date: July 7, 2014
County: Wayne (15)

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 July 7, 2014 from Detroit, Michigan. The Department was represented by [REDACTED], Lead 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 Food Assistance Program (FAP) and Child Development and Care (CDC) 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 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 March 12, 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 CDC benefits issued by the Department.
4. On July 7, 2007, Respondent completed an application for FAP benefits which advised her of her responsibility to report changes in household circumstances, such as a change in residence.
5. On June 28, 2010, Respondent completed a Redetermination.
6. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period it is considering the fraud period relating to Respondent's FAP benefits is January 1, 2006 through December 1, 2008 (FAP fraud period).
8. The Department's OIG indicates that the time period it is considering the fraud period relating to Respondent's CDC benefits is January 1, 2006 through June 30, 2009 (CDC fraud period).
9. During the FAP fraud period, Respondent was issued \$16,833.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$10,761.00 in such benefits during this time period.
10. During the fraud period, Respondent was issued \$19,483.00 in CDC benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
11. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$6,072.00.
12. The Department alleges that Respondent received an OI in CDC benefits in the amount of \$19,493.00.
13. This was Respondent's first alleged IPV with either program.
14. 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 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 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 (April 2009), 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 (January 2009), 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.

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.

Additionally, The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (January 2009), p. 1. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, p. 5.

The Department outlined four reasons why it believed Respondent committed an IPV of the FAP and/or CDC programs:

1. Respondent did not claim some or all of her children on her income taxes from 2006-2009;
2. Respondent underreported her income to the Department;
3. Respondent's mother who was paid as the provider for the children was employed at two different companies from 2006-2007; and
4. Respondent misrepresented herself on the applications she submitted to the Department.

Respondent acknowledged that she allowed her mother to claim her children on her taxes. Respondent testified that her mother provided clothes, food and other resources for the children during these years and that this was a way to compensate her mother as she was not receiving cash assistance from the state. Respondent further stated that she was unaware that she was not allowed to let her mother claim her children for income tax purposes. Respondent testified that her children lived with her and not her mother at the time child care services were paid. Accordingly, there was no evidence presented that Respondent intentionally misled the Department for the purposes of maintaining eligibility for FAP and CDC benefits.

Respondent is a self-employed hair stylist. Regarding the discrepancy in the amount reported to the IRS and the Department, Respondent testified that the receipts she provided to her accountant to complete her tax forms were the same receipts she provided to her assigned worker. Respondent testified that she was required to turn the receipts into her worker weekly. Respondent acknowledged that she did not contact her worker each time she earned more than what was reported on her application but stated that she believed she had satisfied her reporting requirement by providing actual receipts of income received. It is found that the Respondent satisfied her reporting requirement relating to her income and as such the Department has failed to establish that an IPV was committed.

The Department asserted that Respondent's mother worked at two different companies during the same period she was paid as a provider for Respondent's children. The employment information provided by the Department merely showed the provider's yearly income at the respective companies and did not contain any information regarding specific hours worked. Therefore, there was no evidence provided that Respondent's mother did not provide the child care services for which she was compensated.

Lastly, the Department alleged that Respondent misrepresented herself on several applications. From the testimony provided at the hearing, it appeared that most of the alleged misrepresentation resulted from the three issues previously addressed. The only other remaining misrepresentation alleged at the hearing came as a result of address information listed on the July 21, 2006 application. Respondent's mother was receiving relative provider care payments. The Department stated that in order to qualify for relative provider care payments, the relative is not allowed to reside with the children. Respondent listed her mother's address as Tuxedo and her address as Lesure on the July 21, 2006. Respondent acknowledged at the hearing that while she lived on Lesure, her mother lived there also and cared for the children. Respondent stated that she and her mother lived together for only a few months and that her mother owned the Tuxedo home. Respondent stated that she was unaware that her mother could not reside with her and care for the children.

Although Respondent may have violated a provision of the tax code, there was no evidence presented that the children were not in Respondent's care or that dependent care services were not necessary and appropriate. Further, the Department was unable

to disprove that Respondent provided correct income to her worker on a consistent basis even though it may have provided benefits based on the amount listed on Respondent's application. Additionally, there was no evidence presented that Respondent's mother worked at either or both of the companies during the same hours she was paid for caring for the children. Lastly, Respondent stated that she was unaware that her mother could not reside with her and care for the children. For all of these reasons, it is found that the Department did not establish by clear and convincing evidence that Respondent committed an IPV for the purposes of maintaining eligibility for CDC benefits received during the fraud period.

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. 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (January 2009), 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 Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is 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.

FAP

The Department alleged that Respondent was overissued benefits in the FAP Program from January 1, 2006 through December 1, 2008. The Department provided a benefit inquiry history which revealed that Respondent received \$16,833.00 during the FAP fraud period. The Department stated that because Respondent was only entitled to \$10,761.00 during that period, an OI occurred in the amount of \$6,072.00.

The Department provided FAP budgets purporting to show the benefits Respondent should have received during the FAP fraud period. However, the Department was unable to identify how it arrived at the earned income amount on the budgets presented. For instance, Respondent completed an application for child care benefits on July 21, 2006. In the application, Respondent stated that she earned \$675.00 each month.

However, the budgets presented by the Department for July 2006 showed that Respondent's earned income totaled \$430.00 and August in 2006, the budget showed Respondent's earned income totaled \$394.00. The Department was unable to provide a reasonable explanation for the discrepancy.

Further, the Department stated that it obtained Claimant's income tax information and that the information reported was higher than that reported to the Department. The Department stated that it took the amount for the year and divided by 12 months to arrive at an unearned income amount. However, there appeared to be no consistency in the amount used by the Department in determining Claimant's earned income on the budgets presented. Accordingly, the Department has failed to establish that Respondent received more benefits than she was entitled relating to the FAP program during the FAP fraud period.

CDC

The Department further alleged that Respondent was overissued benefits in the CDC program from January 1, 2006 through June 30, 2009. The benefit summary inquiry revealed that Respondent received \$19,483.00 during the CDC fraud period. The Department asserts that Respondent was not entitled to any CDC benefits during the CDC fraud period and as a result, an OI occurred in the amount of \$19,483.00.

The Department alleged that the OI occurred relating to the CDC program because Respondent's mother claimed the children on her taxes and because Respondent's mother was employed during the time she was compensated for providing care for the children. As previously stated, there was no evidence that the children did not reside with Respondent or that her mother was employed during the time the services were paid. There does appear to have been a few months in which Respondent's mother was paid as a relative care provider when the benefits should have been paid at a lower rate. However, the Department did not provide any calculations as to how much Respondent's mother would have been paid as a provider living in the home with Respondent. Additionally, there was no definitive start and end date as to when Respondent and her mother resided together. Therefore, it is found that the Department failed to establish that an OI occurred. As such, the Department is not entitled to recoupment.

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 OI of FAP or CDC program benefits.

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



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

Date Signed: July 30, 2014

Date Mailed: July 30, 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.

JAM/cl

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