

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

**IN THE MATTER OF:**



Reg. No.: 201431982  
Issue No(s): 3005  
Case No.: [REDACTED]  
Hearing Date: JULY 17, 2014  
County: Macomb (36)

**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 July 17, 2014 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent appeared at the hearing and testified on his behalf.

**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 February 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 requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report 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 is April 1, 2010 to October 31, 2010 (fraud period).
7. During the fraud period, the Department alleges Respondent was issued \$2569 in FAP benefits by the State of Michigan and was entitled to \$462 in such benefits during this time period.
8. The Department alleges that Respondent received a FAP OI in the amount of \$2107.
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 his FAP benefits because he intentionally failed to report his self-employment income. In

support of its case, the Department presented (i) the redetermination Respondent submitted to the Department on February 2, 2010; and (ii) the self-employment income and expense spreadsheet Respondent provided to the Department on October 1, 2010 in connection with a State Emergency Relief (SER) application.

The Department argued that Respondent's failure to disclose his self-employment income in his February 2010 redetermination established that he intended to withhold information for the purpose of maintaining and avoiding reduction of his FAP benefits. However, Respondent testified at the hearing that he had not included the income in the redetermination because he had repeatedly informed the Department of his self-employment income. He credibly testified that he presented spreadsheets to his worker, in the same form as the one he submitted on October 1, 2010, every three to four months, and everytime he was assigned a new worker he would resubmit the spreadsheets because the worker would tell him that the prior verifications he provided were not in his file. The fact that Respondent voluntarily submitted the spreadsheet concerning this income with his October 2010 SER application, and that it is unlikely that the Department would have been aware of this income without this verification, further supports Respondent's position that he disclosed this income to the Department. Under the facts presented, the Department has failed to establish by clear and convincing evidence that Respondent intentionally withheld or misrepresented his self-employment income for the purpose of maintaining FAP benefits.

Thus, the Department has failed to establish that Respondent committed an IPV concerning her 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.

Because the Department failed to establish by clear and convincing evidence that Respondent committed a FAP IPV, Respondent is not subject to a disqualification from 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. 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 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

In this case, the Department alleges that Respondent received FAP benefits totaling \$2569 for April 1, 2010 to October 31, 2010 but was eligible for only \$462 in FAP benefits during this period. In support of its calculation of the OI amount, the Department presented FAP budgets for each of the months at issue that it testified showed the amount of FAP benefits Respondent would have been eligible to receive if his self-employment income had been considered in the calculation of his FAP benefits.

In determining FAP eligibility and benefit amount, the Department considers a client's countable income. BEM 500 (October 2010), p. 3. Countable income from self-employment equals the total proceeds **minus** allowable expenses of producing the income. BEM 502 (May 2010), p. 3. Allowable expenses are the higher of (i) 25% of the total proceeds or (ii) actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3.

In this case; each of the FAP budgets presented by the Department shows monthly self-employment income of \$1345. The Department was unable to explain how it calculated Respondent's monthly self-employment income and whether allowable expenses had been considered. A review of the spreadsheet in which Respondent identified his business income and expenses does not support the Department's calculation. In light of the Department's failure to establish how it calculated Respondent's self-employment income, and consequently the FAP OI, the Department is not entitled to recoup and/or collect from Respondent any of the FAP benefits it alleges were over-issued.

### **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 program benefits.

The Department is ORDERED to delete the FAP OI for April 2010 to October 2010.



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

ACE/tlf

Date Signed: July 23, 2014

Date Mailed: July 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.

ACE/tlf

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