

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

IN THE MATTER OF:

████████████████████
████████████████████ ██████████
████████████████████

Reg. No.: 2014-32422
Issue No(s): 3005
Case No.: ██████████
Hearing Date: June 26, 2014
County: Genesee (06)

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 June 26, 2014, from Detroit, Michigan. The Department was represented by ██████████, 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
 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 March 25, 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 self-employment and income.
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 fraud period is September 1, 2011 to November 30, 2011, and June 1, 2012 to November 30, 2012 (fraud period).
7. During the fraud period, Respondent was issued \$4,734 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$858 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 \$3,876.
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 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 his FAP benefits because he failed to report his self-employment income/employment and his son's employment and wages to the Department, which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (June 2011 and May 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.

The Department's OIG indicates that the time period it is considering the fraud period is September 1, 2011 to November 30, 2011, and June 1, 2012 to November 30, 2012. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report the income and that he intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility.

First, the Department presented Respondent's application dated January 13, 2011, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 11-30. Respondent indicated in the application under the self-employment that he is not working, but reported masonry employment under the

employment income section. See Exhibit 1, pp. 23-24 and 30 and see also redetermination dated November 30, 2011, pp. 31-34.

Second, the Department presented Respondent's application dated December 13, 2011, to show that he acknowledged his responsibility to report changes as required. See Exhibit 1, pp. 35-54. In this application, Respondent reported self-employment income doing masonry from 2007, but also indicated that he is not working at present under the employment income section. See Exhibit 1, pp. 47-48. The Department also presented a State Emergency Relief (SER) application dated February 1, 2012, which also reported that Respondent was not currently working under the employment income section nor working at the present time under the self-employment income section. See Exhibit 1, pp. 59-63.

Third, the Department presented Respondent's redetermination dated October 25, 2012. See Exhibit 1, pp. 66-68. In the redetermination, Respondent reported his son's employment and stated he started work in June 2012; his self-employment, which began in July 2012; and his daughter's employment, which began in October 2012. See Exhibit 1, p. 66. Also, on November 9, 2012, Respondent submitted notes to the Department, which stated his son had been employed since June 13, 2012 and that he had self-employment. See Exhibit 1, pp. 69-70. With the notes, Respondent included Self-Employment Income and Expense Statements from May 2012 to October 2012. See Exhibit 1, pp. 71-72.

Fourth, Respondent submitted other verification documents throughout the time period. For example, on November 30, 2012, Respondent submitted his self-employment income between May 2012 to September 2012. See Exhibit 1, p. 73-74 and see also documents submitted dated December 10, 2012, pp. 78-91.

Fifth, the Department presented Respondent's employer's verification dated December 13, 2011, which showed that he was employed from July 2011 to November 2011. See Exhibit 1, pp. 55-58. It should be noted that it appears that this employer was verifying the son's employment, but it actually was the Respondent's employment instead. See Exhibit 1, p. 55. The Department also presented the son employer's verification dated December 10, 2012, which stated that he began employment July 2012, ongoing. See Exhibit 1, pp. 75-77.

In summary, it appears that there are three total earnings that affect both the IPV and OI amounts. First, Respondent reported his verification of employment dated December 13, 2011 and indicated that he was employed from July 2011 to November 2011. See Exhibit 1, pp. 47 and 55-58. Respondent's employer pertains to the OI period of September 1, 2011 to November 30, 2011. Second, Respondent reported he does masonry on multiple occasions, but appeared to first report actual self-employment income earned on October 25, 2012. See Exhibit 1, p. 66. Respondent subsequently submitted several documents that showed he had self-employment income from May 2012 to October 2012. See Exhibit 1, pp. 71-74 and 78-91. Respondent's self-employment pertains to the OI period of June 1, 2012 to November 30, 2012. Third,

Respondent reported his son's employment for the first time on October 25, 2012. See Exhibit 1, p. 66. Again, additional documents showed that the son was employed from June 13, 2012, ongoing. See Exhibit 1, pp. 66, 69 and 75-77. Respondent's son's employment pertains to the OI period of June 1, 2012 to November 30, 2012.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. There was no evidence to show that Respondent, during the alleged fraud period, represented that he intentionally withheld information.

In regards to all three reported earned incomes, the Department presented evidence that Respondent did not report the income timely. It is understandable that the documentation shows the earnings were reported after their employment had begun and it is persuasive that he did not report the income within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7. Nevertheless, this evidence actually shows that the Respondent reported their income information to the Department. This shows that Respondent is not intentionally withholding or misrepresenting the income information.

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 his FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP 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 benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

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 715, (May 2014), p. 6.

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

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715, p. 1.

A client error is present in this situation because Respondent failed to notify the Department of the earned income timely. See BAM 105, p. 7. Based on this information, it is persuasive evidence that an OI is present due to client error.

However, the local office and client or AHR will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (March 2014), p. 36. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, p. 36. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 39.

Based on the foregoing information, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to properly establish an OI amount for the FAP benefits. BAM 600, pp. 36-39.

As to the first OI period (September 1, 2011 to November 30, 2011), the Department presented three budgets for the above time period. See Exhibit 1, pp. 93-95. Each budget included Respondent's income that was not reported timely. See Exhibit 1, pp. 55-58. Moreover, each budget calculated a total earned income of \$3,555. See Exhibit 1, pp. 93-95. Based on the Department's testimony, it appeared it calculated this amount by taking Respondent's last year-to-date (YTD) earnings in the amount of \$10,667.20 and divided it by three months, to obtain an average amount for each OI period. See Exhibit 1, p. 58. The result is \$3,555 for each OI period from September 2011 to November 2011. See Exhibit 1, pp. 93-95. However, this would appear to be an improper way to calculate the average amount because the evidence indicated that Respondent began employment in July 2011. See Exhibit 1, pp. 55-56. Instead, it would appear to have been proper to have divided the YTD by five months because Respondent began work in July 2011 (i.e., July 2011 to November 2011). As such, the

Department failed to establish that it properly calculated the OI amount for the first OI time period.

As to the second OI period (June 1, 2012 to November 30, 2012), the Department presented six budgets for the above time period. See Exhibit 1, pp. 96-102. The budgets included the Respondent's self-employment income and/or the son's income that was not reported timely. See Exhibit 1, pp. 69-91. Again, though, the Department failed to establish that it properly calculated the second OI period. There were benefit periods in which it was unclear how the Department calculated the self-employment income and/or the son's employment. See Exhibit 1, pp. 96-102. As such, the evidence is insufficient to show that the second OI amount was properly calculated.

In summary, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to properly establish an OI amount for the FAP benefits. BAM 600, pp. 36-39; BAM 700, p. 1; and BAM 715, p. 6. Therefore, there is no OI present in this case and the Department will delete the OI and cease any recoupment action.

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 \$3,876 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

delete the OI and cease any recoupment action.



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

Date Signed: July 7, 2014

Date Mailed: July 7, 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.

EJF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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