

**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.: 2014-34071
Issue No(s): 3005
Case No.: ██████████
Hearing Date: July 3, 2014
County: Calhoun (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 3, 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 April 8, 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 unearned and earned 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 April 1, 2012 to April 30, 2012, and December 1, 2012 to February 28, 2013 (fraud periods).
7. During the fraud period, Respondent was issued \$1,379 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$277 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 \$1,102.
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 her FAP benefits because she failed to report her earned and unearned income 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 (December 2011 and 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.
- Unearned income:
 - Starting or stopping a source of unearned income.
 - Change in gross monthly income of more than \$50 since the last reported change.

BAM 105, p. 7.

The Department's OIG indicates that the time periods it is considering the fraud period are April 1, 2012 to April 30, 2012, and December 1, 2012 to February 28, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report her income and that she intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

First, the Department presented Respondent's application dated February 14, 2012, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1, pp. 10-30. It should be noted that Respondent reported being fired from her employment as of February 8, 2012. See Exhibit 1, p. 22.

Second, the Department presented Respondent's State Emergency Relief (SER) application dated April 11, 2012, which reported unemployment income. See Exhibit 1, pp. 31-35. Moreover, the Department presented Respondent's unemployment verification, which showed that she received the unearned income from February 24, 2012 to April 18, 2012. See Exhibit 1, pp. 58-73. It should be noted that the Respondent subsequently received unemployment earnings from May 2, 2012 through July 25, 2012, and then the evidence shows earnings as well from December 5, 2012 to February 15, 2013. See Exhibit 1, pp. 58-73.

Third, the Department presented Respondent's application dated August 17, 2012, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1, pp. 36-55. This application was submitted between the alleged OI periods. The application did not report any earned income, but did report the unemployment income. See Exhibit 1, p. 50.

Fourth, the Department presented verification of Respondent's employment income dated April 8, 2013. See Exhibit 1, p. 56. The verification indicated that Respondent began employment on October 5, 2012 and received wages until March 6, 2013. See Exhibit 1, pp. 56-57.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

As to the first alleged fraud period (April 2012), the evidence was not persuasive to show that Respondent intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

As stated above, the Department presented Respondent's SER application, which was submitted during the first alleged fraud period. See Exhibit 1, pp. 31-35. In the SER application, Respondent reported the unemployment income to the Department. See Exhibit 1, p. 39. Even though Respondent reported the unemployment income untimely, this shows that she did not intentionally withhold or misrepresent the income information. Instead, Respondent actually reported the unearned income to the Department and thus, establishes that she did intentionally withhold the unearned income information.

As to the second alleged fraud period (December 2012 to February 2013), the evidence was not persuasive to show that Respondent intentionally withheld or misrepresented

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

There was no evidence to show that Respondent, during the second alleged fraud period, represented that she intentionally withheld 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 her 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 (July 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 both unreported incomes. Based on this information, it is persuasive evidence that an OI is present due to client error.

In regards to policy, Respondent did not report the unearned/earned income changes within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7. Thus, an OI was present for FAP benefits.

As to the first OI period (April 2012), in consideration of the Respondent receiving the unearned income on February 24, 2012, it is found that the Department applied the appropriate OI begin date April 1, 2012. See BAM 715, pp. 4-5 and Exhibit 1, pp. 3 and 62.

In this case, the Department presented an OI budget for April 2012. See Exhibit 1, pp. 63 and 72-73. The budget included Respondent's unemployment income that was not previously budgeted. See Exhibit 1, pp. 63 and 72-73. A review of the OI budget for April 2012 found it to be fair and correct. See BAM 715, p. 8. As such, the overissuance established for the first OI period of April 2012 is \$200. See Exhibit 1, pp. 63 and 72-73.

As to the second OI period (December 2012 to February 2013), in consideration of the Respondent receiving the earned income on October 17, 2012, it is found that the Department applied the appropriate OI begin date December 1, 2012. See BAM 715, pp. 4-5 and Exhibit 1, pp. 3 and 57.

In this case, the Department presented OI budgets for December 2012 to February 2013. See Exhibit 1, pp. 63-71. These budgets included Respondent's employment income that was not previously budgeted. See Exhibit 1, pp. 63-71. It should be noted that the budgets also included the unemployment earnings as well. See Exhibit 1, pp. 58-59 and 66-71. A review of the OI budgets for December 2012 to February 2013 found them to be fair and correct. See BAM 715, p. 8. As such, the overissuance established for the second OI period of December 2012 to February 2013 is \$902. See Exhibit 1, pp. 63-71. The total OI amount for both OI periods is \$1,102 (\$200 first OI period plus \$902 for second OI period).

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 \$1,102 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$1,102 in accordance with Department policy.



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

Date Signed: July 8, 2014

Date Mailed: July 8, 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]
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