

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014 34089
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: June 18, 2014
County: Van Buren (80-00)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 18, 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
 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 Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving
 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 4/08/14, 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 person(s) residing with her and disclose this information to the Department.
5. Respondent had no 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, 2008 through October 31, 2011 (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED]9 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 \$ [REDACTED]0.
9. The Department alleged that the Respondent received an overissuance of SER benefits in the amount of [REDACTED]. No proofs to support the overissuance or that the Respondent was not entitled to receive SER benefits were presented at the hearing.
10. This was Respondent's first second third alleged IPV.
11. 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 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 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 (7/1/13), 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 (7/1/13), 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.

In this case, the Department seeks an intentional program violation of Food Assistance (FAP) benefits and recoupment of overissued benefits. The period in question for overissuance is April 1, 2008 through October 31, 2011.

The Department has alleged that the Respondent reported at various times throughout the alleged fraud period that her three children were members of her FAP group when they were not living with her. Five applications/redeterminations were completed by the Respondent during the period and presented as evidence by the Department. A review of the applications by child listed follows.

██████

On March 13, 2008, the Respondent completed an Application for food assistance and listed herself and ██████, her son, as group members. The Respondent clearly advised the Department that her child was there one week on and one week off, and sometimes weekends depending on her ex-husband's weekend (military) reserve schedule. The application also notes that the Respondent advised the Department that her other children were with their father. Exhibit 1 p. 11 and 17. Thus, at this time the Department presumably would have completed verification to determine where the child ██████ resided if there were any reason to believe this was not true. The Respondent's child, ██████, is listed as living with her at all times and on all applications.

On February 10, 2009, the Respondent filed another application, included in her application her son, ██████, and stated that he lives 20 days of the month with her, and that she was married still to ██████████ Exhibit 1 p.23. The application also notes that the Respondent paid child support for her two other children, ██████████. She did not list these children on the application. Exhibit 1 p 21.

The evidence provided by the Department to establish an intentional program violation as regards the Respondent's two applications, (March 2008 and February 2009) that

claim [REDACTED] was living with her during the period in question (April 1, 2008 through October 31, 2011), was a note taken by an OIG agent who was not present at the hearing. The note was taken as part of an investigation and involves a telephone conversation that the agent documented with the father of [REDACTED] on September 7, 2011. On September 7, 2011, the agent notes indicate the following: [REDACTED] stated he has full physical custody of [REDACTED] since 2004. Reese stated [REDACTED] lives with him in Michigan. Reese stated [REDACTED] stays with [REDACTED] every other weekend, as this is the visitation agreement from the court. [REDACTED] stated [REDACTED] helps out with [REDACTED] by watching him/babysitting him a couple hours after school during the week, but [REDACTED] does not live with [REDACTED] and has not lived with [REDACTED] since 2004." The Department did not provide a copy of a custody or visitation agreement and the Respondent did not pay child support for [REDACTED]

In another phone interview with the Respondent taken by the same investigator, [REDACTED] stated [REDACTED] lives between her house and his father's [REDACTED] house in Coloma. [REDACTED] stated she has [REDACTED] over 50% of the time." Exhibit 1 p. 74-75.

As regards this child, [REDACTED] who the Respondent listed as living with her throughout the entire fraud period, the Department did not establish by clear and convincing evidence based upon the evidence presented that the Respondent intentionally gave the Department inaccurate information or misrepresented information with regard to [REDACTED] being a group member.

[REDACTED]

On September 11, 2009, the Respondent completed another application and listed her children, [REDACTED] and [REDACTED], as living with her Exhibit 1 p. The application clearly advised the Department that [REDACTED] was not at the address at the time of the application and that he stayed at the home 14 days monthly. Exhibit 1, p. 37.

In addition, the Respondent did not complete the number of days [REDACTED] resided with her in the household in the space provided. There were no caseworker notes associated with this application. However, based on the information provided, the Respondent advised the Department that [REDACTED] did not live with her 50% of the time and thus the Department should not have included him as a group member. There is no further evidence with regard to what, if anything, the Department investigated regarding [REDACTED] at the time. The Respondent also clearly advised the Department that she had a mental disability and was receiving SSI. She again notes that she pays child support for [REDACTED]. The caseworker interview notes were written 9/11/09 and indicate that at the interview, the other two children, [REDACTED], were added to the FAP group even though addresses for these children were listed in [REDACTED], Michigan and the Respondent's address was reported as [REDACTED] Michigan about 19 miles distance apart.

On January 21, 2010, the Respondent completed a Redetermination and did not cross out any of the three children [REDACTED] listed as members in her household.

The Redetermination notes that all children live with her 15 days or more. The caseworker notes indicate based on an interview on 1/28/10 that the children were living with Respondent at least 15 days per month. Exhibit 1 p.52,

On November 22, 2010, the Respondent applied for Medical Assistance. Exhibit 1 p. 53. The Respondent listed an address in [REDACTED], Michigan. The application information indicates that the Court has terminated both parental rights. The application also indicates that all three children, [REDACTED], live with the Respondent at least 15 days per month. No children were listed in the section where all children under age 22 were to be listed. Exhibit 1 p. 61. The application also advises the Department that the Respondent pays child support for [REDACTED].

The Department began an investigation in August 2011 based on a Hotline referral. As part of the investigation, interview notes of a stepparent of [REDACTED], were made. The stepmother stated that the father has had full custody of the children since 2006. During the school year, [REDACTED] lives with them in [REDACTED] c and see their mother every other weekend. She also acknowledged that the children, [REDACTED], stay with the mother during the summer. Since 2006, [REDACTED] have lived with him more than 50% of the time. At the time of the interview, [REDACTED] had been living with his mother since at least June 2011. On September 6, 2011, the Respondent was also interviewed. The Respondent stated that [REDACTED] was living with her all summer but is now with her father. [REDACTED] had also been living with her full-time and has been so since May 2011. [REDACTED] lives between her house and his father's house and lives with her over 50% of the time.

The Department never determined in a follow-up call to either [REDACTED] mother, the Respondent and their father, whether [REDACTED] lived with the Respondent during the summers.

Based upon the evidence it is determined that [REDACTED] did live with his mother from May 2011 ongoing. It is also determined that [REDACTED] and [REDACTED] lived during the summers with their mother, presumably June, July and August.

The Department also presented school records for [REDACTED] beginning in 2008. Exhibit 1 pages 83 through 94. A record for [REDACTED] in 2008 indicates that she lives with her father and stepmother and that she was not to leave the school grounds with her mother, [REDACTED] unless a note was sent with the child allowing her to leave. This school record was signed by [REDACTED] the child's father on September 22, 2008. On August 27, 2010, the Department presented a school form for [REDACTED] indicating that she was a member of his household without any notation regarding [REDACTED]. On August 26, 2011, a school record for [REDACTED] was provided indicating that [REDACTED] no longer lived in the home.

A school record for [REDACTED] was also provided on August 26, 2008 indicating he was a member of his father's household and that he was not allowed to leave the school grounds with [REDACTED] unless the father provided to note allowing same. On August 27,

2010 school records were provided in which indicated that [REDACTED] still lived with his father however there was no note prohibiting him from leaving the school grounds with his mother. Exhibit 1 pages 91 – 94. No other school records were provided.

Based upon the evidence presented, it is determined that the Respondent did not have [REDACTED] living with her at the time she would have completed the January 21, 2010 and the November 22, 2010 applications. This determination is based upon the school records for [REDACTED] filed August 26 and 27 2010, respectively, completed by their father. This determination is also based on the fact that the father signed a sworn statement regarding the custody of the children and that the children, [REDACTED] and [REDACTED], lived with him more than 50% of the time from 2006 through July 2011 and that child support was received by the father for the children.

Based upon the evidence reviewed and presented it is determined that the Department **did establish** by clear and convincing evidence that the Respondent falsely reported that her children, [REDACTED], were living with her during the period January 21, 2010 through October 3, 2011, as to [REDACTED] only and as to [REDACTED] through May 2011. As a consequence of this false reporting, the Respondent received more FAP benefits than she was entitled to receive as a result of the false reporting, however as explained below, an IPV finding and disqualification cannot be granted. The Department **did not establish** by clear and convincing evidence that the Respondent's son, [REDACTED], was not living with her during the fraud period. Even though a false reporting is found, an IPV requires that an overissuance of benefits of \$1,000 or more must be established. As the FAP overissuance budgets remove [REDACTED] from all the months of the Fraud Period, the overissuance budgets as presented are all incorrect as the group size would be two for the entire period which resulted due to the fact that the Department's calculations did not include [REDACTED] in the FAP group in any of the budgets.

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 (7/1/13), 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, because the Department did not establish and Intentional program violation it is not entitled to any disqualification of the Respondent.

SER Overissuance

The Department's Hearing Summary sought an Overissuance of State Emergency Relief (SER) benefits in the amount of [REDACTED] for the period 4/1/2009 through 10/31/2011, but did not present any proofs regarding this claim other than benefits were received, and without more the evidence presented, did not meet its burden of proof to show an overissuance of SER benefits.

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.

As previously determined the Department did not establish that [REDACTED] was not living with the Respondent a a group member.

Looking only at the period where it is determined that two of Respondent's children, [REDACTED], were falsely reported living with her by Respondent (January 21, 2010 through October 31, 2011), the Department calculated the overissuance based upon a group consisting of only one member, the Respodent, and removed 3 persons from the group. In fact, the overissuance, based upon the ruling in this case should have been calculated for a group of two members ([REDACTED] and Respondent), and should have removed 2 members ([REDACTED]). This error requires a finding that the overissuance for the entire period was incorrectly calculated and thus cannot be upheld. Even the overissuance calculations for the period prior to January 21, 2010 are incorrect as they do not include [REDACTED] as a group member, but instead remove him. Lastly, the overissuance determinations after January 21, 2010 are incorrect due to the finding in this Decision that [REDACTED] were living with their mother for a 3 month period (June, July and August) for the summer based upon the evidence provided by the Department, and months were incorrectly included as part of the total overissuance when it made its determination of the overissuance during those summer periods. As the overissuance fails for the entire period and has not been proved, the Department is also not entitled to a finding of IPV.

Therefore, it is determined that these errors in calcuating the overissuance in the amount of [REDACTED] requires a finding that the overissuance amount sought by the Department cannot be granted as it is incorrect.

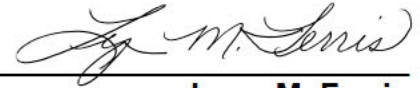
DECISION AND ORDER

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 **did not commit an intentional program violation (IPV).**
2. Respondent **did not receive an OI of program benefits** in the amount [REDACTED] from the following program(s) FIP FAP SDA CDC MA.
3. Respondent did not receive an overissuance of State Emergency Relief (SER) program benefits in the amount of [REDACTED].

The Department is ORDERED to

- delete the Food Assistance OI and cease any recoupment action.
- delete the State Emergency Relief OI and cease any recoupment action.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 14, 2014

Date Mailed: July 15, 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.

LMF/tm

cc:

[REDACTED]