

**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.: 14-003429
Issue No.: 3005
Case No.: ██████████
Hearing Date: July 17, 2014
County: LENAWEЕ

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 July 17, 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 May 30, 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 to report changes in 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 January 1, 2010 through February 28, 2011 (Fraud period 1), and April 1, 2011 through May 31, 2011 (Fraud period 2).
7. During the fraud periods, Respondent was issued \$3971 in FAP benefits, [REDACTED] in Fraud Period 1, and [REDACTED] in Fraud Period 2, respectively, in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 benefits in Fraud Period 1, and \$ [REDACTED] in Fraud Period 2 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].
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), p. 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 presented evidence that the Respondent completed a redetermination on September 18, 2009. Thereafter, the Department sent the Respondent a Change Report so that she could report any changes October 19, 2009. Exhibit 1 pp. 36. The Respondent's husband started a job with [REDACTED] on November 18, 2009. The Claimant completed the Change Report on March 13, 2010, and reported that her husband had just started his job with [REDACTED]. Thereafter, the Respondent started a job with [REDACTED] on January 25, 2011, and did not report this employment. The Respondent's husband worked consistently for these companies and Respondent did not report the second employment at all. The employment was discovered by a system generated new hire notice. Based upon the evidence presented, the closeness in time to the start of employment and the change report sent and the failure to report the second employment, it is determined that the Respondent intentionally withheld information regarding the receipt of income and employment to obtain for FAP benefits that she was otherwise entitled to receive. Based upon the foregoing, the Department has established by clear and convincing evidence that an IPV has been committed by the respondent.

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.

In this case, The Department has established by clear and convincing evidence that an IPV has been committed and thus is entitled to a one-year disqualification.

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 Claimant 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.

In this case, The Department presented budgets for the two time periods in question and all were reviewed with respect to the unreported unearned income, and compared with the pay information available consisting of pay stubs and a payroll summary provided by both employers pursuant to verifications of employment. The Department also presented a Benefit Summary Inquiry covering the periods in question which demonstrated the actual FAP benefits received by the Respondent. The Department also correctly calculated the first months of each OI period beginning January 1, 2010 and April 11, 2011, respectively, applying the policy found in BAM 720, p. 7. After reviewing the budgets it is determined that the Department correctly calculated the total overissuance correctly in the amount \$ [REDACTED].

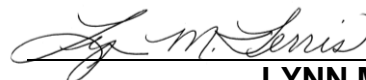
DECISION AND ORDER

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 [REDACTED] from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.
- It is FURTHER ORDERED that Respondent be disqualified from FIP FAP SDA CDC for a period of 12 months. 24 months. lifetime.



LYNN M. FERRIS

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

Date Signed: August 13, 2014

Date Mailed: August 14, 2014

