

**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.: 14-001641
Issue No.: 1005; 3005; 5000
Case No.: ██████████
Hearing Date: September 15, 2014
County: MONTMORENCY

ADMINISTRATIVE LAW JUDGE: Susan Burke

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 September 15, 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), Food Assistance Program (FAP) and State Emergency Relief (SER) 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 FIP and/or 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 April 30, 2014, to establish an OI of FIP, FAP and SER benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP and FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report household 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 September 1, 2011 through April 30, 2013 (fraud period).
7. Respondent received an OI in FIP benefits in the amount of \$9,410.00 and FAP benefits in the amount of \$6,241.00.
8. This was Respondent's first IPV.
9. 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).

FIP AND FAP

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3101 to .3131.

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 \$500 or more, **or**
 - the total OI amount is less than \$500, **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 employee.

BAM 720 (1/1/2011), p. 4

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 720, p. 1

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. *Id.*

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. *Id* (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, Claimant does not deny that she signed several applications for assistance for programs including FIP, FAP, and SER from August 22, 2011 through January 29, 2013. It is logical to conclude that the Department clearly and correctly instructed regarding her reporting responsibilities. In addition, Claimant had no apparent physical or mental impairment that limits her understanding or ability to fulfill reporting responsibilities. Claimant did not report her spouse's income throughout all of the applications.

Claimant argued that she and her husband were separated, but Claimant's husband described that he lived in the same home as Claimant at least twenty days per month, and that he supported the family with his income. It is logical to conclude that Claimant intentionally withheld or misrepresented information for the purpose of establishing or maintaining program 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. *Id.* 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. *Id.*

In this case, Claimant is disqualified from receiving FIP and FAP benefits for one year.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (1/1/2011), p. 1

In this case, Claimant and her spouse had minor children living in the same household. For FIP purposes, a child's legal parents who live together are mandatory group members, and all income of group members is to be counted. BEM 210 (6/1/2011) Living together means sharing a home where family members usually sleep except for temporary absences. Thus, Claimant's spouse's income should have been counted when calculating FIP benefits.

For FAP purposes, spouses who are legally married and live together must be in the same group. BEM 212 (9/1/2010) Claimant's spouse's income should have been counted when calculating FAP benefits.

The Department has established that Respondent received an OI in FIP benefits in the amount of \$9,410.00 and FAP benefits in the amount of \$6,241.00. See Exhibit 1, pp. 183-205.

SER

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001 through R 400.7049.

With regard to SER, Department policy dictates that SER and ESS overissuances are to be referred to the recoupment specialist only when IPV is suspected and a FIP, SDA or FAP overissuance also exists for the same period. The Department is to follow procedures in the SER manual for recoupment of SER. BAM 720, p. 3 The policy and procedure governing the calculation, establishment and recoupment of an OI for the SER program is found in ERM 401, Payment. BAM 700, p.11 When an overissuance is found, it is the responsibility of the specialist to determine the amount and contact the provider to obtain a refund. Emergency Relief Manual (ERM) 401 (4/1/2011), p. 3

In this case, since ERM 401 instructs the Department to contact the provider to obtain a refund for an OI in SER, this Administrative Law Judge has no jurisdiction with regard to Respondent. Therefore, the Department's request for hearing regarding the SER IPV is DISMISSED.

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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent received an OI in FIP benefits in the amount of \$9,410.00 and FAP benefits in the amount of \$6,241.00.

The Department is ORDERED to initiate recoupment procedures for FIP benefits in the amount of \$9,410.00 and FAP benefits in the amount of \$6,241.00.

It is FURTHER ORDERED that Respondent be disqualified from FIP and FAP for a period of one year.

