

**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.: 14-003739
Issue No.: 1005
Case No.: ██████████
Hearing Date: September 17, 2014
County: CRAWFORD

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 September 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 June 5, 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 her husband's 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 March 1, 2008, to May 31, 2008 (fraud period).
7. During the fraud period, Respondent was issued \$1,779 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$181 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 \$1,598.
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 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 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.

As a preliminary matter, a previous administrative hearing was held on April 14, 2014, in which the Department sought an IPV against the Respondent for both her Food Assistance Program (FAP) and FIP benefits (see reg. no. 2014-27997). However, the Notice of Hearing was returned to sender and the FIP claim was dismissed for lack of service. Thus, the Administrative Law Judge (ALJ) only addressed if whether Respondent committed an IPV regarding the FAP benefits.

In this case, the Petitioner (Department) requested another hearing as a result of Respondent having allegedly committed a FIP IPV. The Department obtained a different address identified by the Department as the last known address. The Notice of Hearing and accompanying documents were mailed to Respondent and none of the documents were returned as undeliverable. See BAM 720, p. 12. As such, the hearing properly proceeded with respect to the alleged FIP IPV.

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 FIP benefits because she failed to report her husband's employment and wages to the Department, which caused an overissuance of FIP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Program Administrative Manual (PAM) 105 (April 2007), p. 7. Changes must be reported **within 10 days**: after the client is aware of them, or the start date of employment. PAM 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.

PAM 105, p. 7.

Other reporting requirements include, but are not limited to, changes in persons in the home. PAM 105, p. 7.

For FIP group composition, when assistance is requested for a dependent child, each of the following who live together must be in the program group: child and the child's parent(s). Program Eligibility Manual (PEM) 210 (July 2007), p. 3. The program group means those persons living together whose income and assets must be counted in determining eligibility for assistance. PEM 210, p. 1.

The Department's OIG indicates that the time period it is considering the fraud period is March 1, 2008, to May 31, 2008. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report her husband's income and that she intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of her FIP program benefits or eligibility.

First, the Department presented Respondent's application dated December 7, 2006, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1, pp. 12-19.

Second, the Department presented Respondent's OI referral dated July 23, 2008. See Exhibit 1, p. 20. It should be noted that the OI referral indicated that Respondent's spouse was in jail and returned back to the home with the Respondent. See Exhibit 1, p. 20. Moreover, at the time the spouse returned to the home, Respondent never reported that he had earnings while in the home. See Exhibit 1, p. 20.

Third, the Department presented Respondent's husband's Verification of Employment and accompanying documentation dated September 2, 2008. See Exhibit 1, pp. 21-22. The employment verification indicated that Respondent's husband began employment on January 14, 2008 and that it was expected to end May 9, 2008. See Exhibit 1, p. 21. Moreover, the employer indicated that the husband received wages from January 25, 2008, to May 16, 2008. See Exhibit 1, p. 22.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FIP benefits. There was no evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld information. The Department presented Respondent's application and verification of employment, however, these documents were not submitted during the alleged fraud period.

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

Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report her spouse's 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 (May 2014), p. 1.

A client error is present in this situation because Respondent failed to notify the Department of her spouse's return to the household and his unreported earned income. 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 earned income changes within 10 days of receiving the first payment reflecting the change. PAM 105, p. 7. Thus, an OI was present for FIP benefits.

Applying the overissuance period standards and in consideration of the Respondent receiving the unreported income on January 25, 2008, the Department determined that the OI period began on March 1, 2008. See Exhibit 1, pp. 3 and 22. It is found that the Department applied the appropriate OI begin date. See BAM 715, pp. 4-5.

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, p. 6.

In this case, the Department presented OI budgets for March 2008 to May 2008. See Exhibit 1, pp. 29-38. The budgets included Respondent's husband's income that was not previously reported from the employer's verification. See Exhibit 1, pp. 21-22. A review of the OI budgets for March 2008 to May 2008 found them to be fair and correct. See BAM 715, p. 8.

Based on the above information, the Department established that from March 2008 to May 2008, Respondent was issued \$1,779 in FIP benefits. After budgeting the

