

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-004278
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: September 24, 2014
County: Calhoun (District 21)

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 24, 2014, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) 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 Food Assistance Program (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 June 17, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to use FAP benefits only for purposes authorized by the Food Stamp Act of 1977, and to report changes in her circumstances that would affect her eligibility.
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 December 1, 2011, through August 31, 2012, and December 1, 2012, through April 30, 2013, (fraud periods).
7. During the fraud periods, Respondent was issued [REDACTED] in benefits by the State of Michigan, and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of [REDACTED].
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable. The hearing packet was mailed to Respondent at the last known address and was not returned.

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. 12.

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, Respondent applied for FAP, and she acknowledged that she understood that she needed to report changes in her household circumstances that would affect her eligibility for the benefits she was receiving.

Respondent was employed, but was receiving FAP. In a November 14, 2011, Notice of Case Action (Exhibit 1 Page 84 et seq.), she was instructed that she needed to report to the Department if her household income exceeded [REDACTED]. (Exhibit 1 Page 87.) In another Notice of Case Action (Exhibit 1 Page 92 et seq.) dated September 20, 2012, she was instructed that she needed to report to the Department if her household income exceeded [REDACTED]. (Exhibit 1 Page 95.)

On May 6, 2013, the Department received wage verification from her employer. (Exhibit 1 Pages 52-53.) That verification reported her wages from October 12, 2012, through April 26, 2013. Her wages for September 30, 2011, through October 12, 2012, are reported at Exhibit 1 Page 55. The monthly totals are provided at page 83. Respondent's household was also receiving RSDI each month.

Claimant's household income exceeded the simplified reporting limit for the following months: October, November, and December of 2011; March, April, May, August, October, November, and December of 2012; February, March, and April of 2013. In some months, her income did not significantly exceed the reporting limit, but in other months there was a large gap. For example, in March 2012, the limit was [REDACTED], but she made [REDACTED]. She exceeded the limit by [REDACTED]. Most significant was March 2013, when she had income of [REDACTED], which was [REDACTED] over the reporting limit of [REDACTED]. For the period of December 1, 2011, through August 31, 2012, her failure to report her income resulted in her receiving [REDACTED] in FAP that should not have been received. Similarly, for the period of December 1, 2012, through April 30, 2013, her failure to report her income resulted in her receiving [REDACTED] in FAP that should not have been received. The Department has provided clear and convincing evidence that Claimant intentionally withheld material information regarding her wages from the Department. It is significant that she received a NCA on November 14, 2011, and her income exceeded the reporting limit in October, November, and December 2011. Then, she received another NCA dated September 20, 2012, and her income exceeded the limit for the next three months, but she did not report it. She submitted a redetermination dated February 28, 2013, (Exhibit 1 Pages 50-51) in which she affirmatively stated that her household earned income had not increased by more than [REDACTED] from [REDACTED], yet in that very month she had already received two paychecks reflecting gross income of [REDACTED]. She testified that she thought the Department wanted to know if her net hourly wage, without overtime, exceeded the limit. That is not believable, because the Redetermination form specifically mentions "household's monthly gross earned income (before taxes) . . ." Even if the Department did not consider overtime, she was earning [REDACTED] per hour, and at 40 hours per week, she was grossing [REDACTED] per week, or [REDACTED] per month (using the multiplier of 4.3 times the weekly wage).

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 15.

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 (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, Respondent committed an IPV by receiving more in FAP benefits than she would have received had she accurately reported her income. Because she has committed an IPV, she is to be disqualified.

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.

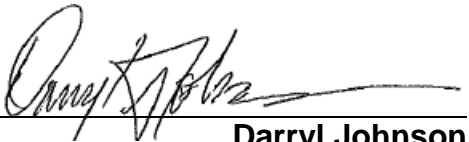
In this case, Respondent received [REDACTED] more in benefits than she should have. She was not entitled to those benefits. The Department has established an OI of [REDACTED] which is to be recouped.

DECISION AND ORDER

1. The Department has established by clear and convincing evidence that Respondent committed an intentional program violation (IPV).
2. Respondent received an OI of program benefits in the amount of [REDACTED] from the FAP program.

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 FAP for a period of 12 months.


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

Date Signed: **9/26/2014**

Date Mailed: **9/26/2014**

DJ/jaf

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

