

**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.: 2014-30888
Issue No(s): 3005
Case No.: ██████████
Hearing Date: August 20, 2014
County: Macomb (20)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 August 20, 2014 from Detroit, Michigan. The Department was represented by ██████████
████████████████████ 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 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 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 March 7, 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 report 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 alleges that between July 1, 2005, and August 30, 2006, Respondent received \$1,933 in FAP benefits and was eligible to receive \$0.
7. The Department alleges that Respondent received an FAP OI in the amount of \$1,933.
8. This was Respondent's first alleged FAP 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 Program Reference Tables (PRT).

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), pp. 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 alleges that Respondent committed an IPV concerning his FAP benefits because, although he reported his employment income from his employer [REDACTED] (Employer), he failed to report the commission income he received from Employer. Wages are the pay an employee receives from another person or organization and include commissions; wages are considered in the

calculation of a client's FAP eligibility. PEM 500 (July 2005 and July 2006), p. 15; PEM 556 (October 2014), p. 2.

In support of its case that Respondent intentionally withheld his commission information and misrepresented his income, the Department presented (i) the application Respondent submitted to the Department on July 12, 2005; (ii) the verification of employment Employer submitted to the Department on July 28, 2006 in response to the Department's request; (iii) Respondent's check stubs dated June 30, 2005; June 15, 2005; September 15, 2005; October 31, 2005; November 15, 2005; and November 30, 2005; and (iv) the benefit summary inquiry showing that Respondent was issued FAP benefits between July 2005 and August 2006.

Respondent testified at the hearing that he received regular ongoing pay of \$866.67 twice a month, on the fifteenth and last day of the month, and received a commission check, if eligible based on his and Employer's store performance, on the fifteenth of the following month. A review of the July 12, 2005, application shows that Respondent checked "yes" when asked if he received tips/bonuses and checked "no" when asked if tips were included in the gross income on his check stub. Respondent argued that the Department was put on notice that he received commissions both from his application and the paystubs that showed "other bonus" in the year-to-date earnings column. Respondent testified that the Department did not ask for verification of his commission, and the Department did not present any evidence to dispute this testimony.

In order to establish that a client has committed an IPV, the Department must establish that the client "committed, and intended to commit, an IPV." 7 CFR 273.16(e)(6); 7 CFR 273.16(c). Under the evidence presented, where Respondent disclosed to the Department that he received commissions that were not included in his twice-monthly pay, the Department has failed to establish by clear and convincing evidence that Respondent intended to commit an IPV by misrepresenting his income.

Therefore, the Department has failed to establish its IPV allegations against 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.

Because the Department failed to establish that Respondent committed an FAP IPV, he is not subject to a disqualification from the FAP program.

Overissuance

When a client group receives more benefits than 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 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

In this case, the Department alleges that, when Respondent's commissions are included in the calculation of his FAP eligibility for July 2005 to August 2006, the household's gross income exceeds the applicable gross income limit.

However, the Department did not identify the gross income limit that applied to Respondent's case between July 2005 and August 2006. Furthermore, while the Department calculated Respondent's gross monthly income for July 2005 to December 2005 based on the consolidated inquiry of his quarterly earnings, it did not establish Respondent's gross monthly income for January 2006 through August 2006: Respondent's actual twice-monthly pay for each of those months is identified in the verification of employment completed by Employer, but the Department did not calculate Respondent's gross monthly pay based on the information provided. In the absence of the foregoing information, the Department has failed to satisfy its burden of showing that it overissued FAP benefits to Respondent. Therefore, the Department is not entitled to collect and/or recoup FAP benefits from Respondent for the period between July 2005 and August 2006.


Thus, the Department is not entitled to recoup and/or collect any FAP benefits issued to Respondent between July 1, 2005, and August 30, 2006.

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an FAP OI.

The Department is ORDERED to delete the FAP OI for the period July 2005 to August 2006 and cease any recoupment and/or collection procedures.


Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 10, 2014

Date Mailed: September 10, 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.

ACE/tlf

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