

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-34895
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: September 4, 2014
County: Benzie (00)

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 4, 2014 from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent, [REDACTED].

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 April 21, 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 and her daughter's unearned 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, 2013 to April 30, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$1,148 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$64 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 \$1,084.
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), 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 of her FAP benefits because she failed to report her unemployment compensation and her daughter's Retirement, Survivors and Disability Insurance (RSDI) to the Department, which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (November 2012), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Unearned income:
 - Starting or stopping a source of unearned income.
 - Change in gross monthly income of more than \$50 since the last reported change.

BAM 105, p. 7.

The Department's OIG indicates that the time period it is considering the fraud period is January 1, 2013 to April 30, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report the unearned income and that she intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

First, the Department presented Respondent's application dated April 16, 2012, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1, pp. 11-30 and see also redetermination dated September 18, 2012, pp. 31-34. It should be noted that Respondent reported her employment income and child support income. See Exhibit 1, pp. 24-25.

Second, the Department presented two written statements from the Respondent received on October 29 and 30 of 2012. See Exhibit 1, pp. 35-37. On October 29, 2012, Respondent reported that she had married on October 11, 2012 and that they

reside together. See Exhibit 1, pp. 35-36. Moreover, Respondent stated her employment will end as of November 4, 2012 and that she would attempt to file for unemployment, but did not know if she would qualify. See Exhibit 1, pp. 35-36. On October 30, 2012, Respondent reported that her actual last day of work was October 27, 2012. See Exhibit 1, p. 37. Also, Respondent stated she will be attempting to file for unemployment and would notify the Department of any income. See Exhibit 1, p. 37.

Third, the Department presented Respondent's Semi-Annual Contact Report (contact report) dated March 15, 2013, which was submitted during the alleged fraud period. See Exhibit 1, pp. 38-39. In the contact report, Respondent reported no changes and did not list any household unearned income in Section 5. See Exhibit 1, p. 39.

Fourth, the Department presented Respondent's three unearned income verifications (child's RSDI income, child support, and unemployment compensation). Respondent received on behalf of her child \$257 in monthly RSDI income that began on November 10, 2012. See Exhibit 1, p. 40. Respondent also received \$87 in monthly child support income (child support income was reported timely). See Exhibit 1, p. 41. Finally, the Department presented Respondent's unemployment verification in which she received \$420 biweekly (\$210 weekly) that began on November 16, 2012. See Exhibit 1, pp. 42-43.

At the hearing, Respondent argued that she did not intentionally withhold the income information. Respondent testified that she did not recall reporting the income information due to medical conditions. Respondent acknowledged that she received all three of the above stated unearned incomes during the alleged fraud period. Respondent testified that the child support income consisted of arrearages from the daughter's father. Moreover, Respondent testified that the daughter's father filed for disability and the county court found that the daughter's monthly RSDI income satisfied the child support income. Respondent appeared to testify that she did not think she had to report the RSDI income because she had already claimed it (as child support income). Respondent finally testified that she did not indicate any household income in the contact report dated March 15, 2013 because there were no changes at the time and that the Department already had all of the information.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP.

As stated above, the Department presented Respondent's contact report dated March 15, 2013, which was submitted during the alleged fraud period. See Exhibit 1, pp. 38-39. In the contact report, Respondent reported no changes and did not list any household unearned income in Section 5. See Exhibit 1, p. 39. Even though Respondent did not indicate the unearned income, she credibly testified that she did not intentionally withhold the income information. Moreover, Respondent credibly testified that she did report the daughter's income because she had already claimed it (as child support income). In fact, Respondent reported that she will attempt to file for unemployment benefits and will notify the Department of any income. See Exhibit 1, pp.

35-37. This evidence shows Respondent did not intentionally withhold or misrepresent the income information.

In summary, 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 FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP 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 FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program.

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 overissuance is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715 (July 2014), p. 6.

During the hearing, it was discovered that Respondent signed an IPV Repayment Agreement (DHS-4350) on April 10, 2014. See Exhibit 2, p. 1. Respondent argued that the IPV Repayment Agreement (repayment agreement) she signed is improper and that she was forced to sign the document. Respondent testified that at first she received a different repayment agreement with a higher amount and did not sign that document. Then, Respondent testified that she received another repayment agreement and signed that document because it was a lesser amount. The Department testified that it erred in the calculation of the first repayment agreement and sent Respondent an updated repayment agreement.

Based on the foregoing information and evidence, it is found that the signed repayment agreement by the Respondent is valid. The evidence presented that Respondent

signed the repayment agreement on her own free will and there was no evidence of any threat, duress or coercion used to make her sign the agreement.

By the Respondent signing the repayment agreement, the Department can initiate recoupment of the \$1,084 OI amount for the time period of January 1, 2013 to April 30, 2013. See BAM 715, p. 10. Based on this information, this hearing decision will not address the OI amount further due to the discovery of the Respondent signing the repayment agreement on April 10, 2014.

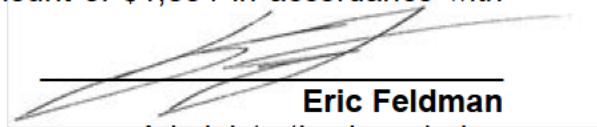
DECISION AND ORDER

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 \$1,084 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$1,084 in accordance with Department policy.



Eric Feldman
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.

EJF/cl
cc:

