

**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.: 2014-35211
Issue No(s): 3005
Case No.: ██████████
Hearing Date: September 3, 2014
County: Berrien

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 September 3, 2014, from Detroit, Michigan. The Department was represented by ██████████
████████████████████ 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 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 April 28, 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 and household membership.
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 August 1, 2010, and February 29, 2012, Respondent received \$5,863 in FAP benefits and was eligible to receive \$3,549.
7. The Department alleges that Respondent received a FAP OI in the amount of \$2314.
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 and Disqualification

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 her FAP benefits because she failed to notify the Department that (i) her [REDACTED] had earned income during certain periods he was in her FAP group, (ii) she had self-

employment income beginning January 2011, (iii) her [REDACTED] another member of her FAP group, had moved out of her home in April 2011.

In support of its case, the Department presented (i) a redetermination Respondent submitted on August 9, 2010; (ii) a printout showing [REDACTED] employment history; (iii) a documentation record dated March 21, 2011, in which the Department documents that Respondent reported that [REDACTED] had moved back into her home and requested that he be added her FAP case; (iv) a change report Respondent submitted on April 28, 2011, in which she again reported that [REDACTED] was back in her home; (v) a redetermination Respondent submitted August 1, 2011, in which no income is reported; (vi) a redetermination Respondent submitted August 5, 2011, in which she does not include [REDACTED] as a household member and reports that she has earned income; (vii) self-employment income and expense statements for January 2012 to April 2012 that Respondent submitted to the Department on May 4, 2012; (viii) the online application Respondent submitted to the Department on April 16, 2012, in which she reported that [REDACTED] was back in her household and had income but did not report [REDACTED] as a household member; and (ix) case comments regarding conversations between Respondent and her worker.

In support of its case that Respondent untimely reported her self-employment income and [REDACTED] having left her home, the Department relies on case notes entered by Respondent's worker in connection with an April 2012 application. According to the case notes, Respondent purportedly informed her worker that she had been paid for doing hair since January 2011 and that [REDACTED] had been out of her home for a year. The worker did not testify at the hearing. Therefore, this evidence is insufficient to establish by clear and convincing evidence that Respondent misrepresented or withheld information concerning her circumstances for the purpose of maintaining FAP eligibility. See MRE 805; MRE 803(6); MRE 804(a)(5) and (b)(3). It is further noted that, in the August 5, 2011, redetermination she submitted to the Department, Respondent indicated that she had a job. Because there is no other income in the FAP budgets presented by the Department other than the alleged unreported self-employment income, it appears that Respondent may have reported her income but the Department failed to process it.

The Department also contends that Respondent committed an IPV by failing to report [REDACTED] employment. The evidence presented showed that [REDACTED] began employment in June 2010 that ended August 29, 2010, and that Respondent failed to report this income in her August 9, 2010, redetermination. When Respondent reported [REDACTED] back in her home on March 21, 2011, and filed a change report on April 28, 2011, indicating that [REDACTED] was back in her home, she failed to identify his employment. The evidence shows that [REDACTED] had re-commenced employment with his employer, with his first paycheck on April 30, 2011. He had ongoing weekly income through July 2011. Although there is some evidence that [REDACTED] income was not timely reported, to establish an IPV, the Department must establish that Respondent was overissued benefits. See BAM 720, p. 1; Bridges Policy Glossary, p. 36 (defining intentional program violation as requiring a benefit overissuance). As discussed below,

the Department has failed to establish an overissuance. In the absence of an overissuance, the Department has failed to establish, by clear and convincing evidence, that Respondent committed an IPV concerning her FAP benefits. Therefore, Respondent is not subject to a disqualification from the FAP program. BAM 720, p. 16.

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 Respondent was overissued FAP benefits (i) for August 2010 because her original FAP budget for that month did not include [REDACTED] income; (ii) for March 2011 to May 2011 because her original FAP budgets for those months did not include Respondent's self-employment income and improperly included [REDACTED] in the FAP group; (iii) for June 2011 to July 2011 because her original FAP budgets for those months did not include Respondent's self-employment income or [REDACTED] employment income and improperly included [REDACTED] in the FAP group; (iv) for September 2011 to February 2012 because her original FAP budgets for those months improperly included [REDACTED] in the FAP group.

The Department presented two FAP budgets for each OI month in order to establish the OI amount. It is noted that the Department could not explain why two budgets were presented for each month. The budgets presented show the amounts Respondent was eligible to receive if the income and group sizes were corrected in accordance with the Department's allegations. The budget does not clearly identify how the OI for each month was calculated; only after consideration of the benefit issuance summary with the budgets is the OI calculation made more apparent. It is further noted that there is no FAP OI summary showing the alleged OI for each month and the sum of those monthly overissuances. Despite these shortcomings, the OI budgets for each of the months at issue were reviewed.

OI for April 2011 to February 2012

In support of its FAP OI for the months between April 2011 and February 2012, the Department relies, in large part, on its conclusion that Respondent had a FAP group size of three but, because she failed to report that [REDACTED] was no longer in her household, she received FAP benefits for a group size of four. As discussed above, in making this conclusion, the Department relies on statements Respondent purportedly made to her worker in connection with an April 2012 FAP application. In the absence of any substantiation for this conclusion, the Department has failed to establish that [REDACTED] should be excluded from Respondent's group. Therefore, the Department has failed to satisfy its burden of showing that there was an OI from April 2011 to February 2012.

OI for March 2011

In support of its FAP OI for March 2011, the Department established that Respondent reported a group size of three and received FAP benefits for a group size of three but contends that Respondent's unreported self-employment income resulted in an OI of \$112. Department policy requires that, if improper reporting of income causes the OI, actual income for the OI month for that income source must be used. BAM 720, p. 10. In this case, the Department concluded that Respondent had \$600 in monthly self-employment income. The Department did not present any evidence to support this figure as Respondent's self-employment income during the period at issue. Therefore, the Department has failed to satisfy its burden of showing that there was an OI for March 2011.

OI for August 2010

In support of its FAP OI for August 2010, the Department contends that ██████████ employment income resulted in an OI and presented a verification of ██████████ employment income that it obtained from a Department-accessible database of information provided by employers concerning their employees. A review of the FAP OI for August 2010 shows that the Department properly calculated ██████████ actual income for the month. BAM 720, p. 10. Because Respondent did not timely report this income, an earned income deduction was not available for the August 2010 FAP budget. BAM 720, p. 10. The Department testified that the remaining income and deductions (other than the excess shelter) were the same as originally applied to Respondent's case and used to calculate her FAP benefits in August 2010. A review of the Department's August 2010 recalculated budget shows that the Department did **not** apply the excess shelter deduction to the calculation of Respondent's net income. BEM 556 (January 2010), pp. 4-5. Therefore, the Department has failed to satisfy its burden of showing that it calculated the FAP OI for August 2010 in accordance with Department policy.

Because the Department has failed to satisfy its burden of showing that it overissued FAP benefits to Respondent, the Department is not entitled to collect and/or recoup FAP benefits from Respondent for the period between August 2010 and February 2012.

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 OI of FAP benefits.

The Department is ORDERED to delete the OI 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 17, 2014

Date Mailed: September 17, 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/pf

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]