

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-003875
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: September 22, 2014
County: TUSCOLA

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 three way telephone hearing was held on September 22, 2014, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG) and [REDACTED], Eligibility Specialist. Participants on behalf of Respondent included: Respondent, [REDACTED]

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 FAP benefits?

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 9, 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 changes in circumstances, such as changes in 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's OIG indicates that the time period it is considering the fraud period is June 1, 2012 to August 31, 2012 (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued \$1578 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1578.
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.

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.

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.

Department policy clearly demands that to establish a FAP IPV, the Department is required to establish that there was an overissuance of benefits. See also Bridges Policy Glossary (July 2014), p. 36 (defining IPV as “a benefits overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his authorized representative”). In this case, the Department alleges that Respondent received a FAP overissuance totaling \$1578 for June 1, 2012 to August 31, 2012, on the basis that she failed to report that her income had exceeded the simplified reporting limit.

The amount of the FAP 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. At the hearing, the Department established that the State of Michigan issued \$1578 in FAP benefits to Respondent from June 1, 2012 to August 31, 2012 and alleged that based on her excess income, she was eligible for \$0 in FAP benefits during this period.

In support of its contention that there was an OI of the FAP, the Department presented FAP EDG Net Income Budgets for each of the months at issue which show the amount of income that was previously budgeted, as well as handwritten figures showing the changes made to the budgets after the unreported earned income was included in the

FAP benefit calculation. The Department attempted to provide testimony concerning how the OI was calculated, and stated that based on the case comments, Respondent worked 40 hours per week at a rate of \$13 per hour starting in April 2012. The Department failed to present any supporting documentary evidence regarding the unreported earned income amounts relied on to determine that Respondent was ineligible for FAP benefits, however.

Furthermore, the Department was given the opportunity to fax a copy of the completed verification of employment and paystubs showing Respondent's actual earnings during the period at issue, however, the Department failed to do so. The Department's testimony concerning Respondent's earned income does not match the amounts listed as earned income on the budgets. After further review, it remained unclear from the evidence presented exactly how the \$1578 OI was calculated in this case, as the Department presented conflicting evidence concerning Respondent's earned income. Therefore, the Department has failed to establish the amount, if any, of a FAP OI.

Accordingly, because the Department has failed to establish that Respondent was overissued FAP benefits, and because an OI is a condition of an IPV, the Department cannot establish a FAP IPV. Therefore, because there is no FAP IPV, Respondent is not subject to a disqualification from future receipt of FAP benefits. BAM 720, p. 16.

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 program benefits in the amount of \$1578 from the FAP.

The Department is ORDERED to delete the OI and cease any recoupment and/or debt collection action.



Zainab Baydoun

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

Date Signed: **10/8/2014**

Date Mailed: **10/8/2014**

ZB / cl

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:

