

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

IN THE MATTER OF:



Reg. No.: 14-003904
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: September 22, 2014
County: ST. JOSEPH

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). 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 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 12, 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 accurately report her household circumstances to the Department.
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 January 1, 2010 to December 31, 2011 (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued \$6968 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1877 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in benefits in the amount of \$5091.
9. This was Respondent's second 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.

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 is alleging that Respondent misrepresented her household circumstances and group composition by applying for and receiving FAP benefits on behalf of a child of whom she was not the primary caretaker. The Department alleged that because Respondent was not the child's primary caretaker, she was ineligible to receive benefits on his behalf. The Department alleged that Respondent's failure to correctly identify her household circumstances resulted in an OI of FAP benefits. For FAP purposes, the primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. BEM 212 (January 2010 and October 2011), pp. 1-4.

In support of its contention that Respondent committed an IPV, the Department presented several assistance applications and redeterminations that Respondent submitted to the Department on various dates throughout the fraud period on which she reports that she is the mother, step mother, or primary caretaker of the child. A review of the applications and redeterminations establishes that Respondent reported to the Department that the child resides with her in the home between 12-16 days per month and that the child has another mother, whom she identifies as Elinor Marsh. The Department also presented five applications for State Emergency Relief on which Respondent reports that her group size is three and that the child is living with her in the home. (Exhibit 1, pp. 11-71). All of the applications and redeterminations signed by Respondent clearly inform her of the responsibility to accurately report her household circumstances and group composition, as well as the penalties for failing to do so.

The Department argued that it received a letter from Respondent's ex-partner, Elinor Marsh, who is the child's biological mother. In the written statement, Ms. Marsh contends that Respondent has never been the child's caretaker and that the child has not resided with Respondent since December 2009, when the couple split up. Ms. Marsh indicated that the child visits with Respondent on Sundays from 9:45 am to 6:00 pm and Wednesday afternoons from 4:00 pm to 7:00 pm but that he had not spent the night at Respondent's home in over a year and a half. The Department presented the statement from Ms. Marsh, as well as the child's birth certificate for review at the hearing. (Exhibit 1, pp. 72-74).

The Department testified that an interview was conducted with Respondent concerning the IPV allegation and the Department's contention that she was not the child's primary caretaker. Although Respondent disputed the Department's assertions, the Department testified that she was given an opportunity to provide documentation verifying her status as the child's primary caretaker and that the child resided with her but that Respondent failed to do so.

Based on the foregoing information, there was clear and convincing evidence that Respondent was aware of her responsibility to accurately report her household circumstances and that she intentionally withheld or misrepresented information for the

purpose of establishing, maintaining, increasing or preventing the reduction of her FAP benefits. Therefore, the Department has established 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, 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.

In this case, the Department has satisfied its burden of showing that Respondent committed an IPV by misrepresenting her household circumstances. The Department alleged that this was Respondent's second IPV and testified that she served a one year disqualification on her first IPV for the FAP from January 1, 2012 to December 31, 2012. Therefore, because this was Respondent's second IPV, she is subject to a two year disqualification under the FAP.

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 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.

In this case, the Department has alleged that Respondent received an OI of FAP benefits resulting from the misrepresentation of her household circumstances. As discussed above, the Department has established that Respondent was not the primary caretaker of the child and as such, she was ineligible for the FAP benefits issued on his behalf. The Department alleged that from January 1, 2010 to December 31, 2011, Respondent was issued \$6968 in FAP benefits and that she was entitled to only \$1877 during this period, resulting in an OI of \$5091.

The Department presented FAP OI budgets for the months at issue showing that once the child is removed as a FAP group member and the unearned income from unemployment compensation benefits and child support is taken into consideration, Respondent received an OI in FAP benefits in the amount of \$5091. Therefore, the Department has established that it is entitled to recoup or collect \$5091 in FAP benefits from Respondent.

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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$5091 from the FAP.

The Department is ORDERED to initiate recoupment procedures for the amount of \$5091 from the FAP in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 24 months.



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:

