

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-004452
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: July 28, 2014
County: CALHOUN (DISTRICT 21)

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

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 July 28, 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: the Respondent, [REDACTED], and [REDACTED], who appeared as a witness.

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 Food Assistance Program (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 June 20, 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 the correct group size and the persons living in her home.
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 October 1, 2010 through October 31, 2011, and October 1, 2012 through January 31, 2013 (fraud period).
7. During the fraud period, Respondent was issued [REDACTED] 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 [REDACTED].
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 ((December 1, 2011); (August 1, 2012), p. 10.

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 (December 1, 2011), p. 5; BAM 720, p. 4.
(August 1, 2012) p. 1

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits.
BAM 720, p. 12.

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 requested a hearing for an intentional program violation and over issuance of Food Assistance benefits alleging that the Respondent failed to report a group member, [REDACTED], as living in her home during the period of the alleged fraud (October 1, 2010 through October 31, 2011 and October 1, 2012 through January 31, 2013) and, therefore, received more FAP benefits than she was entitled to receive. Throughout the alleged fraud period, the Respondent completed several applications. The Respondent completed an application on September 8, 2010 indicating that [REDACTED] was a household member, and later on October 30, 2010, reported that he was not a household member. Exhibit 1, pages 10-32. On October 3, 2012 the Respondent again applied for Food Assistance and did not report [REDACTED] living in the home, as they were separated but did report income received from child support for her two children. Throughout the period, the Claimant received FAP benefits for a group of 3. The evidence also contained a statement to the Department by the Respondent dated January 13, 2012, that [REDACTED] moved back into the home on December 3, 2011. The Department also indicated that as of December 17, 2012, based upon a face-to-face conversation with [REDACTED], that Mr. [REDACTED] was living in the home. The Respondent and [REDACTED] have a special needs child together, and at times [REDACTED] suffers from migraines and could not live with the Respondent.

The Claimant's application in October 2012 noted the receipt of child support for both her children. Exhibit 1, page 46. Generally speaking, child support is required to be paid by the absentee parent. Although the Department suggested that [REDACTED] paid child support to mislead the Department into thinking that he did not live with the Respondent, it is determined that this opinion evidence is not substantiated. The Respondent and [REDACTED] were not married at the time, and were only recently married in 2014.

The Department, through the OIG, testified that the Respondent advised the Department that [REDACTED] was living where he was employed. There was no evidence, other than the hearsay evidence presented by the Department, that the Respondent so advised the Department. The OIG testified that he did meet with Mr. [REDACTED] at his place of employment on December 17, 2012, and that [REDACTED] indicated that he always lived in the home. Although this testimony was not rebutted, a different statement was contained in the investigative findings completed by the OIG, which state that [REDACTED] stated that [REDACTED] only told DHS that he lived at the [REDACTED] because his income would deny them food benefits. The Department also testified that he met with [REDACTED] on two occasions, but the investigative report only

has reference to one occasion in December 2012. Overall, the evidence presented by the Department does not establish an intentional failure to report by the Respondent that [REDACTED] was living in the home by clear and convincing evidence and, therefore, the Department has not established an IPV. The Department has established that [REDACTED] was living in the home in December 2012.

After a review of the record and the evidence presented, it is determined that for the period October 1, 2010 through October 31, 2011 the Department did not establish by clear and convincing evidence that [REDACTED] lived with the Respondent, and thus no IPV is established for that period. As regards the second period October 1, 2012 through January 31, 2013, it is determined when completing the October 2012 application, the Respondent reported that [REDACTED] was not living in the household and they were separated. The Department's evidence did establish that [REDACTED] was in the home in December 2012, but this does not establish that an IPV was established for the reasons stated above. Exhibit 1, pp.46

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, (December 1, 2011); (August 1, 2012), 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. 12.

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 (October 1, 2009), 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. 12.

In this case, because the Department did not establish an IPV, the Department is not entitled to a disqualification of the Respondent from receiving FAP benefits.

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., (December 1, 2011); (August 1, 2012)

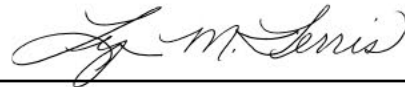
In this case, the Department provided FAP budgets to demonstrate the overissuance for the months covering October 2010 through October 2011. As stated above, the Department did not establish an IPV for this period or that [REDACTED] was living in the Respondent's home. Therefore, no overissuance is established for this period.

No budgets were provided for the period October 1, 2012 through January 31, 2013, the second alleged overissuance period where the Department sought an overissuance in the amount of [REDACTED]. Because no budgets were provided, the Department did not establish based upon the proofs submitted that it was entitled to an overissuance for October 2012 through January 31, 2013.

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 [REDACTED] from the following program(s) FAP.
3. The Department is ORDERED to delete the OI and cease any recoupment action.



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

Date Signed: **10/27/2014**

Date Mailed: **10/27/2014**

LMF / tm

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:

