

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

IN THE MATTER OF:



Reg. No.: 14-005786
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: October 16, 2014
County: GENESEE-DISTRICT 2

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 telephone hearing was held on October 16, 2014, from Detroit, Michigan. The Department was represented by [REDACTED]uk, 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 July 7, 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 employment and 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 February 28, 2013 (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued \$5579 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$1928 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$3651.
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was 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.

In this case, the Department alleged that Respondent committed an IPV because she failed to report a group member's employment and income. Subsequent to the scheduling of the current hearing, the Notice of Hearing and accompanying documents were mailed to Respondent via first class mail at the address identified by the Department as the last known address. After mailing, the notice was returned by the United States Postal Service as undeliverable. When notice of a FAP IPV hearing is sent using first class mail and is returned as undeliverable, the hearing may still be held. 7 CFR 273.16((e)(3); BAM 720, p. 12. At the hearing, the Department established that the address it provided was the best available address for Respondent and that there was no other address associated with Respondent's name. Thus, the hearing properly proceeded with respect to the alleged FAP IPV.

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 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 the employment and income of a group member, [REDACTED]. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment and earning income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (December 2011), p.7.

The Department contended that Respondent's failure to timely report the employment and earned income caused an OI of FAP benefits in the amount of \$3651 from June 1, 2012 to February 28, 2013. The Department provided copies of the verification of employment of [REDACTED], showing that he began working at [REDACTED] on March 30, 2012 and received his first pay check in April 2012. The Department provided the monthly wage history, showing that [REDACTED] continued to be employed and earning income through February 2013. (Exhibit 1, pp. 40-41).

In support of its contention that Respondent committed an IPV, the Department presented an assistance application that Respondent submitted to the Department on March 17, 2012, a few weeks prior to [REDACTED] employment begin date. A review of the application shows that Respondent included [REDACTED] as a member of her household group and reported that no one in the home was earning income. (Exhibit 1, pp. 11-31). This was sufficient to establish that Respondent was advised of her responsibility to report changes in circumstances, and the penalties for failing to do so.

The Department also provided a Notice of Case Action dated April 11, 2012, which informed Respondent that she was approved for FAP benefits effective April 2012, and that the amount of her FAP benefits was determined using \$0 in monthly income. A review of the Notice of Case Action establishes that Respondent was once again informed of the responsibility to report changes in income and employment, as well as the penalties for failing to do so. (Exhibit 1, pp. 32-37). At the time the Notice of Case Action was sent to Respondent, [REDACTED] had gained employment and was earning income, which remained unreported until it was later discovered via a Wage Match. (Exhibit 1, p.46).

Because Respondent did not inform the Department that [REDACTED] had gained employment and was earning income after being advised of the responsibility to report changes, the Department's evidence establishes, by clear and convincing evidence that Respondent intentionally withheld information for the purpose of maintaining FAP eligibility.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15. 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. 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. Because this was Respondent's first IPV, she is subject to a one-year 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 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 presented a FAP benefit summary inquiry to establish that the State of Michigan issued \$5579 in FAP benefits to Respondent from June 1, 2012 to February 28, 2013. The Department alleged that Respondent was eligible for \$1928 in FAP benefits during this period and that she received an OI of \$3651.

In support of its OI case for the period between June 1, 2012 and February 28, 2013, the Department presented a verification of employment and a monthly wage history to show that [REDACTED] was employed and earning income during this period. The Department also presented FAP Worksheets for each month showing how the Department calculated the OI. A review of the worksheets for each month during the fraud period shows that when [REDACTED] unreported earned income is included in the calculation of the group's FAP benefits, the group was eligible to receive \$1928 in FAP benefits during those months.

Thus, the Department is entitled to recoup or collect from Respondent \$3651, the difference between the \$5579 in FAP benefits actually issued to and the \$1928 in FAP benefits she was eligible to receive between June 1, 2012 and February 28, 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 established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$3651 from the FAP program.

The Department is ORDERED to initiate recoupment and/or collection procedures in the amount of \$3651 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from the FAP for a period of 12 months.



Zainab Baydoun

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

Date Signed: **10/28/2014**

Date Mailed: **10/28/2014**

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:

