

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

IN THE MATTER OF:



Reg. No.: 14-005974
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: October 27, 2014
County: KALAMAZOO

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 27, 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 July 14, 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 to the Department 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 September 1, 2012 to July 31, 2013 (fraud period).
7. During the fraud period, the Department alleges that Respondent was issued \$4437 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$275 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$4162.
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.

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 the FAP because she failed to timely report her employment and earned income to the Department. The Department also alleged that Respondent failed to report her unearned income from child support. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (May 2012), p.7.

The Department contended that Respondent's failure to timely report the employment and earned income and the unearned income from child support caused an OI of FAP benefits in the amount of \$4162 from September 1, 2012 to July 31, 2013. The Department presented a copy of Respondent's verification of employment showing that she gained employment on July 15, 2012 and earned her first paycheck on July 20, 2012. The Department provided a payroll register showing that Respondent continued to be employed and earning income throughout the alleged fraud period. (Exhibit 1, pp.15-26). The Department also provided a child support search summary showing that Respondent was receiving unearned income from child support on behalf of two children during the alleged fraud period. (Exhibit 1, pp. 27-29).

In support of its contention that Respondent committed an IPV, the Department presented a Redetermination for Respondent's FAP case that was submitted to the Department on July 2, 2012, prior to employment begin date. (Exhibit 1, pp. 11-14). This was sufficient to establish that Respondent was advised of her responsibility to report changes in circumstances.

The Department testified that the income was discovered in June 2013, when it was reported by Respondent at the time of her FAP redetermination. A review of the evidence shows that although she failed to timely report the change, because Respondent disclosed the employment and income to the Department, she did **not** intentionally withhold information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. As such, the Department has failed to establish, by clear and convincing evidence, that Respondent had the intent to commit an IPV.

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. 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 failed to satisfy its burden of showing that Respondent committed a FAP IPV. Therefore, Respondent is **not** subject to a disqualification from 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 \$4437 in FAP benefits to Respondent from September 1, 2012 to July 31, 2013. (Exhibit 1, pp. 53-54). The Department alleged that Respondent was eligible for \$275 in FAP benefits during this period and that she received an OI of FAP benefits in the amount of \$4162. (Exhibit 1, p. 30).

In support of its OI case for the period between September 1, 2012 and July 31, 2013, the Department provided copies of Respondent's verification of employment and payroll register showing that Respondent was employed and earning income during the fraud period, as well as a child support search summary detailing the amount of unearned income from child support that Respondent was receiving. (Exhibit 1, pp. 15-29).

The Department also presented FAP OI Budgets for each month during the fraud period to show how the OI was calculated. A review of the budgets for each month shows that when Respondent's unreported earned income from employment and her unearned income from child support is included in the calculation of her FAP benefits, she was eligible to receive \$275 during those months.

Thus, the Department is entitled to recoup or collect from Respondent \$4162, the difference between the \$4437 in FAP benefits actually issued to and the \$275 in FAP benefits she was eligible to receive between September 1, 2012 and July 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 receive an OI of program benefits in the amount of \$4162 from the FAP.

The Department is ORDERED to initiate recoupment and/or collection procedures for the amount of \$4162 in accordance with Department policy.



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

Date Signed: **10/29/2014**

Date Mailed: **10/29/2014**

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:

