

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

IN THE MATTER OF:



Reg. No.: 14-006031
Issue No.: 3005
Case No.:
Hearing Date: October 23, 2014
County: HILLSDALE

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 23, 2014, from Detroit, Michigan. The Department was represented by , 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
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (MA)
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
 Family Independence Program (FIP)? State Disability Assistance (SDA)?
 Food Assistance Program (FAP)? Child Development and Care (CDC)?

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 15, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits issued by the Department.
4. Respondent was was not aware of the responsibility to report his earned income.
5. Respondent had 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, 2013, to September 30, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$3,303 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$249 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$3,054.
9. This was Respondent's first second third alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was 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 alleges that Respondent committed an IPV of his FAP benefits because he failed to report his employment and wages to the Department, which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (November 2012), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 7.

The Department's OIG indicates that the time period it is considering the fraud period is January 1, 2013, to September 30, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of his responsibility to report his income and that he intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility.

First, the Department presented Respondent's application dated October 18, 2012, to show that the Respondent was aware of his responsibility to report changes. See

Exhibit 1, pp. 12-35 and see also Notice of Case Action dated October 24, 2012, pp. 36-41. In the application, Respondent reported that he was laid off by the employer on or around September 10, 2012. See Exhibit 1, p. 24. Moreover, Respondent reported that his only source of income was child support. See Exhibit 1, p. 26.

Second, the Department presented Respondent's Wage Match Client Notice dated July 30, 2013, which the Department argued was the first time it became aware that he was receiving earned income from his employer. See Exhibit 1, pp. 10 and 42-43. This was the same employer that Respondent noted in his application that it had ended. See Exhibit 1, p. 24.

Third, the Department presented Respondent's redetermination dated September 6, 2013, which occurred during the alleged fraud period. See Exhibit 1, pp. 44-47. In the redetermination, Respondent indicated his only source of income was child support, even though the Department alleged that he was receiving earned income at the time he submitted this documentation. See Exhibit 1, p. 45.

Fourth, the Department presented a Verification of Employment and income information from Respondent's employer dated September 12, 2013. See Exhibit 1, pp. 48-58. The Verification of Employment and additional documents indicated that Respondent began employment on February 6, 2012 and ended September 23, 2012 (laid off). See Exhibit 1, p. 48. However, the employer also indicated that he began employment again on October 22, 2012 and ended due being laid off on December 21, 2012. See Exhibit 1, p. 48. Finally, the employer indicated he began employment again on January 2, 2013. See Exhibit 1, p. 48.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP benefits. The evidence is sufficient to establish that Respondent intentionally withheld or misrepresented his income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility.

In this case, the Department presented Respondent's redetermination dated September 6, 2013. See Exhibit 1, pp. 44-47. The redetermination indicated no earned income and only child support income. See Exhibit 1, p. 45. However, the Verification of Employment and additional documents submitted by the employer showed that he was employed at the time he submitted the redetermination. See Exhibit 1, pp. 48-58. Thus, the evidence presented that Respondent was aware that he was employed at the time of redetermination and that he failed to report such income. This is persuasive evidence that Respondent committed an IPV of his FAP benefits because he intentionally withheld or misrepresented his income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. 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. 16. 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 concerning FAP benefits. Therefore, Respondent is subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As previously stated, the Department has established that Respondent committed an IPV of his FAP benefits.

Applying the OI standard and in consideration of Respondent receiving the unreported income in October and November of 2012, the Department determined that the OI period began on January 1, 2013. See Exhibit 1, pp. 4 and 56-58. It is found that the Department applied the appropriate OI begin date. See BAM 720, p. 7.

Additionally, 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 OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720, p. 8.

In regard to Respondent's FAP benefits, the Department presented OI budgets for the time period of January 2013 to September 2013. See Exhibit 1, pp. 59-79. Monthly budgets were provided for the FAP programs using the submitted employer's documents. See Exhibit 1, pp. 48-58. A review of the OI budgets found them to be fair and correct. The Department established that the overissuance for FAP benefits was \$3,054 for the time period of January 1, 2013, to September 30, 2013. Thus, the Department is entitled to recoup \$3,054 in FAP benefits.

It should be noted that Respondent's benefit summary inquiry included a recoupment amount. It appears that mostly likely it is Administrative Recoupment (AR). See Exhibit 1, pp. 78-79. In regards to the OI calculation of FAP benefits, the amount of Electronic Benefit Transfer (EBT) benefits received in the calculation is the gross (before AR

deductions) amount issued for the benefit month. See BAM 720, p. 9 and BAM 725 (July 2014), p. 1. Thus, the Department properly included the gross amount of FAP benefits received before AR deductions in the OI calculation amount. See BAM 720, p. 9 and BAM 725, p. 1.

DECISION AND ORDER

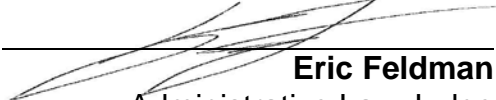
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$3,054 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

initiate recoupment procedures for the amount of \$3,054 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from
 FIP FAP SDA CDC for a period of
 12 months. 24 months. lifetime.


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

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

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

EJF / 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:

