

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

IN THE MATTER OF:

SAMANTHA BRADLEY
[REDACTED]

Reg. No.: 14-006451
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: October 30, 2014
County: SAGINAW

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 October 30, 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 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 July 18, 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 employment.
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 through December 31, 2012 (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 of 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 (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. 1; 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 seeks to establish that the Respondent committed an IPV of her FAP benefits due to failure to report her husband's employment on a July 31, 2012 redetermination. The Respondent's spouse ended a job with one employer, [REDACTED], and started employment with another employer on June 13, 2012, and received a paycheck beginning July 20, 2012. Subsequently, the Respondent applied for FIP cash assistance benefits on September 19, 2012, at which time she reported her husband was no longer residing in the house and that the household had no employment income. Exhibit 1 p. 14 and 29. The group size reported at that time was five, and the caseworker's notes included with the application indicate that the husband moved out 3 weeks ago. In a November 2012 application, the Respondent signed the application and reported that the household had income from the husband's employment from [REDACTED].

In order to establish an IPV the Department must demonstrate by clear and convincing evidence that the Respondent withheld information from the Department to obtain benefits. In this case, this standard is determined not to be met by the evidence presented.

Based upon the September 2012 application, the Respondent's spouse had moved out. Therefore, the Department was not entitled to include his income when calculating the over-issuance of benefits sought to be recovered for September 2012. Subsequently in the November 2012 application, the Respondent's spouse's employment was reported and, therefore, the Department should have calculated the November 2012 and December 2012 benefits properly and included the spouse's [REDACTED] income as it was reported to the Department on November 6, 2012. Exhibit 1, p. 59. Given this reporting evidence, it is determined that the Department did not establish an Intentional Program Violation by clear and convincing evidence. Essentially, the evidence demonstrates that the Respondent late reported the [REDACTED] employment for the month of July and August 2012, and this is not sufficient to establish an intentional program violation.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 13. 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. 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. 13.

In this case, the Department's evidence did not establish an IPV and, therefore, the Department is not entitled to a disqualification of the Respondent for IPV.

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.

In this case, the Department had information available to it as of the September 19, 2012 application that the Respondent's spouse was no longer living with her for at least 3 weeks prior to the application and, therefore, the Respondent's household did not have any employment income from her spouse for September 2012. Therefore, the over-issuance budget for September 2012, which includes the Respondent's spouse's income, is incorrect. In October 2012, the evidence presented does not establish that the Respondent's spouse was living in the home, and thus the Department was not entitled to recoup benefits for October 2012, as the Respondent's spouse's income was not available to the household.

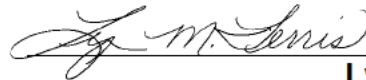
The Department's evidence established that for November and December 2012, it was advised by the Respondent that the Respondent's spouse was reported living in the house again as of the November 6, 2012 application, and that he was working. Therefore, the Department had knowledge of the income and had an obligation to include it in the November and December FAP benefit calculations for the Respondent's FAP group. The budgets calculated the over-issuance based upon an IPV calculation as it assumed an IPV would be established. The Department did not properly calculate the over-issuances for November and December, as no earned income allowance of 20% was deducted from the earned income when calculating the FAP overissuance as no IPV has been found and as required by BEM 550. (September 1, 2010), pp.1

In this case, because the income from employment and the spouse's employment was reported in the November application, the Department should have calculated the FAP benefits to include the earned income which it did not and should have included the earned income deduction when calculating these benefits; as it did not, the amount of the over-issuance as presented is incorrect and, therefore, the Department has not met its burden of proof to establish the amount of the OI. Based upon the budgets provided by the Department, the Department is not entitled to recoup any over-issuance for November 2012 and December 2012.

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 FAP program.
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: **11/24/2014**

Date Mailed: **11/24/2014**

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:

