

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

IN THE MATTER OF:

██████████
██████████
██████████████████

Reg. No.: 14-007526
Issue No.: 3005
Case No.: ██████████
Hearing Date: December 10, 2014
County: MUSKEGON

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 December 10, 2014, from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent, ██████████.

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 31, 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 her earned and unearned 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 April 1, 2012, to March 31, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$2,453 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 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 \$2,453.
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 her FAP benefits because she failed to report earned income and her unemployment compensation and/or worker's compensation (unearned income) 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 (December 2011), 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.

Income reporting requirements are limited to the following:

- Unearned income:
 - Starting or stopping a source of unearned income.
 - Change in gross monthly income of more than \$50 since the last reported change.

BAM 105, p. 7.

The Department's OIG indicates that the time period it is considering the fraud period is April 1, 2012, to March 31, 2013. At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report her income and that she intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

First, the Department presented Respondent's application dated April 2, 2012, which acknowledged her rights and responsibilities to report changes as required. See Exhibit 1, pp. 10-28. In this application, Respondent reported that her employment had ended by her doctor on March 22, 2012. See Exhibit 1, p. 20. However, the Department also notated in the notes section of the application that Respondent was still employed with the company. See Exhibit 1, p. 28.

Second, the Department presented Respondent's Wage Match Client Notice (client notice) dated October 18, 2012, which reported earned income that was not previously reported. See Exhibit 1, p. 29.

Third, the Department presented Respondent's employment verification, which showed she received wages from April 8, 2011, to October 5, 2012. See Exhibit 1, pp. 30-33. However, from the effective pay date of April 13, 2012, ongoing (except October 5, 2012), the employment verification showed Respondent had earnings, but indicated no hours worked. See Exhibit 1, pp. 31-32. The Department testified that it appeared Respondent received worker's compensation for the pay dates with no hours worked.

Fourth, the Department presented Respondent's unemployment compensation, which showed she received unemployment wages from to September 12, 2012 to April 8, 2013. See Exhibit 1, pp. 34-37.

Fifth, the Department presented Respondent's case comments summary. See Exhibit 1, pp. 38-39. The case comments indicated Respondent submitted a State Emergency Relief (SER) application on March 18, 2013 and discovered Respondent received unemployment benefits since September 1, 2012. See Exhibit 1, p. 38. The case comments also indicated that Respondent submitted a wage match from her employment on November 8, 2012. See Exhibit 1, p. 39. Respondent informed the Department she did not receive any more income from the employer due to injury and she stated she was receiving unemployment. See Exhibit 1, p. 39. The Department indicated that the Work Number showed Respondent received worker's compensation starting in July 2012 and the last payment was on October 5, 2012. See Exhibit 1, p. 39. Respondent claimed she did not know she had to turn in that income. See Exhibit 1, p. 39.

At the hearing, Respondent testified that she did not intentionally withhold income information from the Department. First, Respondent testified that she did not receive worker's compensation from her employer. Respondent testified that her last date of employment was on or around April 2012. Respondent testified that she had obtained an attorney in attempt to get worker's compensation; however, the attorney did not pursue the case further. Respondent did not present any evidence to contradict the Department's documentary evidence (i.e., Work Number) showing that she did not receive worker's compensation or any income after April 2012.

Second, Respondent argued that she did notify the Department that she received unemployment benefits timely. Respondent testified that she also did get back-pay from her employer for the unemployment compensation. However, the Department testified that the unemployment compensation history did not indicate any lump sum payment and it showed bi-weekly payments. See Exhibit 1, pp. 34-37.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of her FAP benefits. This Administrative Law Judge (ALJ) finds that Respondent did not credibly testify and that she intentionally withheld or misrepresented her income information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility.

First, Respondent denied receiving any form of worker's compensation or income from the employer on or around April 2012, ongoing. Moreover, Respondent even indicated in her application that she stopped receiving wages on March 22, 2012. See Exhibit 1, p. 20. However, the Department presented evidence that Respondent continued to receive wages from April 13, 2012, to October 5, 2012. See Exhibit 1, pp. 31-32. Respondent did not present any evidence to contradict the Department's documentary evidence that showed wages after she alleged she no longer received it.

Second, Respondent did not credibly testify that she reported her unemployment benefits timely. The Department presented Respondent's case comments history, which showed the Department discovered her unemployment wages on or around March 18, 2013 (SER application). See Exhibit 1, p. 38. This is more than five months after Respondent began receiving her unemployment wages.

In summary, the evidence is sufficient to establish that Respondent failed to report her income and that she intentionally withheld or misrepresented her income information for the purpose of establishing, maintaining, increasing or preventing reduction of her 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 disqualified from FAP benefits for 12 months. BAM 720, p. 16

Overissuance

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

Applying the OI standard and in consideration of Respondent receiving the unreported income in April 2012 (same benefit period as April 2012 application), the Department determined that the OI period began on April 1, 2012. See Exhibit 1, pp. 3, 10, and 30-33. 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 April 2012 to March 2013. See Exhibit 1, pp. 40-61. Monthly budgets were provided for the FAP programs using the earned and unearned income verifications (i.e., Work Number and unemployment compensation). See Exhibit 1, pp. 30-37. A review of the OI budgets found them to be fair and correct for the following benefit months: April 2012 to May 2012 and August 2012 to March 2013. The Department miscalculated the benefits months of June and July of 2012 as it included the improper pay dates. See Exhibit 1, pp. 32 and 42-45. As such, the Department established that the overissuance for FAP benefits was \$1,865 for the time period of April 2012 to May 2012 and August 2012 to March 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 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 \$1,865 from the following program(s) FIP FAP SDA CDC MA.

