

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-008708
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: December 04, 2014
County: HILLSDALE

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 4, 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 August 5, 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 her residence to the Department.
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 August 1, 2012 through April 30, 2013 (fraud period).
7. During the alleged fraud period, Respondent was issued \$2,076.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$87.00 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$1,989.00.
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 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 (January 2011), p. 6; 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.

Additionally, food assistance groups with countable earnings are assigned to the simplified reporting (SR) category. This reporting option increases FAP participation by employed households and provides workload relief. Further, Simplified reporting groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. **No** other change reporting is required. BAM 200 (December 2011), p. 1. In this case, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to report that her income exceeded \$2,422.00.

At the hearing, the Department presented a Notice of Case Action which was sent to Respondent on or about June 12, 2012. The Notice of Case Action contained the following language:

Effective the date of this notice, the only change you are required to report for the Food Assistance program is: WHEN YOUR HOUSE HOLD INCOME EXCEEDS THE LIMIT LISTED BELOW.

Household Size: 4
Income Limit: \$2,422.00.

The Department also presented budgets which showed revealed the following information:

April 2013

Earned: \$2,781.00; Amount of unreported income: \$1,233.00; Benefits amount received: \$521.00; Actual benefit amount entitled: \$0.00;

October 2012

Earned: \$2,408.00; Amount of unreported income: \$860.00; Benefit amount received: \$521.00; Actual benefit amount entitled: \$81.00;

September 2012

Earned: \$2,662.00; Amount of unreported income: \$1,114.00; Benefit amount received: \$517.00; Actual benefits amount entitled: \$6.00; and

August 2012

Earned: \$3,028.00; Amount of unreported income: \$404.00; Benefit amount received: \$517.00; Actual benefit amount entitled: \$0.00 as she was over the income limit for this month.

Respondent was clearly on notice by August 2012 that she was required to report any income over \$2,422.00. The evidence presented demonstrated that Respondent failed to do so. Respondent failed to appear at the hearing and therefore failed to offer a reasonable explanation as to why she failed to report that her income exceeded the SR limit in August 2012, September 2012 and April 2013. Accordingly, the Department has established that Respondent intentionally withheld information for the purposes of maintaining benefits and as such committed an IPV of FAP benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 12.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. 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 has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, Respondent is subject to a twelve month 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.

On August 5, 2014, the Department requested a hearing seeking recoupment of Respondent's FAP benefits for August 2012, September 2012, October 2012 and April 2013. Department policy holds if the income falls below the income limit any time during these two months **and** does not exceed the income limit again during the certification period, recoupment is not necessary. If it does exceed the income limit **again** during the certification period and the client does not report, all months that exceeded the limit after the first two months would be recouped. BAM 715 (July 2012), p. 4.

A review of the information provided by the Department demonstrates that Respondent did not exceed the SR limit of \$2,422.00 in October 2012 and as such she was not required to report changes and income. Therefore, it is found that no OI occurred in October 2012. In contrast, the Department provided sufficient evidence that Respondent was over the SR amount in June and July 2012 and as such, the Department properly requested recoupment beginning August 2012. Further, because Respondent exceeded the SR amount in September 2012 and April 2013, the Department is also entitled to recoup the amounts issued during these months. The

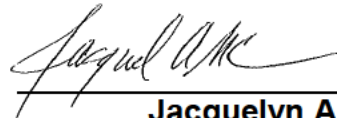
Department provided evidence that Respondent was issued FAP benefits in August 2012, September 2012 and April 2013 in the total amount of \$1,555.00. Respondent was issued \$521.00 in October 2012; however this amount is not included in the OI amount for reasons previously stated. Accordingly the Department has established that it is entitled to recoupment in the amount of \$1,555.00.

DECISION AND ORDER

1. The Department has established by clear and convincing evidence that Respondent committed an intentional program violation (IPV).
2. The Department has established that Respondent received an OI of program benefits in the amount of \$1,555.00 from the FAP program for the period of August 1, 2012 through April 30, 2013.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1,555.00 in accordance with Department policy.

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



Jacquelyn A. McClinton
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/22/2014**

Date Mailed: **12/22/2014**

JAM / 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:

