

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

IN THE MATTER OF:



Reg. No.: 2014-30740
Issue No(s): 3005
Case No.: [REDACTED]
Hearing Date: December 9, 2014
County: Emmett

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 9, 2014 from Lansing, 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 Respondent, by clear and convincing evidence, commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Food Assistance Program (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 January 17, 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 household circumstances, including any change of address, change of group members, and changes in group income.
5. Respondent had no 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, 2010, through June 30, 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 \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP 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 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 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 (7/1/13), p. 12.

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 (7/1/13), p. 6; 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, Respondent applied for FAP on July 21, 2010, and she acknowledged that she understood that she needed to report changes in her household circumstances. Respondent submitted numerous applications after that date, but never reported that she was living with a man that she married on [REDACTED]. The Department provided

a copy of a Lexis/Nexis report showing her husband had reported an address which was the same as Respondent's address from August 2010 to December 2010. The Department also provided a lease from [REDACTED], which showed Respondent and her husband were both tenants at a home in [REDACTED]. On her applications, she reported that her husband's child was living with her, and referred to the child as her stepson, but she did not report that her husband was living with her. Her husband had earned income that was not reported and, therefore, not included in her FAP budget. The FAP budgets, showing the amount Claimant received and the amount she would have received if income were reported correctly, are found at Exhibit 1 Item 11.

Respondent did not participate in the hearing. She was called twice, and both calls went to voice mail. Approximately one-half hour after the scheduled start time, and after the hearing was concluded, MAHS received a call from her providing a telephone number with a 231 area code. She had not provided that number prior to the hearing; calls were made to the number she had provided, and that number had a 989 area code. Respondent had submitted a Decision and Order from her husband's case. (Reg. No. 2014-30741) in which ALJ Purnell concluded the Department had not established an OI in the husband's case. Whatever factual findings ALJ Purnell stated in his opinion are not binding on the undersigned. Furthermore, that Opinion seems to be partially in error. ALJ Purnell concluded Respondent and her husband did not live together until February 2012. In that case, the OI period was from September 1, 2010, through June 30, 2012. The Opinion does not explain why there was no OI during the period of February through June of 2012.

The evidence is clear and convincing that Respondent was married, and living with her husband. Her husband had earned income which was not included in her budget. The income was not reported because, had it been, her benefits would have been reduced/eliminated.

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. 15.

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 (7/1/13), 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, Claimant committed an IPV by receiving benefits greater than she should have received based upon family size and income. Because she has committed an IPV she is to be disqualified.

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, Claimant received \$ [REDACTED] in FAP from September 1, 2010, through June 30, 2012. She was eligible to receive \$ [REDACTED] of those benefits. The Department has established an OI of \$ [REDACTED] which is to be recouped.


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 established by clear and convincing evidence that Respondent committed an intentional program violation (IPV).
2. Respondent received an OI of program benefits in the amount of \$ [REDACTED] from the FAP program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

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


Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 12/15/2014

Date Mailed: 12/15/2014

DJ/jaf

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the Respondent may appeal it to the circuit court for the county in which he/she lives.

cc:

[REDACTED]