

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

IN THE MATTER OF:



Reg. No.: 2014-31813
Issue No(s): 1005, 3005, 6005
Case No.: [REDACTED]
Hearing Date: December 2, 2014
County: Calhoun

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 2, 2014, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Respondent appeared at the hearing and testified on her own behalf.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) Family Independence Program (FIP), and Child Development and Care (CDC) 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 FAP, FIP and CDC 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 March 14, 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 FIP, FAP and CDC benefits issued by the Department.
4. Respondent was aware of the responsibility to use benefits only for purposes authorized by the Food Stamp Act of 1977, and to report changes in her circumstances that would affect her eligibility to receive benefits.
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 periods it is considering the fraud period are: September 1, 2006, through July 31, 2009, for FAP; December 1, 2006, through July 31, 2009, for FIP; February 1, 2007, through September 30, 2008, for CDC (fraud periods).
7. During the fraud periods, Respondent was issued [REDACTED] in FAP benefits; \$ [REDACTED] in FIP benefits; and \$ [REDACTED] in CDC benefits by the State of Michigan. The Department alleges that Respondent was entitled to receive only \$ [REDACTED] in FAP benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$ [REDACTED] FIP benefits in the amount of \$ [REDACTED] and CDC 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

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 Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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 benefits in August 2006. She and her ex-husband had two children, a son born [REDACTED], and a daughter born [REDACTED]. When she applied, her son was in kindergarten and her daughter was in pre-school. Respondent's application indicated both children were living with her at least 15 nights each month, and that was why she needed FIP and FAP. She also said she needed CDC so she could work and participate in the Michigan Works program.

On September 22, 2008, Respondent filed a motion with the Calhoun County Court, asking the court to review the custody order. She stated that the children had been living with their father in Union City "since 2005." She was living in [REDACTED] at the time, and she said she wanted to enroll the children in [REDACTED] Schools. See Exhibit 1 Pages 169-170. On March 3, 2010, the Calhoun County Referee issued his Opinion and Recommendation. (Exhibit 1 Pages 171-177) In that Opinion, he referenced an earlier opinion which followed a motion made by Respondent on [REDACTED]. Following a hearing, the recommendation was that Respondent would have parenting time from "Thursday after school until Monday morning, one-half of spring break, one-half of summer vacation, and alternate holidays, with [the father] having parenting time at all other times." In his findings of fact, the Referee found that, since February 2009, Respondent had been picking up the children from school on Thursday afternoon, and the father's fiancé was picking them up on Monday morning. Based upon that evidence, Respondent was providing care for the children on Thursday, Friday, Saturday, and Sunday evenings beginning in February 2009. That would put the children with her more than half the time for that time period.

The alleged IPV periods were September 2006 through July 2009 for FAP; December 2006 through July 2009 for FIP, and February 2007 through September 2008 for CDC. Based upon her own statement, the children were living with their father starting in 2005, and based upon the Referee's findings, the children continued to live with their father through January 2009. Consequently, she would not have been eligible for FIP, FAP, or CDC until February 2009, at the earliest.

In Exhibit 1 Page 111, the Department has provided a list of the FAP Respondent received from September 2006 through July 2009, as well as the amount she should have received. In 2006, 2007, 2008, and January 2009, she received a total of \$ [REDACTED] in FAP; but she should have only received \$ [REDACTED]. She received an excess of \$ [REDACTED]. The FAP policy is found in PEM 212 (7/1/05). At page 3 it instructs the Department that, "Only one person can be the Primary Caretaker and the other caretaker(s) is considered the Absent Caretaker(s). The child is **always** in the FAP group of the Primary Caretaker." The children were living primarily with their father, and therefore, the father was the primary caretaker; the children should have been in his FAP group (if he had one). Respondent was not eligible to have them included in her group.

On pages 101 to 108 of Exhibit 1, the Department provided reports of the amounts Respondent received in the CDC program from February 4, 2007, through September 27, 2008. She was granted \$ [REDACTED] in CDC; she should not have received anything. The applicable policy is found in PEM 703 (7/1/06) and subsequent versions of that manual. As stated at page 12, each parent of the child needing care must have a valid need reason for the time period that child care is requested. The Department has provided clear and convincing evidence, using Respondent's own words, that she did not have a valid need reason for child care: the children were living with her ex-husband.

The FIP payment history is found at pages 89-100 of Exhibit 1. She received \$ [REDACTED] in FIP payments, which is cash assistance, from December 16, 2006, through July 15, 2009. At the earliest, she would have been eligible for FIP beginning February 1, 2009. On pages 98, 99, and 100, she received \$ [REDACTED], \$ [REDACTED] and \$ [REDACTED] for a total of \$ [REDACTED]. When that is deducted, she is left with a total of \$ [REDACTED]. The applicable FIP policy is found in PEM 210 (11/1/06). The policy requires at least one child in the home, with an exception for a pregnant woman. As stated at page 8, if a child is absent from the home, the caretaker must notify the Department of the child's absence within 10 days after it becomes clear to the caretaker the child will be absent for at least 30 days. Clearly, the Department policy is to provide FIP only to families with a child in the home, or at least on the way.

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, Respondent committed an IPV by receiving benefits in excess of those that would have been paid had she properly and timely reported the children's living situation. 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, Respondent received \$ [REDACTED] in FAP when she should only have received \$ [REDACTED] resulting in an OI in FAP benefits of \$ [REDACTED] during the OI period. She received \$ [REDACTED] in FIP of which only \$ [REDACTED] was lawfully, resulting in a FIP OI of \$ [REDACTED]. In the CDC program, she received \$ [REDACTED] but should not have received anything. She had an OI of CDC in the amount of \$ [REDACTED]. 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) in the FIP, FAP and CDC programs.
2. Respondent received an OI of program benefits in the amount of \$ [REDACTED] from the FAP program; \$ [REDACTED] in the FIP program; and \$ [REDACTED] in the CDC program. The total OI is \$ [REDACTED].

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, FIP and CDC for a period of twelve months.



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

Date Signed: 12/05/2014

Date Mailed: 12/05/2014

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:

