

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

IN THE MATTER OF:



Reg. No.: 14-002455
Issue No.: 3005
Case No.:
Hearing Date: July 3, 2014
County: CALHOUN (DISTRICT 21)

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 July 3, 2014, from Detroit, Michigan. The Department was represented by Linda Cannon, 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
 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 May 8, 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 changes in earned 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 July 1, 2012 to December 31, 2012, and January 1, 2013 to March 31, 2013 (fraud periods).
7. During the fraud period, Respondent was issued \$1,800 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$128 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 \$1,672.
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 his FAP benefits because he failed to report his earned 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 (May 2012 and November 2012), 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.

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

First, the Department presented Respondent's redetermination dated March 26, 2012, to show that the Respondent was aware of his responsibility to report changes. See Exhibit 1, pp. 10-13.

Second, the Department presented verification of Respondent's first unreported income dated December 28, 2012. See Exhibit 1, pp. 14-16. The verification indicated that Respondent began employment on May 15, 2012 and received wages from May 25, 2012 to December 28, 2012. See Exhibit 1, pp. 14-16.

Third, the Department presented verification of Respondent's second unreported income dated October 30, 2013. See Exhibit 1, p. 17. The verification indicated that Respondent began employment on January 2, 2013 and ended May 22, 2013. See Exhibit 1, pp. 17-19.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits. There was no evidence to show that Respondent, during the alleged fraud period, represented that he intentionally withheld information. The Department presented Respondent's redetermination dated March 26, 2012, however, this was before the alleged fraud period.

Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the income information for the purpose of establishing, maintaining, increasing or preventing reduction of his FAP program benefits or eligibility, the Department has failed to establish that Respondent 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, 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 failed to satisfy its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

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 715 (July 2014), p. 6.

As stated previously, the Department failed to show that Respondent purposely failed to report income. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715, p. 1.

A client error is present in this situation because Respondent failed to notify the Department of both unreported incomes. Based on this information, it is persuasive evidence that an OI is present due to client error.

In regards to policy, Respondent did not report the unearned income changes within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7. Thus, an OI was present for FAP benefits.

As to the first OI period (July 2012 to December 2012), in consideration of the Respondent beginning the employment on May 15, 2012, it is found that the Department applied the appropriate OI begin date July 1, 2012. See BAM 715, pp. 4-5 and Exhibit 1, pp. 3 and 15.

In this case, the Department presented OI budgets for July 2012 to December 2012. See Exhibit 1, pp. 34-48. The budgets included Respondent's first employment income that was not previously reported. See Exhibit 1, pp. 14-16. A review of the OI budgets for July 2012 to December 2012 found them to be fair and correct. See BAM 715, p. 8. As such, the overissuance established for the first OI period of July 2012 to December 2012 is \$1,104. See Exhibit 1, pp. 20-32.

As to the second OI period (January 2013 to March 2013), in consideration of the Respondent beginning the employment on January 2, 2013, it is found that the Department applied the inappropriate OI begin date January 1, 2013. See BAM 715, pp. 4-5 and Exhibit 1, pp. 3 and 17-19. The appropriate OI begin date is February 1, 2013. See BAM 715, pp. 4-5.

In this case, the Department presented OI budgets for January 2013 to March 2013. See Exhibit 1, pp. 33-39. The budgets included Respondent's second employment income that was not previously reported. See Exhibit 1, pp. 17-19. A review of the OI budgets for January 2013 to March 2013 found them to be fair and correct. See BAM 715, p. 8. However, as stated above, the OI period began on February 1, 2013. Thus, the OI amount of \$184 for January 2013 is subtracted from the total amount sought. See Exhibit 1, p. 33. As such, the overissuance established for the second OI period of February 2013 to March 2013 is \$384. See Exhibit 1, pp. 33-39. The total OI amount for both OI periods is \$1,488 (\$1,104 first OI period plus \$384 for second OI period).


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 \$1,488 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- reduce the OI to \$1,488 for the period July 2012 to December 2012 and February 2013 to March 2013, and initiate recoupment procedures in accordance with Department policy.


Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **7/14/2014**

Date Mailed: **7/14/2014**

EJF/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:

[REDACTED]