

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-002888
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: September 10, 2014
County: Gratiot

ADMINISTRATIVE LAW JUDGE: Darryl T. 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 September 10, 2014, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included [REDACTED] and her husband, [REDACTED].

ISSUES

1. Did Respondent receive an overissuance 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 May 22, 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 earnings in excess of the simplified reporting limit of \$ [REDACTED] monthly.
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 January 1, 2012 through April 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 \$0.00 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 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 (7/1/11), 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 (7/1/11), 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 and she acknowledged that she understood that she needed to report changes in her household circumstances that would affect her eligibility for the benefits she was receiving. In the Notice of Case Action (NCA) dated May 16, 2011, Claimant was advised that, if her household income exceeded \$ [REDACTED] she would have to report it to the Department by the 10th of the following month. Claimant's husband works in furniture sales and is paid strictly on commission. Consequently, his income will vary from week to week, and from month to month. Sales (and commissions) are better when people are receiving tax refunds; they drop off during the summer months.

Claimant's husband's income totaled \$ [REDACTED] for January 2012 (Exhibit 1 Page 39), \$ [REDACTED] for February 2012 (Id, Page 37), \$ [REDACTED] for March 2012 (Id, Page 35), and \$ [REDACTED] for April 2012 (Id, Page 33). Those totals were not disputed by Claimant or her husband. Claimant does not dispute that they received more benefits than they were entitled to, and she disputes that there was an intentional under-reporting of income.

The evidence is persuasive that Claimant received an OI of benefits. The Department has provided clear and convincing evidence that Claimant received \$ [REDACTED] in benefits when she should have received nothing. What is not clear and convincing, however, is that Claimant deliberately failed to report the increased income. The Department provided a NCA from May 16, 2011. It also provided an application from November 9, 2011 (Exhibit 1 Page 28) which suggests that another NCA was issued some time after November 9, 2011. That NCA was not provided. The Department has not provided evidence that Claimant was informed that she had to report income above a specific simplified reporting limit after November 9, 2011. At Page 31 of Exhibit 1, the comments state "the s/r threshold for this family #4 is \$ [REDACTED]/mo." That is believed to mean the self-reporting threshold for a family of four is \$ [REDACTED] per month. That is different from the hearing summary which says the limit was \$ [REDACTED] per month.

The Claimant and her husband testified credibly that they did not deliberately withhold information from the Department about their income.

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.

Because the Department did not prove that Claimant intentionally withheld information, the disqualification will not be imposed.

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.

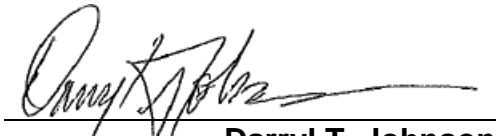
In this case, Respondent received \$ [REDACTED] during the period when she did not report her husband's increased income. (Exhibit 1 Page 31.) She was not entitled to those benefits. The Department has established an OI of \$ [REDACTED] which is to be recouped.

DECISION AND ORDER

1. The Department has not 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.

No disqualification period will be imposed.


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

Date Signed: **9/12/2014**

Date Mailed: **9/12/2014**

DTJ/las

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]