

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

IN THE MATTER OF:

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Reg. No.: 14-003522
Issue No.: 3005; 3006
Case No.: ██████████
Hearing Date: September 17, 2014
County: WAYNE-DISTRICT 31
(GRANDMONT)

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 September 17, 2014, from Detroit, Michigan. The Department was represented by ██████████ Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: Respondent, Latrice Crawford.

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 June 2, 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 her 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 October 1, 2012, to May 31, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$3,504 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$2,226 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 \$1,278.
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.

As a preliminary matter, the evidence packet included OI budgets regarding Respondent's Family Independence Program (FIP) benefits. See Exhibit 1, p. 47. However, the Department testified that the FIP benefits were result of agency error in which the Department was recouping. The Department testified that this IPV hearing would only address whether Respondent received an OI of FAP as a result of Respondent having allegedly committed a FAP IPV. As such, the hearing properly proceeded with respect to the alleged FAP IPV.

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 her FAP benefits because she failed to report her employment and wages 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 (September 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.

An individual who runs his/her own business is self-employed. BEM 502 (October 2012), p. 1. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502, p. 1.

Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income except for farm loss amounts. BEM 502, p. 3.

Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3.

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

First, the Department presented Respondent's application dated October 4, 2012, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1, pp. 10-35. In the application, Respondent indicated that her employment had ended on September 21, 2012 and that her employment did not expect to continue the next 30 days. See Exhibit 1, p. 21. It should be noted that the application also was submitted during the alleged fraud period.

Second, the Department presented Respondent's Verification of Employment dated October 8, 2012. See Exhibit 1, pp. 40-42. The employer indicated that Respondent's employment ended on September 21, 2012 because her assignment ended. See Exhibit 1, p. 41.

Third, the Department presented Respondent's redetermination dated January 30, 2013, which occurred during the alleged IPV period. See Exhibit 1, pp. 36-39. In the redetermination, Respondent did not report income, even though the Department argues she was receiving income at the time the redetermination was submitted. See Exhibit 1, p. 37. Ultimately, the Department argued that Claimant did not report income in the application or redetermination, even though the employment verification showed she maintained employment with their company from March 5, 2012 to May 9, 2013.

Fourth, the Department presented Respondent's Verification of Employment and accompanying documentation dated July 15, 2013. See Exhibit 1, pp. 43-45. The employment verification indicated that Respondent received wages from March 5, 2012, to May 9, 2013. See Exhibit 1, p. 45. Moreover, the employer notated that Respondent is a vendor and that she will be called back to work when they receive more contracts. See Exhibit 1, p. 45.

At the hearing, Respondent argued that she did not intentionally withhold her income information. Respondent testified that she was a "on-call" vendor and received self-employment income for such services. Respondent testified that she would always contact her DHS worker when her income had ended or began, including the submission of verifications of employment.

As to the verification of employment dated October 8, 2012, Respondent testified that she submitted the documentation because her employment had ended September 21, 2012. See Exhibit 1, p. 41. Thus, Respondent testified that she applied for benefits on October 4, 2012 and indicated she did not have self-employment income at the time. See Exhibit 1, p. 21. It should be noted that Respondent's payroll records indicate she received wages on October 11, 2012 and October 25, 2012. See Exhibit 1, p. 45. Respondent testified that she would have contacted the DHS worker subsequent to her application informing the Department of the income received in October 2012.

As to the redetermination dated January 30, 2013, Respondent testified that she did not have self-employment income at the time of submission. A review of the payroll records indicate that Respondent received payment on January 31, 2013 and did not receive another payment until February 28, 2013. See Exhibit 1, p. 45.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP. Respondent credibly testified that she would always contact her DHS worker when her self-employment income had ended or began. Respondent credibly testified that she would have contacted the DHS worker subsequent to her application informing her of the income received in October 2012.

Additionally, the Department did present Respondent's redetermination dated January 30, 2013, which was submitted during the alleged IPV period. The Department alleged that Respondent submitted this document in which she reported no income, even though she was receiving it. However, Respondent provided credible testimony that she did not report such income because she was not employed at the time. Based on this information, it is reasonable to conclude that on or around the time of submission of the redetermination, she did not receive any wages. Respondent received no wages for approximately one month on or around the time she reported no income in the redetermination.

In summary, 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 her 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.

Overissuance

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 (May 2014), p. 1.

A client error is present in this situation because Respondent failed to notify the Department of her self-employment income timely. Even though the analysis found that Respondent did not intentionally withhold her income information, the evidence is persuasive that an OI is present due to client error. Respondent failed to present any documentary evidence that she properly reported that her self-employment income had begun.

Applying the overissuance period standards, It is found that the Department applied the inappropriate OI begin date and the begin date is November 1, 2012. See BAM 715, pp. 4-5. As such, the OI amount of \$154 for the month of October 2012 will be subtracted from the total OI amount sought. See Exhibit 1, p. 47. This results in an alleged OI amount of \$1,124 of FAP benefits for the time period of November 1, 2012, to May 31, 2013.

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, p. 6.

In this case, the Department presented OI budgets for November 2012 to May 2013. See Exhibit, pp. 77-92. The budgets included Respondent's income that was not previously reported. See Exhibit 1, p. 45. A review of the OI budgets for November 2012 to May 2013 found them to be fair and correct. See BAM 715, p. 8. Thus, the

