

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

IN THE MATTER OF:

██████████
██████████████████
████████████████████

Reg. No.: 14-003680
Issue Nos.: 1005, 3005
Case No.: ██████████
Hearing Date: September 18, 2014
County: Oakland (03-Walled Lake)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 18, 2014, from Detroit, Michigan. The Department was represented by ██████████
████████████████████ 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 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 FAP and Family Independence Program (FIP) 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 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 requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP and FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report income.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. Between January 1, 2011, and November 30, 2011, Respondent was issued \$3,778 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$509 in such benefits during this time period.
7. The Department alleges that Respondent received a FAP OI in the amount of \$3,269.
8. This was Respondent's first alleged IPV concerning FAP and FIP.
9. 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, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260; MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; 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 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, in support of its IPV and disqualification case against Respondent, the Department presented a Request for Waiver of Disqualification Hearing, DHS-826, signed by Respondent on June 10, 2014. A client who signs a DHS-826 Request for Waiver of Disqualification Hearing is determined to have committed an IPV and is subject to a disqualification. BAM 720 (May 2014), pp. 2, 15. In the signed DHS-826 presented, the Department advised Respondent that it believed she had committed an IPV and intended to pursue a disqualification hearing for one-year penalty concerning FIP and one-year penalty concerning FAP. Respondent hand-wrote at the bottom of the page "ok you can stop my FIP case for a year cause I don't have a income." However, she marked the box on the DHS-826 stating "I do not admit the facts as presented are correct. However, I have chosen to sign this waiver request and understand that I will be disqualified from the programs shown without a hearing." Respondent's marking of that checkbox and the fact that the form referenced both the FIP and FAP programs and one-year disqualifications under both programs was sufficient to establish that Respondent is subject to a one-year disqualification from both programs. BAM 720, p. 16.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. In this case, the Department alleged both an FIP and FAP OI. However, prior to the current hearing, the Department requested a hearing concerning the FIP OI and a debt collection hearing was held on July 31, 2014. In a hearing decision issued on August 20, 2014, the presiding Administrative Law Judge Jacquelyn McClinton concluded that the Department established the FIP OI and ordered the Department to initiate collection procedures for a \$2,015 OI. In light of the August 20, 2014, Hearing Decision, the Department requested that only the FAP OI issue be addressed. Therefore, the Department's June 2, 2014, hearing request with respect to the FIP OI is dismissed. The hearing proceeded to address the FAP OI.

The amount of the FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 8; BAM 715 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

In this case, the Department alleges an FAP OI for January 2011 to November 2011 based on unreported income of her children, [REDACTED], who are all identified as living with Respondent at the time of her January 2011 application and who were all under the age of 22 in 2011. The Department testified that all three children were members of Respondent's FAP group between January 2011 and November 2011. See also BEM 212 (October 2011), p. 1 (making a parent and all children under 22 years of age who live together mandatory FAP group members).

The Department's evidence showed that (i) [REDACTED] was employed with [REDACTED] (Employer 1) beginning the second quarter of 2010 and ending the first quarter of 2011, that he was employed with [REDACTED] (Employer 2) beginning the second quarter of 2011 until sometime during the third quarter of 2011, and that he received unemployment compensation benefits from [REDACTED] (ii) [REDACTED] was employed with [REDACTED] (Employer 3) beginning the third quarter of 2010 and [REDACTED] (Employer 4) beginning the first quarter of 2011 and continuing through 2011; and (iii) [REDACTED] was employed with Employer 4 from the third quarter of 2011 through 2011. The Department noted that it did not include [REDACTED] income in the FAP OI budgets until after he turned 18 years old. See BEM 501 (January 2011), p. 2 (providing that all earned income for students under 18 years old be excluded from the calculation of a household's earned income).

In this case, the Department alleges that Respondent received FAP benefits totaling \$3,778 for the period from January 2011 to November 2011 but was eligible for only \$509 in FAP benefits during this period if all her children's income was included in the calculation of her FAP benefits. The benefit issuance summary shows that Respondent received FAP benefits totaling \$3,778 between January 2011 and November 2011.

The Department presented FAP OI budgets for each of the months between January 2011 and November 2011 showing its calculation of the FAP benefits Respondent was eligible to receive if all of the household's income had been included in the calculation of her FAP eligibility for each month at issue. A review of the Department's evidence shows that the Department relied on a consolidated inquiry report of the children's quarterly wages in determining each child's income. Although Department policy requires that the Department consider actual income for each of the months at issue (BAM 720, p. 10), because there was no actual income available, the Department properly relied on the consolidated inquiry with respect to the wages of each of the parties. Because Respondent did not timely report the income at issue, the household was not eligible for the earned income deduction. BAM 720, p. 10. A review of the FAP OI budgets for January 2011 to May 2011 shows that Respondent was only eligible for \$509 in FAP benefits during that period. RFT 260 (October 2010), pp. 15-21. For June 2011 to November 2011, Respondent's household's income exceeded the net income limit applicable for a group size of four and, therefore, the household was not eligible for any FAP benefits issued to her during those months. RFT 250 (October 2010 and October 2011). Therefore, Respondent was overissued \$3,269 in FAP benefits from January 2011 to November 2011, the difference between the \$3,778 in FAP benefits issued to her during that period and the \$509 she was eligible to receive.

Therefore, the Department has established that it is entitled to recoup and/or collect from Respondent \$3,269 in overissued FAP benefits.

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. Respondent is subject to an FIP and FAP disqualification based on the DHS-826 she signed.
2. Respondent received an OI of FAP benefits in the amount of \$3,269.

DECISION AND ORDER

Pursuant to the Department's request, the Department's hearing request concerning the FIP OI is DISMISSED.

With respect to the FAP OI, the Department is ORDERED to initiate recoupment procedures for the amount of \$3,269 in accordance with Department policy.

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



Alice C. Elkin

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

Date Signed: **9/22/2014**

Date Mailed: **9/22/2014**

ACE / pf

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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]