

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

**IN THE MATTER OF:**

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

Reg. No.: 14-004373  
Issue No(s): 3005  
Case No.: ██████████  
Hearing Date: July 28, 2014  
County: Jackson

**ADMINISTRATIVE LAW JUDGE:** Jacquelyn A. McClinton

**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 28, 2014 from Detroit, Michigan. The Department was represented by ██████████, 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 Food Assistance Program (FAP) 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 Food Assistance Program (FAP) 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 18, 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 changes in circumstances.
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 October 1, 2011 through May 31, 2012 (fraud period).
7. During the fraud period, Respondent was issued \$4,208.00 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 \$4,208.00.
9. This was Respondent's second 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 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 (October 2011), p. 10.

### **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 (January 2011), 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, the Department alleges that Respondent committed an IPV of her FAP benefits because she failed to notify the Department that she had moved back into the home of her former husband. At the time Respondent moved into the home, she was pregnant with twins but she and her ex-husband did not have any children together. On April 1, 2012, Respondent reported the birth of her twins but did not report a change in address.

At the hearing, the Department provided an application and a Shelter Verification submitted by Respondent on July 26, 2011 in which she listed a different address than her ex-husband. The application required Respondent to acknowledge that she had received the Information Booklet advising her regarding Things You Must Do which explained reporting changes of addresses and reporting changes in residency. While this evidence may be sufficient to establish that Respondent no longer resided in Michigan and was no longer eligible for FAP benefits, to establish an IPV, the Department must present clear and convincing evidence that Respondent intentionally withheld or misrepresented information for the purpose of maintaining benefits.

The Regulatory Agent for the Department testified that she interviewed Respondent in June 2014 and that Respondent stated that she and her ex-husband had been sharing food since she moved back into the home in September 2011. Department policy holds that generally, persons who live together and purchase and prepare food together are members of the same FAP group. BEM 212 (October 2011), p. 1. Department policy also holds that parents and their children **under** 22 years of age who live together **must** be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1. Accordingly, once the twins were born, Respondent's ex-husband became a mandatory group member.

The Department testified that Respondent called on April 1, 2012 to report the birth of her children but did not state that she was living with their father or to report a change of address. The Department also provided evidence that Respondent's ex-husband had earnings during the fraud period which would have affected the amount of FAP benefits Respondent received. The addition of group members would likely have increased the amount in FAP benefits she would receive. Contrastly, the addition of her gainfully employed ex-husband with whom she shared food, would have likely reduced the amount of FAP benefits she received. It is clear that Respondent was aware of the requirement to report changes in circumstances as she reported the birth of her children. It is found that Respondent intentionally failed to report that she moved into a home with her ex-husband for the purpose of maintaining or increasing her FAP benefits.

### **Disqualification**

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. 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. 12.

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. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (October 2009), 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. 13.

In this case, the Department testified that Respondent had a previous 12 month disqualification. It is found that the Department has satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Accordingly, since this is Respondent's second IPV, she is subject to a disqualification under the FAP program for a period of 24 months.

### **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. The Department has alleged an OI of FAP benefits resulting from Respondent's receipt of Michigan-issued benefits while no longer a state resident.

The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p. 6; BAM 715 (January 2011), p. 5; BAM 705 (January 2011), p. 5. At the hearing, the Department established that the State of Michigan issued a total of \$4,208.00 in FAP benefits to Respondent from October 1, 2011 through May 31, 2012. The Department alleges that Respondent was eligible for \$0.00 in FAP benefits during this period.

In support of its contention that Respondent was overissued FAP benefits, the Department presented Wage History of Respondent's ex-husband from the first and second quarters of 2012. Additionally, the Regulatory Agent testified that she reviewed the tax return of Respondent's ex-husband from 2011 which showed that he earned \$76,799.00 for the year. Accordingly, Respondent's ex-husband earned approximately \$6,400.00 each month in 2011. The wages of Respondent's ex-husband clearly exceeded the gross income limit for both a group size of two and a group size of four. RFT 260 (October 2011), pp. 20-22. As previously stated, Respondent's ex-husband was a mandatory group member both because they shared food and when the twins that he fathered were born. Therefore, the Department has established it is entitled to recoup the \$4,208.00 in FAP benefits it issued to Respondent between October 1, 2011 and May 31, 2012.


### **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 did commit an intentional program violation (IPV).
2. The Department has further established that Respondent received an OI of program benefits in the amount of \$4,208.00 from the FAP program for the period of October 1, 2011 through May 31, 2012.

The Department is ORDERED to initiate recoupment procedures for the amount of \$4,208.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 24 months.



**JACQUELYN A. MCCLINTON**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: August 13, 2014

Date Mailed: August 13, 2014

**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.

JAM/cl

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