

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-004376
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: September 25, 2014
County: KALAMAZOO

ADMINISTRATIVE LAW JUDGE: Susan Burke

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 25, 2014, from Detroit, Michigan. The Department was represented by [REDACTED], 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 the Department establish by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving 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 [REDACTED], to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG requested that Respondent be disqualified from receiving program benefits.
3. Respondent notified the Department of employment for herself and her group member and requested forms from the Department to submit pay stubs prior to and within the alleged fraud period of [REDACTED].
4. A notice of hearing was mailed to Respondent at her 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 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 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 (5/2010), 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 (7/2010), 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 the present case, the Department alleged that Respondent did not report her income at [REDACTED]s and that she did not report the income from her group member from [REDACTED] and [REDACTED]. The Department alleged the fraud period to be [REDACTED].

With regard to Respondent's employment at Schuler's, she reported to the Department that she was working at Schuler's in her application of April 9, 2009 (Exhibit 1, p. 23) In a verification of Employment date-stamped August 31, 2010, the employer stated that Respondent was temporarily off, but that Respondent's employment was permanent. (Exhibit 1, p. 54) The Department was therefore aware of Respondent's employment situation and could have made further inquiries.

With regard to Respondent's group member's employment, Respondent's group member began employment with [REDACTED] on [REDACTED] (Exhibit 1, p. 42), after the alleged fraud period began. Moreover, Respondent reported the group member's potential employment with [REDACTED] on [REDACTED], . (Exhibit 1,

p. 41) In addition, Respondent requested employment forms from the Department in order to submit the group member's pay stubs on August 31, 2010. (Exhibit 1, p. 39) It is not known if the Department followed up on Respondent's request. It is also noted that Posh Staffing employment ended on October 1, 2010 (Exhibit 1, p. 45), within the alleged fraud period. The [REDACTED] employment began prior to the alleged fraud period (Exhibit 1, p. 45), but after Respondent's FAP application of [REDACTED]. Although Respondent should have reported the Posh Staffing employment prior to the Semi-Annual Contact Report, based on Respondent's submission of all other records, it is not found that Respondent intentionally withheld the information.

Based on the above discussion, it is not concluded that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. Respondent reported information to the Department, and it is not certain whether the Department in turn followed up on information that she reported through issuance of verification checklists and the Department's "pay stub forms," as requested by Respondent.

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. 13.

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.

In this case, the Department has not proven by clear and convincing evidence that Respondent committed an IPV, so Respondent is not disqualified from receiving benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 725 (5/2010), p. 1.

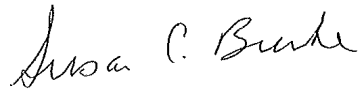
In this case, the Department presented a budget that did not include an earned income deduction. (BEM 556 (1/2010), p. 3) Therefore, the Department did not present for examination a budget to determine a proper OI based on Department error.

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did not receive an OI of program benefits.

The Department is ORDERED to delete the OI and cease any recoupment action.



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

Date Signed: **10/21/2014**

Date Mailed: **10/21/2014**

SCB / hw

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:

