

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

IN THE MATTER OF:



Reg. No.: 14-005971
Issue No.: 1005; 3005
Case No.: [REDACTED]
Hearing Date: October 22, 2014
County: BAY

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 October 22, 2014, from Detroit, Michigan. The Department was represented by [REDACTED], 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
 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 July 10, 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 husband's self-employment 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 FAP fraud period to be April 1, 2010, to June 30, 2013. (FAP fraud period).
7. The Department's OIG indicates that the time period it is considering the FIP fraud period to be June 1, 2011, to June 30, 2013. (FIP fraud period).
8. During the fraud period, Respondent was issued \$30,970 in FIP FAP SDA CDC MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$17,273 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA benefits in the amount of \$13,697.
10. This was Respondent's first second third alleged IPV.
11. 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 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, the Department alleges that Respondent committed an IPV of her FAP/FIP benefits because she failed to report her spouse's self-employment income to the Department, which caused an overissuance of FAP/FIP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (January 2010 and June 2011), 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.

At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report her spouse's self-employment

income and that she intentionally withheld or misrepresented the information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP/FIP program benefits or eligibility.

First, the Department argued that Respondent's husband failed to report that he received self-employment income. The Department further argued that it became aware of his unreported income when the husband completed an employment information sheet for the Partnership. Accountability. Training. Hope. (PATH) program. See Exhibit 1, pp. 77-78. On May 22, 2013, Respondent indicated in the form that he had been self-employed since the age of 18. See Exhibit 1, p. 77. Also, the Department presented a PATH email dated May 22, 2013, which stated that the husband alleged he was informed by the Department not to declare his income because it was too much work to budget. See Exhibit 1, p. 78. However, neither Respondent nor her husband was present at the hearing to testify to the above allegation. The evidence presented Respondent's and her husband's tax return information for the tax years of 2010 to 2012, which in fact reported self-employment income. See Exhibit 1, pp. 71-76.

Second, the Department presented multiple applications/semi-annual contact reports/redeterminations, which were submitted by the Respondent during the alleged fraud period. A review of the submitted forms found that the Respondent failed to report her husband's self-employment income. See Exhibit 1, pp. 12-49.

Based on the foregoing information and evidence, the Department has established that Respondent committed an IPV of FAP and FIP benefits. The evidence is sufficient to establish that Respondent failed to report her husband's self-employment.

The Department presented evidence to establish Respondent's intent during the fraud IPV usage. Even though the husband eventually reported the self-employment income, the Department presented multiple documents in which the Respondent failed to report her husband's self-employment income throughout the fraud period. See Exhibit 1, pp. 12-49. This is persuasive evidence to show that Respondent committed an IPV of her FAP/FIP benefits because she failed to report her husband's self-employment income, which caused an overissuance of FAP/FIP benefits.

As stated previously, the Department presented a PATH email which stated that the husband alleged he was informed by the Department not to declare his income because it was too much work to budget. See Exhibit 1, p. 78. However, neither Respondent nor her husband was present at the hearing to testify/rebut the above allegation.

In summary, there was clear and convincing evidence that Respondent was aware of the responsibility to report self-employment income and that she intentionally withheld or misrepresented the information for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP/FIP program benefits or eligibility.

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 satisfied its burden of showing that Respondent committed an IPV concerning FAP/FIP benefits. Therefore, Respondent is disqualified from FAP and FIP benefits for 12 months. BAM 720, p. 16

Overissuance

As previously stated, the Department has established that Respondent committed an IPV of FAP and FIP benefits.

Applying the OI standard and in consideration of Respondent's husband receiving the unreported income in the tax year of 2010, the Department determined that the OI period began on June 1, 2011 for FIP benefits and April 1, 2010 for FAP benefits. See Exhibit 1, pp. 4 and 71. It is found that the Department applied the appropriate OI begin dates. See BAM 720, p. 7.

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 720, p. 8.

An individual who runs their own business is self-employed. BEM 502 (January 2010 and January 2011), 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. A list of allowable and non-allowable expenses is located in BEM 502. See BEM 502, pp. 3-4. Verification sources for self-employment include income tax returns or other sources listed in BEM 502. See BEM 502, p. 6.

In regards to Respondent's FIP benefits, the Department presented OI budgets for June 2011 to June 2013. See Exhibit 1, pp. 98-207. Monthly budgets were provided for the FIP program using the submitted tax year documents. See Exhibit 1, pp. 71-76. A review of the OI budgets found it to be fair and correct. The Department established that the overissuance for FIP benefits was \$6,201. Thus, the Department is entitled to recoup \$6,201 in FIP benefits.

In regard to Respondent's FAP benefits, the Department presented OI budgets for the time period of April 2010 to June 2013. See Exhibit 1, pp. 79-207. Monthly budgets were provided for the FAP programs using the submitted tax year documents. See Exhibit 1, pp. 71-76. A review of the OI budgets found them to be fair and correct. The Department established that the overissuance for FAP benefits was \$7,496. Thus, the Department is entitled to recoup \$7,496 in FAP benefits.

In total, the Department is entitled to recoup \$13,697 in FAP/FIP benefits.

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 has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$13,697 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

initiate recoupment procedures for the amount of \$13,697 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from
 FIP FAP SDA
 12 months. 24 months. lifetime


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

Date Signed: **10/28/2014**
Date Mailed: **10/28/2014**
EJF / cl

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:

