

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

IN THE MATTER OF:



Reg. No.: 14-006097
Issue No.: 3005
Case No.:
Hearing Date: October 23, 2014
County: HILLSDALE

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 23, 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
 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 12, 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 changes in 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 November 1, 2012, to March 31, 2013 (fraud period).
7. During the fraud period, Respondent was issued \$1,492 in FIP FAP SDA CDC MA 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 FIP FAP SDA CDC MA benefits in the amount of \$1,492.
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.

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 who is a food assistance simplified reporter, committed an IPV of her FAP benefits because she failed to report her income exceeding the reporting limits, which caused an overissuance of FAP benefits.

Food assistance groups with countable earnings are assigned to the simplified reporting (SR) category. BAM 200 (December 2011), p. 1.

Simplified reporting (SR) groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. BAM 200, p. 1. **No** other change reporting is required. BAM 200, p. 1. If the group has an increase in income, the group must determine their total gross income at the end of that month. BAM 200, p. 1. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, p. 1. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. BAM 200, p. 1.

The income limit is 130 percent of the poverty level based on group size. BAM 200, p. 1. To determine the group's SR income limit, all eligible members of the FAP group are counted. BAM 200, p. 1. Respondent's applicable group size in this case is five. RFT 250 indicates that the simplified reporting income limit for a group size of five is \$2,927. RFT 250 (October 2012), p. 1.

The Department's OIG indicates that the time period it is considering the fraud period is November 1, 2012, to March 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 exceeding the reporting limits and that she intentionally withheld or

misrepresented her income 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 April 19, 2012, to show that the Respondent was aware of her responsibility to report changes. See Exhibit 1, pp. 11-32.

Second, the Department presented Respondent's Notice of Case Action dated May 1, 2012, which notified her of the ongoing obligation to report to the Department if her household's monthly gross income exceeded the simplified reporting limit of \$2,836 (group size of five). Exhibit 1, pp. 33-39.

Third, the Department presented Respondent's Semi-Annual Contact Report (contact report) dated August 10, 2012, which was submitted before the alleged fraud period. See Exhibit 1, pp. 40-41. The Department argued that Respondent reported fraudulent information on section 4 of the contact report by indicating her household's monthly gross income had not exceeded \$2,343. See Exhibit 1, p. 41. Moreover, the Department argued that the Respondent's employer verifications found that the husband's income exceeded the amount of above (\$2,343) for May 2012, June 2012, and August 2012. See Exhibit 1, pp. 10 and 46-47. The Department inferred that Respondent should have reported her household's increase of monthly income on the contact report. See Exhibit 1, p. 10.

Fourth, the Department presented Respondent's Wage Match Client Notice (client notice) dated July 22, 2013. See Exhibit 1, pp. 42-43. The document indicated that Respondent did not respond to the client notice. See Exhibit 1, p. 42.

Fifth, the Department presented a Verification of Employment and income information from the husband's employer dated September 13, 2013. See Exhibit 1, pp. 44-47. The Verification of Employment and additional documents indicated that the husband began employment on August 2, 2010, ongoing. See Exhibit 1, p. 44.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

The Department presented a reasonable argument that the Respondent failed to indicate that her household's monthly gross income exceeded \$2,343. See Exhibit 1, p. 41. Furthermore, the Department presented the husband's employer verifications to show that his income exceeded the amount above (\$2,343) for May 2012, June 2012, and August 2012. See Exhibit 1, pp. 10 and 46-47. Thus, the Department inferred that Respondent should have reported her household's increase of monthly income on the contact report. See Exhibit 1, p. 10. However, a review of the husband's income found that he was below the income limit amount for July 2012. See Exhibit 1, p. 46. Nevertheless, there was no evidence to show that Respondent, during the alleged fraud period, represented that she intentionally withheld information. The Department

presented Respondent's contact report and client notice; however, these documents were dated either before or after the alleged fraud period. See Exhibit 1, pp. 40-43. The Department did not include the contact report month (August and/or September of 2012) as part of the alleged fraud period.

Therefore, 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. BAM 720, p. 16.

Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report a change in earned 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 (July 2014), p. 1.

Additionally, the only client error overissuances related to simplified reporting that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. BAM 200, p. 5. For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. BAM 200, p. 5. Groups report if their actual income for a month exceeds 130 percent of poverty level.

BAM 200, p. 5. SR does not affect client errors that occur at application and redetermination. BAM 200, p. 5. SR does not affect the determination of agency error overissuances. BAM 200, p. 5.

A client error is present in this situation because the evidence presented that Respondent failed to report that her group's income exceeded the SR income limit. See BAM 200, pp. 1 and 5 and BAM 715, p. 1. Based on this information, it is persuasive evidence that an OI is present due to client error.

The Department determines the first month of the overissuance as two months after the actual monthly income exceeded the simplified reporting (SR) limit. BAM 715, p. 5. This accounts for the 10 days to report by the client, the 10 days for the specialist to act on the change and the 12-day negative action period. BAM 715, p. 5. If the income falls below the income limit any time during these two months and does not exceed the income limit again during the certification period, recoupment is not necessary. BAM 715, p. 5. If it does exceed the income limit again during the certification period and the client does not report, all months that exceeded the limit after the first two months would be recouped. BAM 715, p. 5.

Applying the above standard, the Department properly determined that the OI period began on November 1, 2012. See Exhibit 1, p. 4 and see BAM 715, pp. 4-5.

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 March 2013 (except February 2013). See Exhibit 1, pp. 48-57. The budgets included the husband's income verification. See Exhibit 1, pp. 45-47. A review of the OI budgets for November 2012 to March 2013 (except February 2013) found them to be fair and correct. See BAM 715, p. 5. Thus, the Department is entitled to recoup \$1,492 of FAP benefits for the time period of November 1, 2012, to March 31, 2013.


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 \$1,492 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to

- initiate recoupment procedures for the amount of \$1,492 in accordance with Department policy.



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:

